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Walker Bank & Trust Co. v. Spencer C. Taylor and State Bank of Provo : Appellants' Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

Walker Bank & Trust Company,
a Utah corporation,

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

APPELLANTS' REPLY BRIEF

Appeal from the judgment of the Third District Court of
Salt Lake County
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APPELLANTS' REPLY BRIEF

THE CASE OF THE FOUR ANOMALIES

In our opening brief, appellants have pointed out:

1. The anomaly of the second largest bank in the State of Utah, with thirteen branches and resources in excess of \$240,000,000, a member of a multi-state banking chain having nearly \$6,000,000,000 in deposits and some 447 banking offices located throughout the eleven

Western states, claiming to be irreparably injured by the only branch of a small independent bank in Provo, Utah, having only \$7,000,000 in deposits.

2. The anomaly of a large metropolitan bank with numerous branches using as a sword against a small independent bank a statute designed as a shield to protect small independent banks from the monopolistic tendencies of a large chain banking system.¹

3. The anomaly of the plaintiff's argument that it is not the fact that it has a branch in Provo, but that the defendant State Bank of Provo itself is there, that precludes defendant from establishing a branch in Provo, Utah.

Respondent's brief presents a fourth. Walker Bank argues in its Point 1 that the statute in question is clear and unambiguous and therefore the court should not look to the intent of the legislature or resort to any of the other principles of statutory interpretation. But in its Point 2, Walker Bank's argument is that when the legislature referred to "a bank or banks," it must have meant "*bank or banks or a branch thereof.*" If the court must, on Point 2, apply the rules of statutory construction to interpret section 7-3-6, Walker Bank's argument on Point 1 for a disregard of those rules in reading that same sentence falls of its own weight.

¹Walker Bank and First Security Bank of Utah, N.A., the two banks having branches in Provo had, in 1962, 44.4 per cent of all banking offices in the State and held between them 51 per cent of all the bank deposits in the State. Report on Bank Holding Companies, Committee on Banking and Currency, House of Representatives, 88th Cong., 1963.

It has been appellants' position throughout that whether the question of statutory interpretation be considered in the light of the fact that Walker Bank has a branch in Provo or the fact that the State Bank of Provo is the only bank in Provo, the language of the whole statute and the history surrounding its enactment must be considered to determine the legislative intent.

Appellants' position is in accord with the basic principle of statutory interpretation recognized by this court:

“ . . . ‘in the exposition of a statute , the intention of the lawmaker will prevail over the literal sense of the terms . . . ’ ” *Norville v. State Tax Commission*, 98 Utah 120, 97 P.2d 937, 939 (1940).

Whether this principle is reached by thought process alone or with the aid of more divine counsel, appellants are pleased to note that this court's approach finds support in scripture. As St. Paul said in his second letter to the Church in Corinth,

“Follow not of the letter, but of the spirit, for the letter killeth, but the spirit giveth life.” 2 Corinthians 3:6.

I. WALKER BANK'S RELIANCE ON ONE SENTENCE OF SECTION 7-3-6 IS NOT SUPPORTED BY THE STATUTE OR THE PRINCIPLES OF STATUTORY INTERPRETATION.

Walker Bank states its position bluntly. It claims:

“ . . . Section 7-3-6 prohibits the operation of branches in any city not of the first class where a bank is already located, except only where a branch results from a bank taking over an existing bank.” Resp. Br. P. 3.

This result may not be absurd to the Walker Bank, for every branch it has established outside Salt Lake County has been secured by taking over an existing bank such as in Provo, in Logan, and in Price.

But the result is absurd when applied to the only bank in the community—it is absurd to tell the people of Provo the only way the only bank chartered to serve that community may provide additional banking services is for the State Bank of Provo to take over itself!

Walker Bank makes no attempt to explain why the legislature would have intended such an absurd result. It first cites *Union Trust Company v. Simmons*, 116 Utah 422, 211 P.2d 190 (1949). But that case did not deal with the problem of the only bank *in that community* seeking to establish a branch of itself. In that case, the Union Trust Company, a Salt Lake City bank, was seeking to establish a branch in Ogden where there were located other banks. This involved the very situation in which the legislature intended to protect local banks from outside invasion by branches. That case supports defendants', not plaintiff's interpretation of the statute.

