2001

Travelers Express Company, Inc. v. The State of Utah : Brief of Appellant

Utah Supreme Court

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David L. Wilkinson; Attorney General; Joseph P. McCarthy; Assistant Attorney General; Attorneys for Defendants-Appellants.

IN THE SUPREME COURT OF THE STATE OF UTAH

TRAVELERS EXPRESS COMPANY, INC., a Minnesota Corporation,

Plaintiff-Respondent,

-v-

STATE OF UTAH, EDWARD T. ALTER, in his capacity as Treasurer of the State of Utah, and VAL OVESON, in his capacity as Auditor of the State of Utah,

Defendants-Appellants.

Case No. 19216

REPLY BRIEF OF DEFENDANTS-APPELLANTS

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CASES CITED

STATUTES CITED

Appellant submits the following Reply Brief in response to Respondent's Brief in response to Respondent's Brief.

POINT I

VESTED PROPERTY INTEREST CANNOT BE CREATED BY STATUTE OF LIMITATIONS WHEN IT UNDERMINES AND DESTROYS PUBLIC POLICY ON UNCLAIMED PROPERTY AS ESTABLISHED BY THE LEGISLATURE THROUGH A LAW PASSED SUBSEQUENT TO PASSAGE OF THE STATUTE OF LIMITATIONS.

In 1957 the Utah Legislature in effect repudiated the doctrine of escheat by establishing and endorsing a new concept known as the Uniform Disposition of Unclaimed Property law. This, in effect, requires all corporations or business holding funds or property belonging to an owner they cannot locate, to turn it over to the Utah State Treasurer. He, basically, "stands in the shoes of the owner" and holds for him.

Owners or their heirs who file claims are paid and the unclaimed balance is used for public purposes by being deposited in the Uniform School Fund. Owners or heirs, without any limitation of time, may come forward and claim a refund of all that is being held. A trust fund has been established sufficiently large to enable all claims to be paid. In the case of money orders cashed by Travelers Express after having been reported as unclaimed property and the funds paid in, repayment will be made by the Treasurer's Office upon submission of the cashed money order.

While the basic question to be decided in this case is whether the six-year Statute of Limitations applies, or whether the later passed law setting a seven-year presumption of abandonment statutory period overrules the six-year period. However, a deeper underlying question is really whether the Uniform Unclaimed Property Law can be circumvented and public policy be thwarted by the use of the Statute of Limitations to permit corporate escheat.

A basic concept is that escheat is not favored in the law. Recently In the Matter of the Estate of Vera Katz Vernon and Harold T. Katz, deceased, 659 P.2d 1052 (Utah 1983) this court overruled a past precedent to give an estate to heirs who showed up many years after escheat ordinarily occurred. If the court upholds the respondent in this case, it will be permitting, even affirming, the doctrine of escheat in a different form, namely corporate escheat.

Corporate escheat, if permitted, will divert funds from public purposes, and ultimately from owners or heirs just as effectively as public escheat will divert funds from owners and their heirs.

POINT II

TRAVELERS EXPRESS COMPANY, INC. MAY NOT BE SELECTIVE IN APPLYING STATUTE OF LIMITATIONS ONLY TO STATE AND NOT TO OTHER OWNERS SUBJECT TO UNCLAIMED PROPERTY ACT, AND NOT APPLYING TO OWNERS WHO CASH MONEY ORDERS AFTER SIX YEARS.

The appellants contend that when money orders are purchased and issued that they are subject to the six-year Statute of Limitations, and that at the end of six years, the holder has a vested right in the funds.

Two questions immediately come to mind. (1) Is Travelers Express Company taking the position that all of its money orders sold within the State of Utah are good for only six years? (2) Will Travelers Express Company refuse to cash any money order older than six years for any customer?

A resounding "no" answer is so obvious that it hardly needs to be mentioned. Nowhere in the record is there any evidence that money orders are not honored by Travelers Express after six years, except those claimed by the State Treasurer under the Unclaimed Property Law. No time limits are ever brought to the buyer's attention.

After asserting the statute, there has been a waiver of it when any time barred money orders have been cashed older than six years. The defense of the Statute of Limitations may not be asserted against the State of Utah, and then waived against owners of money orders who present them for payment after six years. The issuing company cannot observe a double standard.

This principle was the central point in the case of South Carolina Tax Commission v. Metropolitan Life Insurance Company, 221 S.E.2d 522 (1975).

> It is clear from the records that the respondent would never attempt a forfeiture against a policy holder, and that the point is now raised only as against the Tax Commission. The derivative nature of the Commission's rights under the act must be considered. If the owner of presumed abandoned property has any rights, which are conceded by Metropolitan, these rights accrue in their entirety to the commission. Metropolitan may not waive its contractual rights as to these policies against the policyholders, and then enforce those same rights against the Tax Commission. (Emphasis added.)

The case further stated . . . "Both in law and equity forfeitures are abhorred, but by the same token waivers are favored."

The same would be true of forfeited money orders to Travelers Express. It would bring about corporate escheat. On the other hand, the waiver doctrine would protect the funds for the true owners, and would be returned to the owner by the State Treasurer when claimed.

Also, another case applying the waiver doctrine stated:

> It is probable that the bank would never attempt such a forfeiture against a traveler's check purchaser, and that the point is now raised only as against the controller. If this is so, the derivative nature of the controller's rights under the act must be born in mind. If the owner of presumed abandoned property has any rights, those rights accrue in their entirety to the controller. The bank may not waive its contractual rights as to a purchaser of

> traveler's checks, and then enforce those same rights as against the state and the controller. (Emphasis added.)

