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Walker Bank & Trust Co. v. Spencer C. Taylor and State Bank of Provo : Brief Amicus Curiae of First National Bank of Logan, Utah

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

OCT 4 - 1963

WALKER BANK & TRUST COMPANY,
a Utah corporation.

Clerk, Supreme Court, Utah

Plaintiff-Respondent.

vs.

SPENCER C. TAYLOR, Bank Commissioner
of the State of Utah, and State Bank
of Provo, a Utah corporation,

Defendants-Appellants.

NO.
9947

Brief Amicus Curiae of First National Bank of Logan, Utah

From Appeal from the judgment of the Third District
District Court of Salt Lake County
Honorable A. H. Ellett

UNIVERSITY OF UTAH

APR 29 1965

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BRIEF AMICUS CURIAE OF FIRST NATIONAL
BANK OF LOGAN, UTAH

STATEMENT OF THE CASE

It is not the intent of the First National Bank to submit an extended brief. We fully agree with the position taken by appellant. We only desire to supplement the contentions of appellant by making a few observations which may amplify the position taken by them.

ARGUMENT

I

THERE IS A MARKED DISTINCTION BETWEEN
A UNIT BANK AND A BRANCH BANK.

Walker Bank & Trust Company contends the institution known as the Farmers & Merchants Branch of Walker

Bank & Trust Company is a bank and not a branch; it, therefore, becomes important to distinguish between a bank and a branch.

U.C.A. 1953, Sec. 7-3-8 provides,

The term "commercial bank" when used in this chapter means any bank organized for the purpose of receiving deposits of money subject to withdrawal upon check or other demand, and engaging in other banking activities.

And this is the definition given of a branch:

The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business at which deposits are received, or checks paid, or money lent. U.C.A. Sec. 53-7-3-6.

II

THE FARMERS' & MERCHANTS' BRANCH OF
THE WALKER BANK & TRUST COMPANY OF
PROVO, UTAH, IS A BRANCH BANK AND NOT A
UNIT BANK.

An attempt to show that the Farmers' & Merchants' Branch of the Walker Bank & Trust Company is a bank by showing its functions does not get to the heart of the matter. The distinguishing characteristics between a bank and a branch is not found in the difference between the type of business which they conduct, but rather in their management and control.

To determine that control let us look to the merger agreement dated the 28th day of September, 1956, be-

tween the Walker Bank & Trust Company, a Utah Corporation, and the Farmers' & Merchants' Bank of Provo, a Utah Corporation, now in file in the office of the Secretary of State of Utah.

The second paragraph on page 2 of the Agreement provides:

WHEREAS, the respective Boards of Directors of Walker Bank and Farmers' & Merchants' Bank of Provo deem it advisable for the purpose of greater efficiency and economy of management and in order to expand the territory which can be served, as well as the general welfare of said corporations, and their stockholders, that the Farmers' & Merchants' Bank of Provo be merged with and into Walker Bank under and pursuant to the provisions of Chapter 6, Title 7, Utah Code Annotated 1953 pursuant to the terms and conditions hereinafter set forth;

The merger agreement further provides:

Paragraph 1. The Farmers' & Merchants' Bank of Provo, shall be and it hereby is merged with and into Walker Bank.

Paragraph 2. Walker Bank shall continue in existence as the corporation surviving said merger, and shall, as heretofore, be a corporation organized and existing under the laws of the State of Utah. Walker Bank, as it shall exist from and after the date of said merger (hereinafter sometimes referred to as "the merger") becomes effective, is hereunder sometimes called "the Surviving Corporation" or "the Resulting Bank."

Paragraph 4. The name of the Surviving Corporation is and shall be Walker Bank & Trust Company.

Paragraph 5 of the merger provides for capital stock of Walker Bank & Trust Company. There is nothing said about the capital stock of the Farmers' & Merchants' Branch of Provo, except that it shall be converted into shares of stock of the Walker Bank & Trust Company.

Paragraph 7 of the agreement among other things provides that the Walker Bank & Trust Company's main office is to be located 175 South Main Street, Salt Lake City, Utah, and the Farmer's & Merchants' Branch is to be located 9th North and 3rd West in Provo, Utah. (Here we may explain that the Farmers' & Merchants' Branch of the Walker Bank & Trust Company carries on a general banking business in Provo, Utah, but only as a branch bank.)

