

1983

Travelers Express Company, Inc., A Minnesota Corporation v. State of Utah, Linn C. Baker, In His Capacity As Treasurer of The State of Utah, And Richard G. Jensen, In His Capacity As Auditor of The State of Utah : Brief of Plaintiff-Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

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TRAVELERS EXPRESS COMPANY, :  
INC., a Minnesota corporation, :  
 : CASE NO. 19216  
Plaintiff :  
Respondent. :  
 :  
v. :  
STATE OF UTAH, LINN C. BAKER, :  
in his capacity as Treasurer :  
of the State of Utah, and :  
RICHARD G. JENSEN, in his :  
capacity as auditor of the :  
State of Utah, :  
 :  
Defendants :  
Appellants. :  
 :  
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BRIEF OF PLAINTIFF-RESPONDENT

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## AUTHORITIES CITED

### Cases

- Bank of America v. Cranston, 252 Cal. App. 2d 208, 60 Cal Rptr. 336 (1967) .....
- Blue Cross of Northern California v. Cory, 120 Cal. App. 3d 723, 174 Cal. Rptr. 901 (1981) .....
- Del Monte Corporation v. Moore, 580 P.2d 224 (Utah 1978) .....
- Insurance Co. of North America v. Knight, 8 Ill. App. 3d 871, 291 N.E.2d 40 (1972) .....
- McGuire v. University of Utah Medical Center, 603 P.2d 786 (Utah 1979) .....
- Pacific Northwest Bell Telephone Co. v. Department of Revenue, 78 Wash.2d 961, 481 P.2d 556 (1971) .....
- South Carolina Tax Commission v. Metropolitan Life Insurance Co., 266 S.C. 34, 221 S.E.2d 522 (1975) .....
- Standard Oil Co. v. New Jersey, 5 N.J. 281, 74 A.2d 565 (1950), affirmed, 341 U.S. 428 (1951) .....
- Utah ex. rel. Baker v. Intermountain Farmers Association, No. 17902 (Utah Sup. Ct. filed June 3, 1983) .....6, 7, 8, 9

### STATUTES CITED

- Section 78-12-23 U.C.A. 1953 .....
- Section 78-44-1, et seq. U.C.A. 1953 .....
- Section 78-44-2, U.C.A. 1953 .....
- Section 78-44-25 U.C.A. 1953 .....
- 8 U.L.A. § 16 Commissioner's note (1972) .....

### SECONDARY AUTHORITIES

- Annotation, 71 A.L.R.2d 284 .....
- 54 C.J.S. Limitation of Actions § 146 (1948) .....
- Developments in the Law--Statutes of Limitations, 63 Harv. L. Rev. 1177 (1950) .....

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Appellants. :

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BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT OF THE CASE

Plaintiff brought this action for a declaratory judgment to determine if certain uncashed money orders issued by Plaintiff were subject to the Utah Unclaimed Property Act.

DISPOSITION IN LOWER COURT

Summary Judgment was entered by the District Court in favor of Plaintiff and against Defendants on cross motions for summary judgment.

## RELIEF SOUGHT ON APPEAL

Affirmance of the District Court's grant of summary judgment in favor of plaintiff.

### STATEMENT OF FACTS

Travelers Express Company, Inc. ("Travelers") is a Minnesota corporation engaged in the business of selling money orders throughout the United States. Travelers has been selling its money orders in Utah, either directly or through its predecessor, since 1959. An overwhelming majority of these money orders have been presented for payment in due course. However, some of the money orders have never been cashed, presumably due to loss or destruction of the money order, or simple neglect by the owner.

In 1957, Utah adopted the Uniform Disposition of Unclaimed Property Act (the "Act"), which is set out at UTAH CODE ANN. §§ 78-44-1, et seq. Under Section 78-44-2, any "sum payable on a money order is "presumed abandoned" after seven years. Generally, abandoned property must be paid over to the State. However, the State's rights are only derivative from those of the owner, and if the owner's rights have been extinguished, then there is no "sum payable." On the understanding that the Statute of Limitations barred all claims of the money order purchasers, Travelers, at first, did not report these uncashed money orders.

the State. In response to the State's demand, however, Travelers filed its initial report on October 31, 1977, under protest, as to all sums then held, and brought this suit for refund and declaratory judgment. Subsequent reports were filed October 30, 1978, October 30, 1979, October 30, 1980, October 30, 1981 and October 29, 1982 and Travelers paid to the State, under protest, the sums reported. Both parties stipulated that Travelers' payment of the sums did not constitute a waiver of any rights, including any defense to payment based upon any statute of limitations.