Bank of America v. Cranston, 252 Cal.App.2d 208 (1967).

The same conclusion was reached in a "money order" case. See Cory v. Golden State Bank, Cal.App., 157 Cal.Rptr. 538, 95 CA.3rd 360.

In the recent case of Dennis J. Roberts, II, et al. v. Travelers Express Company, Inc. No. C.A. 80-4443 in the Superior Court of Rhode Island, June 17, 1982. Mr. Justice Albert E. DeRobbio after reviewing the evidence and nearing arguments in a summary judgment hearing stated the following in a transcript of his reasons for his decision as follows:

> A waiver is a voluntary and intentional relinquishment of a known right, claim or privilege. . . . This court concurs with the findings of the California court in the case of Travelers Express against Cory, number 77-1086R, decided January 8, 1980, that Travelers has waived such a service charge. And I quote the language from that case, "Since the controller's rights under California's Unclaimed Property Law are derivative and he succeeds to wnatever rights the owners of abandoned property have, the waiver of service charges by plaintiff as to the owners in any event defeats any right Travelers might seek to assert against the controller."

The court's order signed by Justice DeRobbio on July 9, 1982 stated:

> #4. Travelers Express has never attempted to collect these service charges from owners or payees of the money orders regardless of when presented for payment, but has instead followed a practice of waiving such charges to all except the state.

In the present case on appeal, Travelers Express may not waive its assertion of the Statute of Limitation against individual money order owners and not waive this right against the State Treasurer.

POINT III

LEGISLATIVE HISTORY DEMONSTRATES THAT THE UTAH UNCLAIMED PROPERTY ACT SUPERSEDES THE RUNNING OF THE STATUTE OF LIMITATIONS.

The original unclaimed property law passed in 1957 did not specifically, mention money orders, although we maintain that they were covered by Section 78-44-8, U.C.A. (1953) which covered "all intangible personal property not otherwise covered by this act."

A specific amendment in 1959 clearly showed the legislative intent of covering money orders when the specific words "money orders" were included. This was two years after Section 16 of the Uniform Act dealing with the Statute of Limitations was omitted at the passage of the Uniform Unclaimed Property Act in 1957.

The Legislature certainly would not have amended in these words through passage of a specific bill if it would have been a useless and meaningless gesture. It would have been totally without purpose if the Legislature had intended to continue to recognize the six-year Statute of Limitations.

This 1959 amendment shows the clear intent of the Legislature that money orders were to be covered by the unclaimed

property law, and that companies issuing money orders must report those that were uncashed for seven years.

Thus, the principle of legislative intent argued extensively by respondents in their brief tnat the Statute of Limitations was intended to supersede the effect of the Unclaimed Property Act has been totally demolished by the 1959 amendment, particularly in reference to money orders. Therefore, the extensive quote from the case of State of Utah ex rel. Baker v. Intermountain Farmers Association, 668 P.2d 503 (1983) is not in point nor applicable. The public policy to be concerned about is the unclaimed property disposition policy which is a successor to the old escheat policy, and it has a far higner priority than whether the Statute of Limitations should continue.

A brief explanation of tne reference to a Bar by the Statute of Limitations in Section 78-44-11(5). U.C.A. (1953) and in Regulation #10 issued by the State Treasurer shortly after the 1957 act was adopted needs to be explained.

The State Treasurer has always upheld the principle of Ireland v. MacIntosh, 61 Pac. 901 (Utah) that once the Statute of Limitations has fully run, and it has not been waived, it becomes a vested right. Tnerefore, in recognizing that the statute nad fully run on any property held by a nolder at least six years prior to the 1957 passage of the Uniform Unclaimed Property Act., In other words before 1951, there should have been placed in the law a passage which recognized this right, and stating that such was not reportable. That was the reason for Section 78-44-11(5),

and that was the reason for Regulation #10 so that these prior rights would be recognized and not excluded. However once the law had recognized these exceptions, the future reporting was done, the public policy of unclaimed property would have priority over the Statute of Limitations, and no later vested rights through that statute would accrue. Regulation #10 and subsection 11(5) would no longer be relevant, and would become nullities.

In summary, the case of Utah ex rel. Baker v. Intermountain Farmers Association, supra, has been quoted extensively and heavily relied upon by respondents. However, such reliance is improper and faulty since such case was given the following very narrow interpretation by this court.

> Since our conclusion that the state has no right to the custody of these patronage credits is based on the applicability of the statute of limitations to a particular type of property covered by a particular bylaw provision of the holder, we have no occasion to rule on other questions argued by the parties. . . . We also express no opinion on the applicability of the statute of limitations to any type of unclaimed property other than patronage credits. (Emphasis added).

CONCLUSION

Defendants-Appellants respectfully request the Court to reverse the decision of the District Court.

RESPECTFULLY submitted this 16th day of November, 1984.

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JOSEPH P. McCARTHY
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CERTIFICATE OF MAILING

This is to certify that I mailed two true and correct copies of the foregoing Reply Brief of Defendants-Appellants, postage prepaid, to L. Ridd Larson and Douglas Matsumori of Ray, Quinney & Nebeker, 400 Desert Building, Salt Lake City, UT 84111-1996 this 16th day of November, 1984.

Carol L. Thorne