Paragraph 9 provides among other matters that the officers of the head office are the following: John M. Wallace, President; Reed E. Holt, Executive Vice President; O. K. Carlson, Senior Vice President; and that the officers of the Farmers' & Merchants' Branch are a vice-president and manager and other minor officers. It also provides for officers of the Walker Bank & Trust Company consisting of a Board of Directors as provided by law. No provision is made for a Board of Directors of the Farmers' & Merchants' Branch.

Section 7-6-6 of the U.C.A. 1953 provides that upon a merger (such as the one which we are now dealing) the charter of the constituent bank (Farmers' & Merchants' Bank) other than the resultant bank (Walker Bank & Trust Company) shall thereupon be deemed to have been surrendered.

Paragraph 10 specifically provides that the separate corporate existence of the Farmers' & Merchants' Bank shall cease and become effective on the date of the merger, and all of its property transferred and vested in the Walker Bank & Trust Company.

Without a charter, without any capital stock, without a board of directors, without any property whatsoever can it be said that the Farmers' & Merchants' Bank longer exists as a corporate entity. By taking away its charter, its capital structure, its board of directors and all of its property, its separate corporate existence would expire without the provisions of Paragraph 10 of the merger. 13
Am Jur ~~1196~~. par 1196

But contends plaintiff the Farmers' & Merchants Branch of the Walker Bank & Trust Company occupies the same banking house as was formerly occupied by the Farmers & Merchants Bank and continues to do a banking business in Provo, Utah.

We are cognizant of the fact that Section 7-6-7 U.C.A. 1953 provides as follows:

The resulting state bank shall be considered the same business and corporate entity as each constituent bank with all the rights, powers and duties of each constituent bank except as limited by the Charter and by-laws of the resulting state bank.

¹⁶⁻¹⁰⁻⁷¹
Section 16-10-71, the section in effect at the time of said merger, supplements the above statute, as follows:

Upon the consummation of such consolidation all the rights, privileges and franchises of each of the

consolidating corporations, and all the property, real and personal, and all subscriptions and debts due on whatever account, shall be deemed to be transferred to and vested in such new corporation without further act or deed.

But we cannot agree that one of the rights and powers transferred to the resultant bank was the right of the resultant bank to protect the former status of the Farmers' & Merchants' Bank and its competitive situation as provided under section 7-6-7 U.C.A. '53. Subdivision (B) and (C) of Section 7-67 U.C.A. 1953 illustrates the type or rights and powers passing from the constituent bank to the resultant bank and this is supplemented by the following quotation from Fletcher on Corporations.

Under a provision giving a consolidated corporation the rights, franchises, privileges and property of the consolidating corporations, or without such a provision, and in the absence of provision to the contrary, it has been held that a consolidated corporation acquired the power of eminent domain enjoyed by one or both of the consolidating corporations, the right, in the case of a railroad company, to charge a certain rate for transportation of persons or property, the power, through a quasi public corporation, like a railroad company, to mortgage its property and franchises, an immunity of officers and employees from working on the public roads or serving on the jury, the right to compromise and settle a claim against one of the consolidating corporations, and to maintain an action to enforce a settlement, the right to the benefit of a license to use a patent enjoyed by the consolidating corporations, and the right (in case of a railroad company, for example) to receive subscriptions by cities and other municipality. A

consolidated company may claim a mechanic's lien for materials furnished by a constituent corporation.

Franchise rights of the constituent companies vest in the consolidated company. Thus where, by statute, the consolidated company is vested with all the assets of the constituent companies, rights in the streets under municipal ordinances pass to the new corporation. But the life of a prior franchise is not, of course, extended by a consolidation of constituent railway companies into one company. (Fletcher's Corporations, vol. 7, Section 4715, p. 8352-3). Paragraphs B and C of Section 7-6-7 U.C.A. 1953 provides:

The resulting state bank shall have the right to use the name of any constituent bank whenever it can do any act under such name more conveniently.

