1966

Apache Tank Lines, Inc., Cowboy Oil Company, Orville R. Stevens, Administrator of 0. H. Guyman Estate, Crystal B. Guyman and Paul W. Cook v. Beall Pipe and Tank Corporation : Respondent's Brief

IN THE SUPREME COURT
of the
STATE OF UTAH

APACHE TANK LINES, INC.,
COWBOY OIL COMPANY,
ORVILLE R. STEVENS,
Administrator of O. H. Guyman
Estate, CRYSTAL B. GUYMAN
and PAUL W. COOK,
Plaintiffs-Appellants,

—vs—

BEALL PIPE AND TANK
CORPORATION,
Defendant-Respondent.

Case No.
10724

RESPONDENT'S BRIEF

Appeal from the Seventh District Court for
Carbon County,
Honorable Henry Ruggeri, Judge

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APACHE TANK LINES, INC., COWBOY OIL COMPANY, ORVILLE R. STEVENS, Administrator of O. H. Guyman Estate, CRYSTAL B. GUYMAN and PAUL W. COOK,
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STATEMENT OF NATURE OF CASE

This case in its present posture is a suit for property damage, wherein the defendant contends that the courts of the State of Utah have no personal jurisdiction over it.

DISPOSITION IN LOWER COURT

The Seventh District Court in and for Carbon County, Henry Ruggeri, Judge, granted defendant's Motion to Quash the purported service of Summons upon it.

RELIEF SOUGHT ON APPEAL

Respondent seeks an affirmance of the judgment below.

STATEMENT OF FACTS

In this brief, we sometimes refer to the parties as they appeared in the court below. We have no particular quarrel with the statement of facts set forth in Appellants' Brief. However, we believe that it may be helpful to the court to set forth chronologically the facts which we believe to be essential to a determination of the issue before the court. They are as follows:

1. Defendant regularly qualified to do business in the State of Utah on or about May 3, 1961. (R. 13)

2. From about May 3, 1961, to October 1963, defendant maintained a salaried employee in the State of Utah, and was actually engaged in business in the State of Utah. In October 1963, said employee was withdrawn from the State of Utah, and since that date "defendant has not had any employee residing in the State of Utah; has not maintained an office in the State of Utah; has not had a telephone listing in the State of Utah; has not had a licensed dealer in the State of Utah; has not had any franchised salesmen in the State of Utah; has had no commission agents in the State of Utah; has not maintained a bank account in the State of Utah; has not advertised in any Utah publications; and has not conducted any business whatsoever in the State of Utah." (R. 13-14)

3. Defendant's certificate of authority to do business in the State of Utah was revoked by the Secretary of State of Utah, pursuant to Section 16-10-117, UCA 1953, on February 28, 1964. (R.13, 56-57)

4. Plaintiff Apache Tank Lines, Inc., an Idaho corporation, purchased a tank trailer from defendant outside the State of Utah on or about April 24, 1964. (R. 1-2, 14)

5. On November 14, 1964, said trailer was involved in an accident which occurred in Price, Utah, allegedly as a result of a defect in said trailer, causing property damage to the plaintiffs. (R. 2)

6. Plaintiffs initiated the present action by filing a Complaint in the District Court of Carbon County, on December 31, 1965. (R. 6). The Secretary of State of Utah, as purported agent of defendant, was served on or about February 16, 1966. (R. 9)

7. Service of process was attacked by a Motion to Quash filed March 15, 1966, (R. 10) and argued to the court May 3, 1966. Following oral argument, the court took the matter under advisement, and both sides submitted two written memoranda in support of their respective positions. These memoranda have been included in the record on appeal and may be found at pages R. 16-22; 24-30; 31-36; and 38-41.

On July 22, 1966, Judge Ruggeri handed down a carefully considered memorandum decision, wherein he analyzed the positions of both parties, and then granted defendant's Motion to Quash and ordered the purported service of summons quashed. This decision was designated by respondent to be included in the record on appeal. (R. 55) The decision was belatedly attached to the

record, but has not been numbered as a part thereof. We quote from the decision at p. 7, lines 3-13 as follows:

> "The court finds that the defendant had long ceased to do business in the State of Utah at the times complained of by the plaintiffs; that the defendant was not present in the State of Utah at the time the purported service of summons was made upon it; that the defendant was not doing business in the State of Utah at the times complained of by the plaintiffs; that the cause of action, if any, did not accrue during any time that the defendant was doing business in the State of Utah, and that the defendant was not doing business in the State of Utah when process was served upon the Secretary of State."

The court's decision was subsequently embodied in a formal order. (R. 47)

ARGUMENT

The narrow legal issue presented to the court by this case is whether a foreign corporation whose certificate of authority to do business in the State of Utah has been revoked pursuant to Section 16-10-117 remains subject to the jurisdiction of the Utah courts for claimed liabilities arising out of transactions occurring after the date of revocation and outside of the State of Utah, or whether said corporation remains subject to the jurisdiction of the Utah courts until such time as it makes a voluntary withdrawel pursuant to the provisions of Section 16-10-115. Plaintiffs contend that defendant, having once qualified to do business in the State of Utah, remains subject to the jurisdiction of the Utah courts, even

though its certificate of authority has been revoked, and even though it completely withdraws and ceases from all corporate activity in the State, until such time as it complies with the procedural requirements of Section 16-10-115. It is defendant's position that revocation of its certificate of authority under the provisions of Section 16-10-117 accomplishes exactly the same result as would a voluntary withdrawal under Section 16-10-115. To put the matter bluntly, it makes little difference whether a person is deported by the state or leaves voluntarily, he is, in either event, equally absent.

