

1980

Forace Martin and Eldean Martin v. Herta K.  
Dennett as Personal Representative of John Elwood  
Dennett, Deceased, Et al. v. United States of  
America : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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FORACE MARTIN and ELDEAN :  
MARTIN, husband and wife, :  
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 Plaintiffs, :  
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v. :  
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HERTA K. DENNETT as Personal :  
Representative of John Elwood :  
Dennett, deceased, et al., :  
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 Defendants and :  
Appellant, :  
 :  
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CASE NO. 16781

and :  
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UNITED STATES OF AMERICA, :  
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 Defendant and :  
Respondent. :  
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BRIEF OF RESPONDENT

Appeal from the Judgment of the Third Judicial District in and  
for Salt Lake County, State of Utah, Honorable  
Christine M. Durham, District Judge

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JUL 17 1980

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TABLE OF CONTENTS

	<u>Page No.</u>
NATURE OF THE CASE . . . . .	1
DISPOSITION IN LOWER COURT . . . . .	2
RELIEF SOUGHT ON APPEAL . . . . .	2
STATEMENT OF FACTS . . . . .	2
ARGUMENT . . . . .	3
THE JUDGMENT OF THE DISTRICT COURT SHOULD BE AFFIRMED BECAUSE THE PRIORITIES ESTABLISHED IN §75-3-805, UTAH CODE ANNOTATED (1953) AND/OR 31 U.S.C. §191 ARE NOT APPLICABLE TO THE FACTS OF THIS CASE.	
A. APPELLANT'S CLAIM TO THE FUND ARISES OUT OF THE STATUS OF TITLEHOLDER TO THE REAL PROPERTY IN QUESTION. . . . .	3
B. THE LOWER COURT'S DECISION SHOULD BE AFFIRMED WHEREIN IT FOUND RESPONDENT'S CLAIM SUPERIOR. . . . .	6
C. THE FUNDS PAID INTO COURT NEVER BECAME PROPERTY OF OR AN ASSET OF THE ESTATE OF JOHN ELWOOD DENNETT . . . . .	8
SUMMARY AND CONCLUSION . . . . .	10

AUTHORITIES CITED

Federal Statutes

26 U.S.C. §6320 et. seq. . . . .	8
26 U.S.C. §6321 . . . . .	6, 8
31 U.S.C. §191 . . . . .	10, 11

State Statutes

Utah Code Ann., §38-6-1 et. seq., . . . . .	6, 7
Utah Code Ann., §75-1-101 . . . . .	3, 4, 5
Utah Code Ann., §75-1-201(4) . . . . .	9
Utah Code Ann., §75-1-201(5) . . . . .	9
Utah Code Ann., §75-1-201(33). . . . .	8

Utah Code Ann., §75-1-302 . . . . .	9
Utah Code Ann., §75-1-303 . . . . .	9
Utah Code Ann., §75-3-703 (3). . . . .	4
Utah Code Ann., §75-3-708 . . . . .	5, 8, 9
Utah Code Ann., §75-3-714 . . . . .	4
Utah Code Ann., §75-3-805 . . . . .	1, 2, 9,

Cases Cited

<u>Aquilano v. United States</u> , 363 U.S. 509 (1960). . . . .	7
<u>United States v. City of New Britian</u> , 347 U.S. 81 . . . . . (1953)	7, 8
<u>United States v. Security Trust and Savings Bank, Executor</u> , 340 U.S. 47 (1950). . . . .	7

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NATURE OF THE CASE

This is an action to determine the relative priority of the claims of Appellant and Respondent to the sum of \$1,347.46 which was deposited in the office of the Clerk of Salt Lake County District Court on June 20, 1978 pursuant to the Order of Summary Judgment entered in the above-entitled matter on May 15, 1978. Appellant's claim to the funds is based upon the provisions of §75-3-805, Utah Code Annotated (1953 as amended). Respondent's claim to the funds is based upon three (3) notices of Federal Tax Liens which were duly

recorded in 1965 with the Salt Lake County Recorder. Said liens attached to all real and personal property owned by the now deceased John Elwood Dennett, including the real property which was the subject of the above-entitled lawsuit, and hence the proceeds of sale which were deposited with the Court.

DISPOSITION IN THE LOWER COURT

Pursuant to notice, the claims of Appellant and Respondent (among others who are not parties to this appeal) were submitted in writing and hearing was held before the Honorable Christine M. Durham on the 27th day of June, 1979. At that time the Court reviewed the files and exhibits, heard the statements of counsel and entered its Findings of Fact and Order that the tax lien claims of the United States of America were paramount and superior to the claim of any other named defendant, including the claim of the estate of John Elwood Dennett, deceased, based upon §75-3-805, Utah Code Annotated (1953).

RELIEF SOUGHT

Respondent seeks an affirmation of the Judgment of the Court below.

STATEMENT OF FACTS

Appellant has fairly presented the facts of the case and no separate statement of facts will be set forth.