Any reference to any constituent bank in any writing, whether executed or taking effect before or after the merger, shall be deemed a reference to the resulting state bank if not inconsistent with the other provisions of such writing.

From its inception the entire merger agreement proclaims that the status of the Farmers' & Merchants' Bank was changed; in losing its corporate franchise; transferring its stock and its property, in becoming a branch office and changing its name, it lost its former status as a unit bank, it no longer had the right to protect its status as such.

III

THE WORDS BANK OR BANKS AS USED IN SECTION 7-3-6 U.C.A. DOES NOT INCLUDE BRANCH BANKS.

Supplementing the contention of appellants so ably set forth in their brief now on file in this court we suggest the following:

In 1927 when the branch banking law was before the Congress of the United States, Senator Vandenburg made the following comment:

“Except in a city, town, or village where there is no National or State bank regularly transacting customary banking business, no such association shall establish a branch except by taking over a unit bank existing at the time of the enactment hereof or an affiliate of such association.” 76 Cong. Rec. 2026.

It is clear that when Senator Vandenburg used the word *bank* (no national or state bank) he meant unit bank and not branches for he goes on to say “no such association (meaning unit banks) shall establish a branch.”

After the national banking law a number of states passed acts regulating branches. Our own state permitted branch banking with this prohibition; Except in cities of first class a bank cannot branch in cities or towns where there is already a bank or banks. It is our contention that the words *bank* or *banks* did not include branches. That if our law-makers had intended the words *bank* or *banks* to include branches they would have so provided, by adding to the words used. this further statement: *or branches thereof*.

It may be helpful to determine the intent of our own lawmakers to determine how other states have defined the prohibited area:

The State of Connecticut in its act provided:

“With the approval of the commissioner any state bank may establish and operate one or more branches in any town or towns within this state in which the main office of no state bank and trust company or national banking association is located.” General Statutes of Conn. as amended by Public Acts of 1959, no. 275.

The laws of the state of Indiana provides:

“Any bank or trust company may open or establish a branch bank in any city or town within the limits of the county in which the principal office of such bank or trust company is located, if there be no bank or trust company located in such city or town.” Acts of 1959, Chapter 59.

The laws of the state of Iowa provide:

“A bank may not establish an office beyond those counties contiguous to the country in which a bank is located nor in a city or town in which a bank is already established.” Iowa Code Annotated Paragraph 528.51.

Rev. Stat. Oregon Para. 714. 50 provides:

“A branch may not be established in any city or town, village or community in which a national bank or state bank is doing business except by taking over an existing or national or state bank.”

These statutes are similar to our own and the word *bank* or *banks* is used in these statutes with the same meaning that the word *bank* or *banks* is used in the statutes of the State of Utah.

Another type of statutes of other states were enacted to prevent a branch from being established where another bank or branches were in existence. I quote from the statutes of these states.

MAINE

"However, a trust company may establish a branch in any city, town or village where there are no state banks, or where a unit bank or *branch* of another bank is taken over." Rev. St. Ch. 59 Art. 11, Para. 65.

MASSACHUSETTS

"However, no branch or depot may be opened in any other town if the main office or a *branch office* of any savings bank is therein located." Mass. Anno. Laws, Ch. 493.

NEW JERSEY

"However, a bank may establish a branch office in any municipality where no bank has its principal office or *branch office*." N. J. St. Anno. 17:9A-238 to 17:9A1239.

MICHIGAN

"No facilities may be established if a bank or a *branch thereof* is then in operation." Michigan Public Acts 1959, No. 248.

In these states the Legislatures desired that the prohibited area was where bank or *branches* were located. In each of these states the legislature added the word *branch* to the word *banks*.

As we search for the meaning of the word *banks* as used in our statute it may be well to keep in mind the

statutes of other states. These states describing the prohibited area where branches may not be established use the word *banks* to describe that area and when they want to enlarge the prohibited area they add the word *branches*. Our legislature by not adding *branches* to the prohibited area must have intended that the prohibited area included only *unit banks*.

IV

SECTION 7-3-6 U.C.A. DOES NOT PROHIBIT A HOME OFFICE BANK IN A CITY OF SECOND CLASS FROM BRANCHING.