We see no basis for the distinction attempted to be drawn by the plaintiffs. The Corporation Act provides two methods for termination of the right of a foreign corporation to do business in the State of Utah. One is by a voluntary withdrawal under the provisions of Section 16-10-115. The consequences of a voluntary withdrawal are set forth in the last sentence of Section 16-10-116, as follows: "Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease." A second procedure is provided by revocation of authority by the Secretary of State under the terms of Section 16-10-117. The consequences of this action are set forth in the last sentence of Section 16-10-118 in language essentially identical to that of Section 116, as follows: "Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease."

While we do not contend that a corporation whose certificate has been revoked by the Secretary of State for any of the reasons set forth in Section 16-10-117 should be in an advantaged position over a foreign corporation which has withdrawn under Section 16-10-115, we can see no reason why it should be in a disadvantaged position either. The consequences as spelled out by the legislature appear to be the same in either event.

Plaintiffs place heavy reliance on that portion of Section 16-10-111, which reads as follows:

> "Whenever a foreign corporation authorized to transact business in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served."

We do not interpret this to mean that in every situation where the certificate of a foreign corporation has been suspended or revoked it remains subject to the jurisdiction of the Utah courts by service upon the Secretary of State. A more reasonable interpretation is that in those situations where it is properly subject to the jurisdiction of the Utah courts (e.g. as for acts committed during the period it was in good standing, or where it may have continued unlawfully to do business in the state after revocation of its certificate of Authority) it quite prop-

erly should be subject to the jurisdiction of the Utah courts. Even corporations which follow the procedure of Section 16-10-115 remain subject to the jurisdiction of the Utah courts for two years following their period of withdrawal *for acts committed during their period of good standing.*

We readily concede that this defendant would be subject to the jurisdiction of the Utah courts for any liabilities which it might have incurred during the time that it was in good standing in the State of Utah, or at any time when it was actually engaged in business in the State of Utah, whether properly qualified or not. However, it is undisputed here that it had ceased to do business in the State of Utah before its certificate was revoked.

It is for this reason that the holding of this court in Prudential Federal Savings & Loan Association vs. Hartford Accident and Indemnity Company, 7 Ut. 2d 366, 325 P. 2d 899, cited and relied upon by appellants, is not applicable here. In that case the foreign corporation had been properly qualified in Utah during the time of the transactions out of which the claimed cause of action arose. Here the transaction occurred after the time of the revocation of authority and cessation of doing business within the state.

The purchase by plaintiff Apache Tank Lines, Inc. from defendant was made out of the State of Utah and after the time defendant's Certificate of Authority had been revoked. The accident out of which the claimed

cause of action arose occurred after the Certificate of Authority had been revoked.

It was not the intent or purpose of the above quoted provision of Sec. 16-10-111 to make a corporation subject to the jurisdiction of the Utah courts in perpetuity by reasons of failure to comply with 16-10-115. The withdrawal is accomplished equally effectually by submitting to revocation by the Secretary of State.

The rule is stated in 23 Am. Jur. 516, Foreign Corporations, §500 ,as follows:

> "* * * Jurisdiction cannot be obtained of a foreign corporation by service on its designated agent where the subject matter of the litigation is a transaction taking place in another state, after the corporation has withdrawn or been expelled from the state, and has entirely ceased to do business therein."

There is some mention in Appellants' Brief of the "minimum contacts" rule, as enunciated by the Supreme Court of the United States in such cases as *International Shoe Company v. Washington,* 326 US 310. That case, and others like it, have to do with situations where the defendant has never qualified to do business within the state, but jurisdiction is claimed by reason of the fact that the defendant is actually transacting business within the state, or has such "minimum contacts" with the state that in fair play and justice it ought to defend in that state. Those cases have no application to the facts here, nor do they support the contentions of the Appellants.

In several cases decided by this court, the defendant had much greater activity or "contacts" in the State of Utah than did the defendant here at the time of the transaction in question and, yet, was held not to be subject to the jurisdiction of the Utah courts. See *Parke, Davis and Co. vs. Fifth Judicial District Court,* 93 Utah 217, 72 P. 2d 466; *Advance-Rumely Thresher Co., Inc., vs. Stohl,* 75 Utah 124, 283 P. 731; *McGriff vs. Charles Antell, Inc.,* 123 Utah 166, 256 P. 2d 703; *Western Gas Appliances, Inc., vs. Servel, Inc.,* 123 Utah 229, 257 P. 2d 950; *Dykes vs. Reliable Furniture & Carpet,* 3 Utah 2d 34, 277 P. 2d 969; *East Coast Discount Corporation vs. Reynolds,* 7 Utah 2d 362, 325 P. 2d 853; *Thorpe Finance Corporation vs. Wright,* 16 Utah 2d 267, 399 P.2d 206. These cases are discussed in some detail in our memorandum of authorities contained in the record at pages 24-30. At the time that memorandum was prepared, which was before oral argument on the Motion to Quash, we understood that plaintiffs were relying on the "minimum contacts" rule. However, in their argument to the court, both below and here, they have relied on their construction of the Corporation Code. We have, therefore, felt that no useful purpose would be served, by repeating that discussion in this brief.

CONCLUSION

When defendant's Certificate of Authority was revoked by the Secretary of State, it, in effect, became a non-resident of the State of Utah, no longer subject to the jurisdiction of the Utah courts for acts or transac-

tions occurring after its removal from the state. Since that date, it has transacted no business in the State of Utah, has not been within the State of Utah, has had no contacts whatsoever in the State of Utah, and is, therefore, immune from service in the State of Utah for acts occurring after revocation of its Certificate of Authority.

The judgment below should be affirmed.

Respectfully submitted,

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