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Jesse B. Stone v.SALT LAKE CITY, A
MUNICIPAL CORPORATION; J. BRACKEN
LEE, JOE L. CHRISTENSEN, L. C. ROMNEY, T.
I. GUERTS AND J. K. PIERCEY, ITS
COMMISSIONERS; CHAMBER OF
COMMERCE OF SALT LAKE CITY, AND GUS
P. BACKMAN, ITS SECRETARY; ZIONS
SECURITIES CORPORATION, A
CORPORATION; AND THE CORPORATION
OF THE PRESIDENT OF THE CHURCH OF
JESUS CHRIST OF LATTER-DAY SAINTS, A
CORPORATION SOLE : Brief of Respondent

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9268 D-CC

COURT
OF THE STATE OF UTAH

JESSE B. STONE,
Plaintiff and Appellant,

vs.

SALT LAKE CITY, A MUNICIPAL CORPORATION; J. BRACKEN LEE, JOE L. CHRISTENSEN, L. C. ROMNEY, T. I. GUERTS AND J. K. PIERCEY, ITS COMMISSIONERS; CHAMBER OF COMMERCE OF SALT LAKE CITY, AND GUS P. BACKMAN, ITS SECRETARY; ZIONS SECURITIES CORPORATION, A CORPORATION; AND THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A CORPORATION SOLE,

Defendants and Respondents.

Case No.
9268

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, UTAH

BRIEF OF CHAMBER OF COMMERCE OF SALT LAKE CITY AND GUS P. BACKMAN, ITS SECRETARY, DEFENDANTS AND RESPONDENTS

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IN THE SUPREME COURT OF THE STATE OF UTAH

JESSE B. STONE,

Plaintiff and Appellant,

vs.

SALT LAKE CITY, A MUNICIPAL CORPORATION; J. BRACKEN LEE, JOE L. CHRISTENSEN, L. C. ROMNEY, T. I. GUERTS AND J. K. PIERCEY, ITS COMMISSIONERS; CHAMBER OF COMMERCE OF SALT LAKE CITY, AND GUS P. BACKMAN, ITS SECRETARY; ZIONS SECURITIES CORPORATION, A CORPORATION; AND THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A CORPORATION SOLE,

Defendants and Respondents.

Case No.
9268

RESPONDENTS' SUPPLEMENTAL STATEMENT OF FACTS

1. Plaintiff JESSE B. STONE was not, on the date of the commencement of this action, and never has been, a member of the Chamber of Commerce of Salt Lake City. The affidavit of Gus P. Backman, dated March 9, 1960, attached to the motion of these respondents to dismiss plaintiff's complaint, proves this fact. The appellant does not controvert the same.

2. The applicants, FAUSETT, were not on the date of their application to intervene, and never have been members of the Chamber of Commerce of Salt Lake City. The affidavit of Gus P. Backman, dated March 30, 1960, proves this fact. Appellant does not controvert the same.

ARGUMENT OF RESPONDENTS
CHAMBER OF COMMERCE OF SALT LAKE CITY
AND GUS P. BACKMAN, ITS SECRETARY

POINT I.

THE JUDGMENT DISMISSING PLAINTIFF'S FIRST CAUSE OF ACTION AND REFUSING TO ALLOW THE APPLICANTS, FAUSETT, TO INTERVENE THEREIN INsofar AS THE CHAMBER OF COMMERCE OF SALT LAKE CITY AND GUS P. BACKMAN, ITS SECRETARY, ARE CONCERNED, IS CORRECT FOR THE REASON THAT SAID PLAINTIFF NEVER HAS HAD ANY PRESENT SUBSTANTIAL INTEREST IN THE SUBJECT MATTER OF THE CONTROVERSY, NOR HAS HE EVER POSSESSED A LEGAL STATUS AUTHORIZING HIM TO PROSECUTE SAID CAUSE OF ACTION.

The defendant and respondent, Chamber of Commerce of Salt Lake City, is a corporation, organized and existing under the non-profit corporation laws of the State of Utah. According to its articles of incorporation, its principal purpose "shall be to promote the general welfare of the City and County of Salt Lake in the State of Utah; to engage and assist in social relief work therein and to carry on such other and related activities

as are ordinary and normally engaged in by Chambers of Commerce." Gus P. Backman was at the time of the occurrence of the incidents related in plaintiff's complaint and also at the time of the commencement of this action, the executive secretary of said Chamber of Commerce. It is apparent from the plaintiff's complaint that he was made a defendant in this action only because of the fact that he was the executive secretary of said corporation. Therefore, it is proper to treat in this argument the Chamber of Commerce and Backman as a unit.