#### ARGUMENT

I. EXPIRATION OF THE STATUTE OF LIMITATIONS CREATES A VESTED PROPERTY INTEREST THAT CANNOT BE DESTROYED BY STATUTE.

An action against the issuer of a money order to recover the amount payable thereon is a contract action based upon the issuer's agreement with the purchaser at the time of issue that the issuer would pay out the sum received from the purchaser. This cause of action accrues when the money order is issued and is subject to six year limitations period of UTAH CODE ANN. § 78-12-23, which governs any action on a "contract, obligation or liability founded upon an instrument in writing." See 54 C.J.S. Limitation of Actions § 146; Annotation, 71 A.L.R.2d 284; Developments in the Law--Statutes of Limitations, 63 Harv. L. Rev. 1177, 1212 (1950) (limitations period commences to run upon the issuance of a demand instrument.)



The expiration of a limitations period on an action to recover property creates a vested right to the property in the holder, and operates to extinguish the right of the original owner to require payment. See, e.g., McGuire v. University of Utah Medical Center, 603 P.2d 786, 780 (Utah 1979) (running of statute of limitations on an action creates a vested right which cannot be impaired without denying due process of law); Del Monte Corporation v. Moore, 580 P.2d 224, 225 (Utah 1978) ("if the statute has run on a cause of action, so that it is dead, it cannot be revived"); Blue Cross of Northern California v. Cory, 120 Cal. App. 3d 723, 742, 174 Cal. Rptr. 901, 912-13 (1981) ("the running of the statute of limitations on a claim before the effective date of the UPL [Unclaimed Property Law], as between the holder and the owner remained available as a defense") (emphasis supplied); Pacific Northwest Bell Telephone Co. v. Department of Revenue, 78 Wash. 2d 961, 481 P.2d 556 (1971) (recognizing statute of limitations defense to state's claim under its abandoned property law.)

In this case, the period of limitations on a private action by the original owner of a money order against Travelers is six years. Consequently, the title to any sum payable by Travelers on an unclaimed money order vests in Travelers six years after the issuance of the money order, and there is no "sum

payable" on a money order issued in Utah seven years after issuance, which is the time period under the Act when the payable sum is "presumed abandoned."

II. THE RIGHTS OF THE STATE UNDER THE UNCLAIMED PROPERTY ACT ARE DERIVATIVE FROM THE RIGHTS OF THE OWNERS OF ABANDONED PROPERTY DUE TO THE CUSTODIAL NATURE OF THE ACT.

It is well-established that the rights of a state under an abandoned property law are derivative from those of the original owner of the property. See, e.g., Standard Oil Co. v. New Jersey, 5 N.J. 281, 74 A.2d 565 (1950), affirmed, 341 U.S. 428 (1951); South Carolina Tax Commission v. Metropolitan Life Ins. Co., 266 S.C. 34, 221 S.E.2d 522 (1975); Bank of America v. Cranston, 252 Cal. App. 2d 208, 60 Cal. Rptr. 336 (1967); Pacific Northwestern Bell Telephone Co. v. Dept. of Revenue, 70 Wash. 2d 961, 481 P.2d 556 (1971); Insurance Co. of North America v. Knight, 8 Ill. App. 3d 871, 291 N.E.2d 40, 44 (1972), cert. dismissed, 414 U.S. 804 (1973). Therefore, if, at the time a state seeks to take custody of property under an abandoned property statute, the true owner of the property no longer would have a right to recover it, the state also is barred because under the common law, the expiration of a period of limitations on a cause of action creates a vested right which cannot be destroyed.

The conclusion that the effect of the Unclaimed Property Act can be superseded by the running of

the statute of limitations is consistent with the derivative nature of the Uniform Act, discussed earlier. Once the statute of limitations precludes action by the owner, the State has no higher claim to require the fund or other property to be handed over to its custody.

Utah ex rel. Baker v. Intermountain Farmers Association, No. 11

(Utah Sup. Ct. filed June 3, 1983).

III. LEGISLATIVE HISTORY DEMONSTRATES THAT THE RUNNING OF THE STATUTE OF LIMITATIONS SUPERSEDES THE EFFECT OF UTAH'S UNCLAIMED PROPERTY ACT.

