1981

Utah Hotel Company, a Utah Corporation v. R. Milton Yorgason, in his official Capacity as Salt Lake County Assessori and William E. Dunn, Robert G. Salter, William L. Hutchinson, Each In Their official Capacities As Members of the Board of Equalization For Salt Lake County : Reply Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT OF
THE STATE OF UTAH

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UTAH HOTEL COMPANY, a Utah corporation, Plaintiff and Appellant, vs. R. MILTON YORGASON, in his official capacity as Salt Lake County Assessor; and WILLIAM E. DUNN, ROBERT G. SALTER, WILLIAM L. HUTCHINSON, each in their official capacities as members of the Board of Equalization for Salt Lake County, Defendants and Respondents.	Case No. 17612

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REPLY BRIEF OF APPELLANT

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Appeal from the Judgment of the
Third District Court
for Salt Lake County,
Hon. G. Hal Taylor, Judge

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IN THE SUPREME COURT OF
THE STATE OF UTAH

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IN THE SUPREME COURT OF
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REPLY BRIEF OF APPELLANT

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ARGUMENT

POINT I RESPONDENTS' ATTEMPTED INTERPRETATION OF UTAH CODE ANNOTATED §59-5-109(2)(SUPP. 1979) LACKS SUBSTANCE AND LOGIC

The primary issue before this Court is simply stated: What is the meaning of Utah Code Annotated 59-5-109(2)(Supp. 1979)? 1/ Respondents completely fail to address this pivotal issue in their

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1/ Utah Code Annotated §59-5-109(2)(Supp. 1979) provides:
Taxable real properties revalued, as provided in this chapter, after January 1, 1978, shall be appraised at current fair market value and the value shall be rolled back to the January 1, 1978 level.

Brief. Respondents do not even quote the complete context of that simple provision much less analyze the language of the statute to glean its meaning. Furthermore, they totally ignore the insightful comments of Legislators Pugh, Bangerter and Pace [2/] on the intent of the Utah State Legislature in enacting that provision. The closest Respondents come to responding to the primary issue raised in this appeal is set forth on page 15 of their Brief - a review of the "title heading" of §59-5-109. This title heading is not even a part of the substantive legislation adopted by the Legislature, but merely is a convenience heading supplied by the complier and publisher of Utah Code Annotated.

Respondents represent that Utah Code Annotated §59-5-109(2) (Supp. 1979) is applicable only when the State Tax Commission is reappraising an entire county pursuant to the county-by-county reappraisal program. (Respondents' Brief at pp. 15, 17, 18). Respondents do not explain why the requirement that values be rolled back apply only to the county-by-county revaluation program nor do Respondents explain how their position squares with the 1981 Legislature's action in abandoning the county-by-county reappraisal program while nevertheless retaining the very substance of Utah Code Annotated §59-5-109(2)(Supp. 1979) in Utah Code

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2/ Appellant's Brief pp. 8, 9.

Annotated §59-5-109(Supp. 1981) which requires that the current value of all locally assessed property be rolled back to January 1, 1978 level.

Even assuming arguendo that Respondents' interpretation of Utah Code Annotated §59-5-109(2)(Supp. 1979) is correct, and that statute applies only when the State Tax Commission is appraising an entire county pursuant to the county-by-county reappraisal program, an absurd situation would result. For example: If in 1979 the State Tax Commission reappraised all properties in Weber County, those values would be rolled back to their January 1978 level. Respondents would then have the Weber County Assessor come in the next year and reappraise the individual properties in his county at their current (1980) value without rolling them back to their January 1978 levels. If Respondents' view is correct, why then does the statute require the State Tax Commission to roll back the value of properties to their January 1978 level in the first place? Isn't the purpose of the statute to attain some kind of uniformity of value levels at which properties are assessed? Was it not the intent of the legislature to mitigate the effects of inflation by establishing a base year at which value can be determined in constant dollars? It becomes obvious that Respondents are in error in their interpretation of Utah Code Annotated §59-5-109(2)(Supp. 1979).

POINT II RESPONDENTS RELIANCE UPON UTAH CODE ANNOTATED §59-5-4 (SUPP. 1979) IS INAPPROPRIATE

Rather than addressing head-on the primary issue raised in this appeal, Respondents attempt to divert the Court's attention to the role and responsibility of a county assessor under the provisions of Utah Code Annotated §59-5-4 (Supp. 1979). Respondents seemingly contend that a county assessor's statutory obligations do not extend beyond the limited provisions of Utah Code Annotated §59-5-4 (Supp. 1979). The gist of Respondents' argument is that application of Utah Code Annotated §59-5-109(2) (Supp. 1979) [as well as its 1981 replacement Utah Code Annotated §59-5-109 (Supp. 1981)] would encroach upon the duties of the county assessor by precluding the assessor from revaluing individual properties each year. This conception is totally without merit.

Utah Code Annotated §§59-5-4 (Supp. 1979) and 59-5-109(2) (Supp. 1979) [and now §59-5-109 (Supp. 1981)] are not mutually exclusive nor are they contradictory. Each of these statutes must be read in light of the other and be construed within the general context of property taxation procedures, practices and problems. While it is mandated that a county assessor assess property to its owner each year, it is likewise mandated that the value at which the property is assessed be rolled back to the January 1, 1978 level. Therefore, reading the statutes together,

it is clear that a county assessor must assess properties to their owners each year at the value as rolled back to the January 1, 1978 level. Respondents accept their statutory duty to assess properties to their owners each year, but choose to ignore their statutory duty to roll back the value of properties to their January 1, 1978 level.