Having established that the word *bank* or *banks* as used in section 7-3-6 U.C.A. means unit bank and not branches, our next inquiry is; Does the presence of the Provo State Bank in the prohibited area bar said unit bank from establishing a branch there.

Let us consider the last sentence in paragraph IV of said section 7-3-6 Said paragraph provides:

“Except in cities of the first class, or within unincorporated areas of a county in which a city of the first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank. *No unit bank, organized and operating at a point where there are ~~operating~~ other banks, state or national, shall be permitted to be acquired by another bank for the purpose of establishing a branch until such bank shall have been in operation as such for a period of five years.*” (italics ours)

If a unit bank may not be acquired by another bank until it is in operation for five years, the converse would be true and using this meaning the sentence would read:

A unit bank doing business where there are *other* operating banks may not acquire another bank for the purpose of establishing a branch until such bank shall have been in operation for a period of five years.

Reading the entire paragraph enlightened by this sentence (changed in construction but not in meaning) suggests that a unit bank may not establish a branch where there are *other* operating unit banks. Such interpretation gives the State Bank of Provo the right to establish a bank at the Brigham Young University, for at the time it received permission to establish such a branch bank, there were no other unit banks operating in the city of Provo.

While this contention is not conclusive, it points to the fact that there may be two interpretations of the fourth paragraph of Section 7-3-6 U.C.A. 53.

It is quite clear that the only prohibition contained in Section 7-3-6 does not apply in this case. It is equally clear from the history of the regulation of branch banking in Utah that the statute does not prohibit home office banks from establishing branches in their charter cities even though such city is not of the first class.

The banking crisis in 1933 prompted an amendment (L. 1933, Ch. 6, Sec. 1) to the Utah Code authorizing branch banking in Utah for the first time since it was expressly prohibited in 1911 (L. 1911, Ch. 25, Sec. 32).

The amendment permitted branches in cities of the first class without restriction while in other cities or towns branches could be established (1) by taking over an existing bank, or (2) by obtaining the consent of all existing banks in the community. In 1949, in *Union Trust Co. v. Simmons* 116 Utah 422, 211 P.2d 190, the Utah Supreme Court declared the consent provision unconstitutional on the ground that it was an improper delegation of a legislative function to private parties. Thus, in 1951 the legislature amended Section 7-3-6 by deleting the unconstitutional consent provision. *This deletion did not take away the authority to branch; it simply removed a procedural condition precedent.*

Under the law prior to the decision in *Union Trust Company v. Simmons* (ante) and under similar conditions where there were only one bank and two branch banks in Provo had the Provo bank made application for branch in the city of Provo all it would need was its own consent. That would be indicated in its application. It could then branch in the city of Provo. By a mere procedural change in the law, can it be said that the purpose of the law was changed and the Provo home bank could no longer establish a branch in Provo? The whole history of branch banking legislation so ably presented in appellants brief shows that this could not have been the intent of the legislature. It is only by singling out one particular sentence in the entire law and giving a strained construction even to that sentence can we say that the Provo Bank is proscribed and limited in its branching.

It is apparent that the consent provision was a device whereby existing home office banks could determine who

would be allowed to compete with them. It allowed home office banks to prevent the branch systems or bigger banks from entering the home office city except by taking over another bank. This scheme allowed for increases in banking facilities to meet the needs of the community by allowing out-of-town banks to merge existing in-town banks. At the same time it provided protection for the community's home office banks by preventing out-of-town banks from entering the city indiscriminately thereby increasing the number of competitor banks. It follows that the legislature meant to correct the unconstitutional condition in such a way as to retain home office protection without taking away the authority of the protected banks to expand their facilities to satisfy the needs of the community.

Paragraph IV of Section 7-3-6 is a prohibition. It prohibits branch banking in certain cities and towns. One may conclude by reading this sentence separate and apart from any other that branching is prohibited in certain cities and towns in this state where there are other banks. But was that the intent of our Legislature? Did our law makers intend that the Provo State Bank could not branch in the city of Provo because in a strict construction of the statute it was already there? Did its presence in the forbidden area preclude it from branching there?

It is the duty of the Court to determine what was in the minds of our law makers when it prescribed forbidden areas in cities not of the first class.