ARGUMENT

THE JUDGMENT OF THE DISTRICT COURT SHOULD BE AFFIRMED BECAUSE THE PRIORITIES ESTABLISHED IN §75-3-805, UTAH CODE ANNOTATED (1953) AND/OR 31 U.S.C. §191 ARE NOT APPLICABLE TO THE FACTS OF THIS CASE.

Appellant claims that the first priority lien of Respondent to the sum of money which is the res herein was automatically, by virtue of the death of John Elwood Dennett, subordinated and made subject to the provisions of the Probate Code, §75-1-101 et seq., Utah Code Annotated (1953). (Appellant's Brief, P. 8-9). Appellant offers no statutory or case law to support her claim, asserting only a public policy argument.

A. APPELLANT'S CLAIM TO THE FUND ARISES OUT OF THE STATUS OF TITLEHOLDER TO THE REAL PROPERTY IN QUESTION.

John Elwood Dennett sold real property, which was the subject of the action below, to Plaintiffs Martin on a contract, subject to a prior encumbrance in favor of Western Savings and Loan Company. Plaintiffs initiated this action seeking clear title to the subject real property.

John Elwood Dennett died during the pendency of said litigation, and his widow, Herta K. Dennett, was appointed Personal Representative of the Estate of John Elwood Dennett, deceased, and was thereafter substituted as a defendant in the place of John Elwood Dennett.



Subsequent thereto and in accordance with the Court order, Plaintiffs received clear title to the property, paid the balance owing Western Savings and Loan, and deposited with the Clerk of the Court the sum of \$1,347.46, which represented the balance determined to be owing pursuant to the contract. The only issue then remaining concerned the adjudication of the relative rights, claims and priorities of the various defendants.

Mrs. Dennett, as the Personal Representative, had the same standing to sue and be sued as the decedent had immediately prior to his death. §75-3-703(3), Utah Code Annotated (1953).

§75-3-703(3). Except as to the proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the Courts of this state and the Courts of any other jurisdiction as the decedent had immediately prior to death.

§75-1-101 et seq., Utah Code Annotated specifically sets forth the duties and responsibilities of Personal Representatives, including the following:

§75-3-714. Transactions authorized for personal representatives--Exceptions.--(1) Except as restricted or otherwise provided by this code, by the will or by an order in a formal proceeding and subject to the priorities stated in §75-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

a. Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

⋮

v. Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties.

⋮

In addition, the personal representative is empowered to pursue litigation in accordance with the provisions of §75-3-708, Utah Code Annotated (1953), which provides in pertinent part:

. . . [H]e may maintain an action to recover possession of property or to determine the title thereto.

There is no dispute between the parties that the nature of John Elwood Dennett's claim to the res prior to his death was that of titleholder to the subject real property. It is axiomatic that pursuant to state law a titleholder's equity is subject to attachment by creditors of the titleholder.

Upon the death of the titleholder, his estate falls heir to all assets and liabilities of the titleholder. When litigation of competing claims to an asset is pending, the Personal Representative, as is specifically outlined in §75-1-101 et seq., Utah Code Annotated (1953), has the duty

and responsibility in marshalling the assets of the estate to pursue the litigation and obtain a resolution of the issue of competing claims. Therefore, the Personal Representative as the substituted party in the litigation can assert no greater authority or rights than the decedent possessed prior to his death.

B. THE LOWER COURT'S DECISION SHOULD BE AFFIRMED WHEREIN IT FOUND RESPONDENT'S CLAIM SUPERIOR.

Respondent's claim to the funds deposited with the Court, the res herein, is based upon three (3) Notices of Federal Tax Liens. Each of said liens arose pursuant to the provisions of 26 U.S.C. §6321 which states as follows:

Lien for Taxes. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to the tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such persons.

Respondent perfected its liens by recording the same with the Salt Lake County Recorder in accordance with the provisions of §38-6-1 et seq., Utah Code Annotated (1953). As a result, said tax liens assumed a status similiar (if not identical) to judgments duly rendered within the County. Therefore, in 1965 the tax liens attached and became an encumbrance upon all real and personal property owned by the taxpayer (John Elwood Dennett) within Salt Lake County, State of Utah.

Said tax liens were choate in every way, namely, the identity of the lienor, the property subject to the lien, and the amount of the lien were all established. USA v. City of New Britian, 247 U.S. 81, 84 (1953). Said liens were perfected pursuant to the provisions of §38-6-1, et seq., Utah Code Annotated (1953), and for all purposes were liens against the real property in the instant case. No statutory or case law exists which requires the United States of America to execute against said property in order to maintain its superiority and/or priority derived from Notices of Federal Tax Liens duly recorded. Moreover, inasmuch as litigation was pending wherein the priorities of Appellant and Respondent were being presented and judicially determined, Appellant's assertion at this point that Respondent's priority became subordinate inasmuch as it was unexecuted at the time of Mr. Dennett's death is wholly untenable.

