

1991

Radix Corporation v. Auditing Division of the Utah Tax Commission, the Utah State Tax Commission, and The State of Utah : Reply Brief

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

910117

IN THE SUPREME COURT OF UTAH

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RADIX CORPORATION,)	
)	
Petitioner,)	REPLY BRIEF OF PETITIONER
)	
vs.)	
)	Case No. 910117
AUDITING DIVISION OF THE UTAH)	
STATE TAX COMMISSION, THE)	
UTAH STATE TAX COMMISSION,)	Priority No. 15
and THE STATE OF UTAH,)	
)	
Respondents.)	
)	
)	

* * * * *

PETITION FOR REVIEW OF AN ORDER OF THE
UTAH STATE TAX COMMISSION

* * * * *

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UTAH

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ARGUMENT

RESPONDENTS' BRIEF DOES LITTLE MORE THAN ARGUE
AROUND THE ESSENTIAL POINTS OF THIS CASE.

Petitioner, in its brief, acknowledged the doctrine of "implied authority" which is nothing but actual authority circumstantially proved.¹ See Brief of Petitioner at 5-6. Respondents rely, once again, on the testimony of their auditor that is quoted verbatim in the Brief of Petitioner, at 6, as follows:

- Q. And your statement on the previous document, dealing with the sample method projection-- . . . --my question was, was, at any given time, did she have to request authorization to approve a document to be signed [sic] or get requests--

- A. Well, sometimes she wouldn't have information or if she thought it was something that Mr. Draper needed to get involved with, she would make that statement, that I--I need to talk to Tim Draper.

Transcript at 36:19-25. The Respondents cannot rely simply on Ms. Fanger's statements for their position, however. In City Electric v. Dean Evans Chrysler Plymouth, 672 P.2d 89, 90 (Utah 1983), the Utah Supreme Court made clear:

one who deals exclusively with an agent has the responsibility to ascertain that agent's authority despite the agent's representations.

¹Once again, Petitioner notes that "apparent authority" has never been raised as a basis to support any finding and apparently has been waived.

Here, Respondents admit they took no steps to ascertain Ms. Fanger's authority, but instead "assumed" she had authority. Beyond that, all of Respondents' arguments attempting to show implied authority in Ms. Fanger to waive Petitioner's limitations defense appear to center around the mere fact that Ms. Fanger held the position of accounting manager.

Respondents' argument is, of course, in keeping with their policy of not seeking out authorized officers of corporations to sign limitations waivers. The impropriety of this general policy is argued by Petitioner in the Brief of Petitioner at 4-9 and will not be repeated here.

Respondents attempt to avoid discussing this clearly questionable policy by arguing:

Petitioner broadly characterizes the authority its accounting manager exercised as "authority to waive legal defenses of the corporation." Petitioner's brief at 8. Notwithstanding, this authority is more accurately described as simply the authority of an accounting manager to oversee and facilitate a tax audit.

Brief of Respondent at 9. This argument with Petitioner's characterization of the issue does not change the fact that Respondents seek support for a finding of authority to waive a legal defense of the corporation. The fact that Ms. Fanger was helping the auditor to locate documents of the corporation cannot, of itself, be a basis for an inference that the waiver

of the legal defense of statute of limitations is "incidental to, . . . necessary, usual, [or] proper to accomplish or perform" the acts of providing of the auditor with such documents.

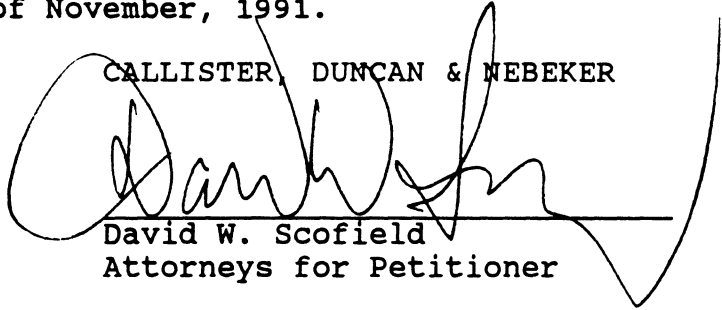
Simply put, there is no circumstantial evidence showing that Ms. Fanger would have authority to waive the statute of limitations defense. As such, the uncontradicted testimony of Timothy Draper, that she did not have that authority, must be accepted as true and the Respondents' decision reversed. The quantum and quality of relevant evidence is simply not adequate to convince a reasonable mind to support a conclusion that Ms. Fanger had such authority. See Boston First Nat'l. v. Salt Lake City Bd., 799 P.2d 1163, 1165 (Utah 1990).

CONCLUSION

For the foregoing reasons, and the reasons stated in the Brief of Petitioner, the decision of the Commission should be reversed as to the conclusion that Ms. Fanger was authorized to execute a limitations defense waiver and the matter should be remanded to the Commission with directions to exclude from its determination of tax owing any sums barred by the limitations period.

DATED this 7th day of November, 1991.

CALLISTER, DUNCAN & NEBEKER

A large, stylized handwritten signature in black ink, appearing to read 'David W. Scofield', is written over a horizontal line. The signature is highly cursive and loops around the text.

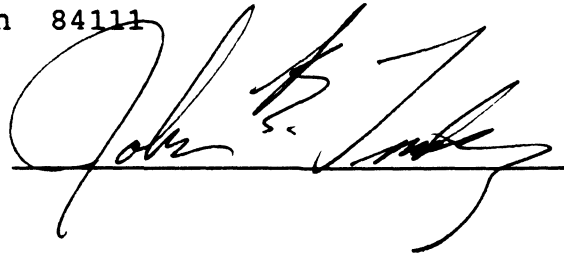
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CERTIFICATE OF MAILING

I hereby certify that Four (4) true and correct copies of the foregoing REPLY BRIEF OF PETITIONER were mailed, postage prepaid, on this 7th day of November, 1991 to the following:

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Assistant Attorney General
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Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to read "John B. Taylor", is written over a horizontal line. The signature is cursive and stylized.