We quote from *Uphoff v. Industrial Board*. 271 Ill. 312, 111 N.E. 128, Ann. Cas. 1917 D, page 1.

“The intention of the law-makers is the law. This intention is to be gathered from the necessity or reason of the enactment and the meaning of the words enlarged or restricted according to their real intent. In construing a statute the courts are not confined to the literal meaning of the words. A thing within the intention is regarded within the statute though not within the letter. A thing within the letter is not within the statute if not also within the intention. When the intention can be collected from the statute, words may be modified or altered so as to obviate all inconsistency with such intention.”

Why the enactment of the prohibition found in the first sentence of Paragraph IV? Did the Legislature intend that the Provo State Bank should be protected from the competition of its own branch?

A contrary interpretation would mean that existing public needs in a city outside Salt Lake City could not be fulfilled since no additional branch facilities could be provided by an existing home office bank. The entire statutory scheme of allowing additional branches when the public convenience and advantage would be served thereby would be subverted, not promoted. Thus, it is exceptionally clear that the statute does not prohibit a home office bank from branching within its charter city, especially when there is no other home office bank located within that city. Such is the situation in Provo, Utah.

V

SECTION 7-3-6 U.C.A. SHOULD BE INTERPRETED TO AVOID UNJUST, UNFAIR, ABSURD OR INEQUITABLE RESULTS.

“By this we do not mean that where the ordinary meaning of the language employed would lead to an absurdity, or inflict great injustice, the ordinary meaning of the words should not be restricted or expanded, if necessary, to avoid an absurdity or an injustice; but this is only another way of stating that courts cannot assume that the lawmaker really intended to enact either absurd or unjust laws.” *Plaster & Mfg. Co. v. Juab County*. 33 Utah 114, 93 Pac. 53.

“In the construction of a statute consideration of what causes injustice may have a potent influence, it is not to be supposed that the framers of the statute contemplated a violation of the rules of natural justice and it should not be presumed to have been within the legislative intent to enact a law having an unjust result.” 50 Am Jur (Statutes) Para. 370.

“The law is presumed to be equitable and it is a reasonable and safe rule of construction to remove any ambiguities in the statute in favor of an equitable operation of the law.” 50 Am Jur (Statutes) Para. 369.

The Court should not adopt the interpretation of section 7-3-6 U.C.A. requested by respondent. This would mean that the State Bank of Provo was the only bank in the state of Utah that could not branch in Provo. Zions First National Bank of Salt Lake City or any other bank in the state could with the consent of the State Bank Commissioner or the Comptroller of Currency by a merger with the Provo State Bank establish a branch in that city. But the appellant cannot merge with itself. It is therefore denied a privilege given to every other bank in this state.

VI

SECTION 7-3-6 U.C.A. 1953 SHOULD NOT BE CONSTRUED TO BE INIMICAL TO PUBLIC WEL- FARE.

Banks are unlike other private corporations; they are affected with a public interest. As is stated in *Schaake et al v. Dolley et al* 118 Pac. 80, Ann. Cas. 1913 A. 254.

"Banking has ceased to^b, if it ever was, a matter of private concern only, like the business of the merchant, and for all purposes of legislative regulation and control it may be said to be "affected with a public interest.' The public patronage which the banker invites and receives is of such a character that he becomes in a just sense a trustee of the fiscal affairs of the people and of the state. If a merchant cannot meet his bills promptly the general public is not disturbed. He is not ruined at once, and if he should fail, the effects are limited, to comparatively a few persons. If a bank is unable to meet a check drawn on it, the refusal to pay is an act of insolvency. Its doors are closed, its business is arrested, its affairs go into liquidation, and the mischief takes a wide range. Those who have been accommodated with loans must pay, whatever their readiness or ability to do so. Further advances cannot be obtained. Other banks must call in their loans and refuse to extend credit in order to fortify themselves against the uneasiness and even terror of their own depositors. Confidence is destroyed. Enterprises are stopped. Business is brought to a standstill. Securities are enforced. Property is sacrificed, and disaster spreads from locality to locality. All these incidents of the banking business are matters of common knowledge and experience. They clearly dis-

tiguish banking from the ordinary private business, illustrate its public nature, and show that it is properly subject to the police power of the state, vested in its legislature.”