There is no dispute but that state law is applicable in determining whether and to what extent a taxpayer has property or rights to property to which a tax lien could attach. Aquilino v. United States, 363 U.S. 509 at 512-513 (1960). Once a duly recorded Notice of Federal Tax Lien has attached to the taxpayer's state-created interest, federal law is applicable in determining the priority of competing liens. 363 U.S. at 514; United States v. Security Trust and Savings Bank, Executor, 340 U.S. 47 (1950).

26 U.S.C. §6320 et seq., the statute which creates the lien for delinquent federal taxes, sets forth no legislatively-determined priority regarding the federal tax lien and conflicting claims. The United States Supreme Court in United States v. City of New Britian, supra, has held that the priority of statutory liens such as respondent's lien arising out of 26 U.S.C. §6321 receives a priority determined by the principle of law known as "the first in time is the first in right", holding that the priority of each statutory lien must depend on the time it attached to the property in question and became choate. 347 U.S. at 85-86.

Respondent's lien was choate and attached to the property and/or right to property of Appellant in 1965, the time of filing with the Salt Lake County Recorder. No other competing claim was prior in time to Respondent's.

C. THE FUNDS PAID INTO COURT NEVER BECAME PROPERTY OF OR AN ASSET OF THE ESTATE OF JOHN ELWOOD DENNETT.

One of the specific duties of the Personal Representative is to take possession or control of the decedent's property, §75-3-708, Utah Code Annotated (1953). The term "property" is specifically described as follows:

§75-1-201(33). "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

In his status of titleholder to the real property,

the res which had been deposited with the Clerk of the Court.

The substitution of Herta K. Dennett as Personal Representative of John Elwood Dennett, deceased, in the above-entitled action was pursuant to the provisions of §75-3-708, Utah Code Annotated, which permits, and indeed requires, the Personal Representative to participate in litigation to determine the title to anything which may be subject to ownership. The Third District Court of the State of Utah had proper jurisdiction to continue to hear the matter and to resolve the issues therein. §§75-1-302, 75-1-303, and 75-1-201(5), Utah Code Annotated (1953).

The Personal Representative actively participated in presenting the claim of the estate to the res and the litigation in the lower court was brought to a conclusion, holding that the claim as presented by the Personal Representative on behalf of the estate was subordinate and inferior to the Notices of Federal Tax Liens filed in 1965 by Respondent.

Therefore, the fund in question never became property of or an asset of the estate which was subject to the claims of creditors of the estate pursuant to §75-3-805.

The term "claims" is defined as follows:

§75-1-201(4) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or the protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses. The term does not include estate or inheritance taxes,

title of a decedent or protected person to specific assets alleged to be included in the estate.  
(Emphasis added).

The claim of respondent was not a claim filed against the estate of the deceased, hence, the provisions of §75-3-805 are inapplicable. Likewise inapplicable are the provisions of 31 U.S.C. §191 which purport to give federal taxes a preference in payment from insolvent estates or estates of a deceased debtor where the funds are insufficient to satisfy all debts.

The priorities claimed by Appellant herein are applicable only to claims filed by creditors against the estate.

The lower Court correctly determined that Respondent's claim to the res took priority over Appellant's claim thereto as titleholder, hence the res was never "property" of the estate and thus not subject to the priorities of §75-3-805, Utah Code Annotated (1953) and/or 31 U.S.C. §191.

#### SUMMARY AND CONCLUSION

The decision of the lower court should be affirmed inasmuch as Appellant has failed to show any statutory basis or legal precedent to support her claim that the death of John Elwood Dennett affected in any manner the nature of his claim to the funds deposited with the court in the above-entitled action.

The claim of the estate was the very claim John Elwood Dennett possessed during his lifetime, namely, titleholder to the subject real property.

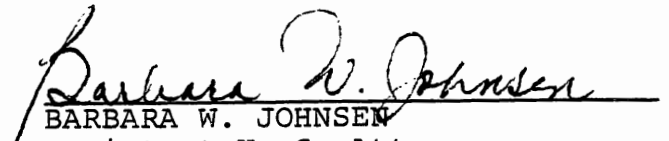
Respondent's claim arising out of duly recorded Notices of Federal Tax Liens attached to the titleholder's equity in said real property when recorded in 1965, hence had priority to all competing claims based upon the principle of "first in time, first in right".

The subject funds never became property of or an asset of the estate of John Elwood Dennett because the Respondent's lien had attached prior to Mr. Dennett's demise. Therefore, the priorities of §75-3-805 and 31 U.S.C. §191 are inapplicable as those statutes pertain only to distributions from assets of an estate.

The decision of the lower court should be affirmed.

Respectfully submitted,

RONALD L. RENCHER  
United States Attorney

  
BARBARA W. JOHNSON  
Assistant U. S. Attorney



MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing Resondent's Brief to the Appellant by placing a copy of the same in the U. S. Mail, postage prepaid, addressed to her attorney, Melvin G. Larew, Jr., 345 South State, Suite 200, Salt Lake City, Utah 84111 this 16<sup>th</sup> day of July, 1980.

 \_\_\_\_\_