The Chamber of Commerce has no stockholders; it only has members. The non-profit corporation laws of Utah contemplate such situation (Secs. 16-6-1, 16-6-12, Utah Code Ann. 1953).

Rule 17 of Utah Rules of Civil Procedure provides in part as follows:

"Every action shall be prosecuted in the name of the real party in interest*****."

The "real party in interest" is the party who by substantive law possesses the right sought to be enforced and not necessarily the persons who will ultimately benefit from the recovery. Therefore, the question, who is the real party in interest, is governed by the substantive law. "The real party in interest" provision applies to all suits including class actions (2 Barron and Holtzoff, Section 482, Page 5).

"In considering the proper person to institute a judicial proceeding one should bear in mind the fundamental principle that courts are instituted to afford relief to persons whose rights have been invaded, or are threatened with inva-

sion, by the defendant's acts or conduct, and to give relief at the instance of such persons; a court may and properly should refuse to entertain an action at the instance of one whose rights have not been invaded or infringed, as where he seeks to invoke a remedy in behalf of another who seeks no redress. One cannot rightfully invoke the jurisdiction of the court to enforce private rights or maintain a civil action for the enforcement of such rights unless he has in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy. To enable one to maintain an action to enforce private rights, he must show that he has sustained some injury to his personal or property rights. The principle that one without pecuniary interest has no judicial standing runs throughout our jurisprudence, and unless one has some remedial interest he cannot be a party plaintiff. His interest must be a present, substantial interest, as distinguished from a mere expectancy, or future, contingent interest, and he must show that he will be benefited by the relief granted." (39 Am. Jur. — Parties, Sec. 10, Pages 859, 860).

Stone and the Faucetts have never been members of the Chamber of Commerce. With respect to this corporation they possess no substantive rights to vindicate in this action. When Stone named the Chamber of Commerce a party defendant in these proceedings, he was an interloper and was a meddler in matters which were none of his business. The Faucetts by their application to intervene, were also interlopers and meddlers. The actions of the Chamber of Commerce were none of their concern. The test as to whether Stone or the Faucetts

were "real parties in interest" is: (1) whether they are owners of rights to be enforced; or (2) whether they are in a position to release and discharge the Chamber of Commerce from the liability upon which the action is grounded. (*Regan vs. Dougherty*, 40 N.M. 439, 62 Pac. (2d) 810). This rule is also well illustrated in the case of *State ex. rel. Hays, et al vs. Wilson*, 17 Wash. (2nd) 670, 137 Pac. (2d) 105, where the Court wrote:

"The order dismissing the action must be affirmed in conformity to the rule that to enable one to maintain a cause of action to enforce private rights, he must show that he has some real interest in the cause of action."

The Supreme Court of Utah in the case of *Shaw vs. Jeppson*, 121 Utah 155, 239 Pacific (2d) 745, clearly demonstrated exactly what is meant by a "real party in interest." In the course of its opinion it said:

"The reason the defendant has the right to have a cause of action prosecuted by the real party in interest, is so that the judgment will preclude any action on the same demand by another and permit the defendant to assert all defenses or counterclaims available against the real owner of the cause."

It is apparent in this instance that since neither Stone nor the Fausetts possess any interest in the Chamber of Commerce by way of membership to be protected or vindicated by this action, that a judgment in favor of the Chamber of Commerce in this action will not shield it against the claim of a real and true member of the corporation based on the facts alleged by Stone.

The general rule is that the question of whether a corporation has acted in excess of its lawful powers can only be raised by one interested therein, or dealing with the corporation, or in a direct proceeding brought by the State authority to forfeit the charter or to subject it to punishment for the unlawful act (13 Am. Jur. — Corporations, Sec. 759, Page 790). One whose rights are not injuriously affected cannot complain that a corporation has acted in excess of its powers (*Denver Power and Irrigation Company vs. Denver and Rio Grande Railroad Co.*, 30 Colo. 204, 69 Pac. 568, 60 LRA 383). A case very much in point is that of *Jones vs. San Bernardino Real Estate Board, et al*, 168 Cal. Ap. (2d) 661, 336 Pacific (2d) 606, wherein it was held that a non-member of a real estate building board association, a non-profit corporation, cannot claim damages from the Association, nor could any liability in favor of the non-member be imposed upon the Association. The illegal acts of the corporation cannot be attacked except by one whose rights have been invaded. (*Belfast vs. Belfast Water Co.*, 98 Atlantic (Maine) 738,) L.R.A. 1917 B. 908; *Memphis and C. R. Co. vs. Grayson*, 88 Ala. 572, 7 South 122.; *Burns vs. St. Paul City Railway Co.*, 101 Minn. 263, 112 N.W. 412; *New Orleans, etc. R. Company vs. Ellerman*, 105 U.S. 166, 26 L. Ed. 1015; *New England R. Co. vs. Central R. and Electric Co.*, 69 Conn. 56, 36 Atlantic 1061.)