POINT III RESPONDENTS' POSITION IS UNSUPPORTED BY THE RECORD

Respondents attempt to justify their failure to comply with the provisions of Utah Code Annotated §59-5-109(2) (Supp. 1979) by raising spurious claims of errors in the assessment and by claiming that they under-assessed Appellant's property and now fear suit by the county attorney. Unfounded and speculative factual issues as to occupancy rates, discrepancies in valuations, new shopping malls, the availability of financing, etc. are also raised by Respondents. All are matters not properly before this Court. Respondents seemingly even question the motives of Appellant in bringing this action. This approach only avoids the issues at bar.

Only the record is before this Court - not the commentary or speculation of Respondents. That record shows:

1. In 1978 the Assessor of Salt Lake County appraised Appellant's real property at an assessed value of $2,305,295.

2. The Salt Lake County Board of Equalization reduced tha assessed valuation to $1,959,500 in 1978.

3. In April of 1979 the State Tax Commission, following a informal hearing at which both Appellant and Respondents presente evidence, again reduced the assessed value of Appellant's proper as of January 1, 1978 to $1,228,985.

4. Respondents did not appeal that decision.

5. In 1979 the Legislature adopted Utah Code Annotated §59-5-109(2) (Supp. 1979). (That statute had been adopted by th Legislature before the State Tax Commission rendered its decisio as to Appellant's property).

6. In 1979, the Salt Lake County Assessor assessed Appella property at its January 1978 value level in accordance with the statute and the decision of the State Tax Commission.

7. In 1980, the Salt Lake County Assessor placed an assess value on Appellant's property at $2,305,295, the exact dollar figure it had originally assessed Appellant's property at in 1978. (Query: Whether an independent appraisal of Appellant's property in 1980 would have resulted in the exact dollar amount of an appraisal of that same property in 1978. It is only conjecture that perhaps the Salt Lake County Assessor was rollin back the 1980 value of Appellant's property to its 1978 level - but to the 1978 level as originally determined by him rather than

and in spite of the 1978 level as decided by the State Tax Commission.)

8. In 1980 Appellant pursued its administrative remedies before the Board of Equalization.

9. Appellant filed a Petition in the lower court seeking a judicial interpretation and enforcement of Utah Code Annotated §59-5-109(2) (Supp. 1979). The Petition sought to compel Respondents to comply with that statute. Hearing on the Petition was continued by mutual stipulation of the parties pending a determination by the Board of Equalization.

10. The Salt Lake County Board of Equalization rendered its decision, denying Appellant's request for readjustment as to the assessed valuation of its property.

11. Appellant thereafter amended its Petition to reflect the decision of the Salt Lake County Board of Equalization.

12. Appellant continued to perfect its administrative remedies by appealing the decision of the Board of Equalization to the State Tax Commission. Those proceedings were stayed by mutual stipulation of the parties pending judicial determination of the issues here presented.

13. The Verified Amended Petition for an Extraordinary Writ specifically states at Paragraph 10: "There have been no changes in the nature or value of Petitioner's parcels of real property

commonly known as the Hotel Utah . . . since the assessment for the year 1978 as finally determined by the Utah State Commission."

14. The lower court rendered its decision, from which Appellant appealed to this Court.

The record plainly does not support nor substantiate Respondents' speculation and inference. What is apparent, however, is that Respondents are now attempting to override the decision of the State Tax Commission as to the 1978 value level of Appellant's property and reinstate the value level it attributed to Appellant's property in 1978. Respondents cannot now challenge that binding decision of the State Tax Commission by taking the position that Utah Code Annotated §59-5-109(2)(Supp. 1979) does not require them to roll back the values of individual properties to their January 1, 1978 level.

CONCLUSION

It is respectfully submitted that:

1. Utah Code Annotated §59-5-109(2)(Supp. 1979) is applicable to Appellant's property.

2. The value level of Appellant's property as of January 1, 1978 was determined by the State Tax Commission at $1,228,985.

3. That value as determined by the State Tax Commission continues to be binding inasmuch as there have been no material changes in the nature or condition of Appellant's property.

Therefore, as a matter of law, Appellant's property for the year 1980 should be assessed at $1,228,985 in accordance with the provisions of Utah Code Annotated §59-5-109(2) (Supp. 1979) and the April 25, 1979 decision of the State Tax Commission. Or in the alternative, this Court should rule that Utah Code Annotated §59-5-109(2) (Supp. 1979) is applicable to Appellant's property (and all properties in the State of Utah) and order the parties to proceed before the State Tax Commission.

DATED this 7 day of May, 1982.

GREENE, CALLISTER & NEBEKER

by _____
Louis H. Callister, Jr.

CERTIFICATE OF HAND DELIVERY

I hereby certify that I caused two true and correct copies of the foregoing REPLY BRIEF OF APPELLANT in Case No. 17612, to be hand delivered to Bill Thomas Peters, TIBBALS, ADAMSON, PETERS & HOWELL, Attorney for Respondents, 220 South 200 East, Suite 400, Salt Lake City, Utah 84111, this 7 day of May, 1982.

_____
Louis H. Callister, Jr.