Because of this public character banks are obligated to serve the public and make it as convenient as possible for the public to do their banking business. In order to best serve the public in these days of dependence on automobiles for transporation, banks must branch and bring their places of business to an area where the public congregate for other business purposes. Our lawmakers must be presumed to have the interest of their constituents in mind when they provided for branch banking. After providing for their safety by requiring approval of the bank commissioner or comptrolled of currency they must not have intended that these safe institutions be restricted in their branching. They could not have intended that a bank in a fast growing community where their were no other banking facilities could not branch and thereby offer their services to the public at a place where people assemble for other business purposes.

In the interpretation of the statute it is not to be presumed that the legislature intended to endanger or to sacrifice great public interest. Indeed, a purpose to disregard sound public policy must not be attributed to the law-making power. Where a statute is ambiguous, Courts interpreting the same may give consideration to the necessities of public welfare, policy, or interest, and where one construction of a statute will lead to possible mischief which another construction will avoid, the latter is favored. 50 Am Jur (Statutes) para. 381.

An interpretation of the statute which permits two large chain banks to come into Provo and purchase unit banks, convert them into branches with the attendant disadvantages of large chain banks and refuses to permit a home bank to serve its patrons by making their banking business more convenient is against public interest and should not be adopted.

Such an interpretation would mean that existing public needs in cities found outside of Salt Lake City could not be fulfilled since no branch facilities could be provided by the existing home office bank. The entire statutory scheme of allowing additional branches when the public convenience, and advantage would be served. would thereby be subverted, and not promoted.

CONCLUSION

As indicated by their brief submitted in the trial court this is respondent's theory of the case.

First; They contend that Farmers' and Merchants' Bank retained its status as a bank after its merger with Walker Bank.

Reducing this argument to its simplest terms we get this result;

A. Branch banks can only be established in an area in cities other than the first class by an existing bank taking over another bank.

B. In the meaning of section 7-3-6 U.C.A. when one bank is taken over by another bank, the bank taken over continues as a bank.

From these premises this conclusion is ⁴unavoidable. There can be no branch banking in cities, other than the first class, in the state of Utah. Such a conclusion seems absurd.

Second; They contend that even though the status of Farmers' & Merchants' Bank is changed by the merger into a branch, the appellant cannot branch because it already occupies the prohibited area as a bank.

On the other hand the theory of the appellants can be summed up as follows:

A. By section 7-3-6 U.C.A. the legislature intended that there could be other ways, besides a take over, to establish a branch in cities other than of first class.

B. When a bank is taken over by another bank it does not continue as a bank but is transformed into a branch.

C. Conclusion; A unit bank may establish a branch in its home city because there are no other banks there – only branches. This conclusion of appellants gives meaning to the intent of the legislature.

Respectfully submitted,

L. TOM PERRY,
Attorney for First National
Bank of Logan
Logan, Utah

SPECIAL APPEAL

Finally I desire to call to the attention of the Court, the vital interest of the First National Bank of Logan in this action. As suggested in its application to file a brief amicuscuriae in this matter, Logan City has one unit bank, The First National Bank of Logan, and two branch banks, the Cache Valley Branch of the Walker Bank & Trust Company and the Logan Branch of the First Security Bank. Its situation is analogous to appellants in Provo, Utah.

On the 21st day of January, 1963, the Comptroller of Currency granted a certificate of authority to the First National Bank of Logan to establish a branch bank in Logan, Utah where it had a unit bank; that on the 11th day of July, 1963, Walker Bank & Trust Company filed an action in the District Court of the United States for the District of Utah seeking to have the certificate of authority of the Comptroller of Currency cancelled and have the First National Bank of Logan, Utah enjoined from operating its branch bank. This action is now pending.

The decision of the Utah Supreme Court in this action will greatly influence the United States District Court in its decision, as the branch banking law of the State is used as a measuring stick by the United States Comptroller of Currency to determine the authority for a National Bank to branch. The First National Bank of Logan has therefore a vital interest in this matter.

L. TOM PERRY,
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Bank of Logan