The principles of law herein set forth demonstrate that neither Stone nor the Faucetts have any standing in Court to question the legality of the actions of the

Chamber of Commerce or Backman, its executive secretary, with respect to the acquisition by the United States of America of the site for the proposed new Federal Building.

Appellant cites Rule 19, of the Utah Rules of Civil Procedure as authority for the proposition that "persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants****," and Appellant further quotes from *Shields vs. Barron*, 17 Howard 130, 139, 15 L. Ed. 158, 161 to the effect that:

"Persons who not only have an interest in the controversy but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience are indispensable parties."

Appellant, therefore, concludes that "the Chamber of Commerce cannot be eliminated from the contract (sic) as there would be no one before the court with whom the City has a contract."

The fallacy of Appellant's argument that the Chamber of Commerce and its executive secretary, Backman, are indispensable parties to this action lies in the assumption that Stone and the Faucetts are in the legal position to litigate the validity of the actions of the Chamber of Commerce and Backman. Were they members in good standing of the Chamber of Commerce, this argument might have validity. Stone and the Faucetts are strangers to the Chamber of Commerce and their institution of this litigation against the Chamber of

Commerce and its executive secretary, were gratuitous acts of interlopers. To state the matter in figurative language, Stone is a trespasser in the precincts of the Chamber of Commerce. The Judgment of the Trial Court evicted him. The Faucetts attempted to gain admission to these precincts but the Judgment of the trial court barred their entrance. Neither Stone nor the Faucetts are in a position to test the question, whether the Chamber of Commerce and Backman are indispensable parties. Let a bona fide member of the Chamber of Commerce come forward and he may be able to reach this question, but Stone and the Faucetts cannot.

There was no error in the Judgment of the trial court in dismissing Stone's first cause of action and refusing to admit the Fausetts to the litigation.

POINT II.

THE APPLICANTS, FAUSETT, WERE NOT ENTITLED TO INTERVENE IN PLAINTIFF'S FIRST CAUSE OF ACTION INsofar AS IT INVOLVED THE CHAMBER OF COMMERCE OF SALT LAKE CITY AND GUS P. BACKMAN, ITS SECRETARY, FOR THE REASON THAT SAID FAUSETTS NEVER HAVE HAD ANY PRESENT SUBSTANTIAL INTEREST IN THE CONTROVERSY, NOR HAVE THEY EVER POSSESSED A LEGAL STATUS WHICH PERMITTED THEM TO INTERVENE.

These Respondents have demonstrated under Point I. that the Fausetts were not entitled to intervene in this action and therefore the refusal of the trial court

to consider their application to intervene was not error. No further argument is necessary in support of this point.

POINT III.

**THE JUDGMENT OF THE TRIAL COURT IN DISMISSING PLAINTIFF'S SECOND CAUSE OF ACTION AND REFUSING TO ALLOW THE APPLICANTS, FAUSETT, TO INTERVENE THEREIN IN-
SO FAR AS THE CHAMBER OF COMMERCE OF SALT LAKE CITY AND GUS P. BACKMAN, ITS SECRETARY, ARE CONCERNED, WAS CORRECT FOR THE REASON THAT SAID DEFENDANTS AND RESPONDENTS NEVER HAVE BEEN CONNECTED IN ANY RESPECT WITH THE SUBJECT OF THE CONTROVERSY.**

The allegations of plaintiff's second cause of action will be searched in vain for any mention of the Chamber of Commerce of Salt Lake City and of its executive secretary, Backman. The reason for the silence of plaintiff as to the Chamber of Commerce of Salt Lake City and Backman, its executive secretary, is the fact that neither of them was in any respect connected with the alleged transaction concerning the Forest Dale Golf Course to which this cause of action relates. Insofar as these defendants are concerned, this cause of action should have been stricken. They were never connected with the subject of the controversy and plaintiff does not pretend that they had any part in it. There was certainly no error in the judgment of the court which dismissed this cause of action as to these respondents.

WHEREFORE, these Respondents respectfully submit that the judgment, as the same affects them, should be affirmed.

Respectfully submitted,

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