As indicated in Defendant's brief, both parties have stipulated that the only question pending on appeal is whether the aforementioned six year statute of limitations precludes the Treasurer from requiring reports and transfer of funds under Utah's version of the Unclaimed Property Act. A recent decision by this Court, rendered subsequent to the filing of Defendant's brief, is dispositive of the question and affirms the District Court's decision to grant summary judgment in favor of Plaintiff.

Section 16 of the Uniform Disposition of Unclaimed Property Act treats unclaimed property as being subject to the even though the applicable state statute of limitations has run prior to the date of presumed abandonment. 8 U.L.A. § 16 commissioners' note (1972). In Utah ex rel. Baker v. Intermountain Farmers Association, supra, this Court recognized

that the Utah Legislature deliberately omitted § 16 from the Act in order to avoid possible constitutional objections based on the statute of limitations.

Utah did not enact § 16 of the Uniform Act. The omission was deliberate. The Bill originally introduced in the Legislature embodied the entire Uniform Act, but § 16 was subsequently omitted in an amendment put forward by the sponsor of the Bill. Utah S.B. 77, 32d Leg. Sess., 1957 Senate Journal 83, 344-46, 614. The State offers no explanation or construction of this omission. The Cooperative argues that this deliberate omission of a provision that would have directed that unclaimed property be reported and paid over to the State notwithstanding the expiration of a period of limitations establishes the legislative intent that the running of a statute of limitations should supersede the effect of the Unclaimed Property Act. For this and the other reasons cited below, we agree.

The legislative history suggests the reason for omitting § 16--to avoid doubts about its constitutionality as to claims already barred by the statute of limitations.

Utah ex rel. Baker v. Intermountain Farmers Association, supra.

Further support of the position that the six year limitation remains operative despite adoption of the Unclaimed Property Act is found in the language of certain provisions of the Act as promulgated by the Utah Legislature. This Court has acknowledged the persuasiveness of such language and concluded that it serves to indicate the legislature's intent to allow the statute of limitations to supersede the effect of the Act.

This omission is especially significant in view of other references to the statute of limitations in the Act as adopted. The Legislature enacted without change the Uniform Act provision requiring the holder to notify the owner before reporting the unclaimed property "if the owner's claim has not been barred by the statute of limitations . . . ." § 78-44-11.5. In addition, in contrast to its deletion of § 16, the Legislature amended the Uniform Act to add a provision that an owner of property or the proceeds of property that has been delivered to the State can claim the same from the State, and "[n]o statute of limitations shall bar the filing of a claim." § 78-44-16. . . . This result is also consistent with the language of § 5: once the statute of limitations has run, the distribution or other sum is no longer "held or owing by a business association . . . to a . . . participating patron of a cooperative," § 78-44-5, and therefore need not be reported or turned over to the custody of the state.

Utah ex rel. Baker v. Intermountain Farmers Association, 501

A final indication that the legislature did not intend the Act to eviscerate the six year limitation is found in a regulation issued by the State Treasurer shortly after the Act was adopted, pursuant to UTAH CODE ANN. § 78-44-25. This regulation demonstrates that the initial administrative construction was that the Act did not apply to payment of funds barred by the statute of limitations.

**Change of Ownership Rights.** When the owner's right to claim property held by another has been barred either by a statute of limitations, the contract under which the property was held, or under the terms of the instrument, or the law under which entitlement

of any person to the state that is not required to be disclosed in other disclosed property to the state. The legislature of the state has not intended to require the reporting of property.

3. Repeal of the Uniform Depositors' Unclaimed Property Act administered to the Utah State Treasurer, Rule 10, Utah ex rel. Baker v. International Foreign Association, 1983.

It is submitted that the legislature intended the Act to prevent the six year limitation as inconsistent with the legislative history of the Act. The case of Utah ex rel. Baker v. International Foreign Association, *supra*, is dispositive of the legislative question and provides clear and convincing evidence that the legislature did not intend the statute of limitations to be operative as a consequence of the adopted Act. This means the applicable statute of limitations extinguishes the right to payment of any sums on the money orders, thus preventing the state from any "out payable" on Travelers' money orders which would be due to the state under the Unclaimed Property Act.

#### CONCLUSION

Respondent respectfully requests the Court to affirm the order of the court below.

14th Floor 14th day of July, 1983.

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CERTIFICATE OF SERVICE

I hereby certify that on the 15<sup>th</sup> day of July, 1983,  
a true and correct copy of the foregoing BRIEF OF PLAINTIFF-  
RESPONDENT were mailed, first-class postage prepaid to the  
following:

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