Walker Bank then argues the statute is “clearly unambiguous” and thus there is “no occasion to resort

to rules in aid of statutory construction or search for the statute's meaning beyond the statute itself." Respondent's Brief, page 7.

That conclusion is not the law.

"The duty devolves on the court to ascertain the true meaning where the language of a statute is of doubtful meaning, or where an adherence to the strict letter would lead to injustice, to absurdity, or to contradictory provisions." 82 C.J.S., Statutes, §322.

A clear exposition of the proper approach to statutory construction is the statement for the Supreme Court by Mr. Justice Reed in *United States v. American Trucking Association*, 310 U.S. 534 (1940):

"In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.

"There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however,

this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion. Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, 'excepting as a different purpose is plainly shown." Pages 542-544.

Thus in its argument, Walker Bank makes several errors of omission.

1. It has failed to deny or meet appellants' showing that the result Walker Bank claims from a literal reading of one sentence of the statute is completely absurd—that the only bank in the community cannot establish a branch of itself. *United States v. American Trucking Associations, supra, Girardi v. Lipsetts, Inc.*, 275 F.2d 492 (3rd Cir., 1960), *United States v. Gertz*, 249 F.2d 662 (9th Cir., 1957). Walker Bank's literal reading of one sentence of the statute would reach the absurd result that in any city not of the first class—any city other than Salt Lake City—where there is only one bank, the legislature intended that same bank's existence would preclude it from establishing a branch of itself in that same community even though the Bank Commissioner and the Governor found that the public convenience and advantage would be subserved and promoted thereby.

2. It brushes off as a “nebulous theory” the history of branch banking legislation and the very framework of the Utah statute itself which makes it clear that the legislature was intending to protect unit banks in cities outside Salt Lake City from invasion by larger city banks and argues for a literal reading which would frustrate that legislative purpose. *United States v. American Trucking Association, supra.*

3. It bases its claim of “clear and unambiguous” language on the reading of only one sentence of the section dealing with branches. *Federal Trade Commission v. Tuttle*, 244 F.2d 605 (2d Cir., 1957):

“As the Supreme Court has repeated several times: ‘In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law and to its object and policy.’ ” Page 614.

4. It offers no explanation for the entire fourth paragraph of section 7-3-6 making special provisions with respect to branches in communities outside Salt Lake County. As this court noted in *Allen v. Board of Education*, 120 Utah 556, 236 P.2d 756 (1951):

“This being so the court should have looked at the conditions and circumstances which motivated the framers of the Constitution and subsequent Legislatures in placing boards of education in cities in a separate administrative category from school districts and counties outside of cities, and, if ascertainable, to define the objectives to be obtained thereby.”

5. It offers no answer to the constitutional question posed by the restriction on branches outside Salt Lake County contained in paragraph 4 of 7-3-6 (See Appellants’ Brief, pages 38-39).

We submit that the whole of paragraph 4 of section 7-3-6 must be read together. Its second sentence was clearly designed to supplement the first by preventing the circumvention of the legislative intent by merely establishing a new unit bank one day and branching it by acquisition the next.

The entire paragraph in question reads as follows:

“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 *other operating 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." (Emphasis supplied).

If the unit bank organized and operating at the point where there are *other operating banks* may not be acquired by another bank for the purpose of making it a branch until the unit bank has been in operation for at least five years, then it must also be true that a unit bank, organized and operating at a point where there are *no other* unit banks operating, may be acquired by another bank for the purpose of making it a branch without waiting until it has been in operation for five years. The presence or absence of *other banks* at the point where the proposed take over is to occur is the critical factor in determining whether or not the bank to be acquired must have been in operation for at least five years.

If the presence or absence of *other banks* is the determining factor in the takeover restriction of the paragraph in question, is that not also the determining factor in the first restriction embraced within the same paragraph? That is, the restriction on where branches may be established with relation to unit banks, par-

ticularly, where the second restriction was clearly designed to prevent circumvention of the first. So when the legislature said "No branch bank shall be established in any city or town in which is located a bank or banks," it meant as it said expressly in the second restriction, in which is located *another* bank or banks. The legislature must have intended both restrictions to apply only where there was a competing bank. It did not intend either restriction to apply where there was no other competing bank.

It inescapably follows that the purpose of the whole paragraph is to prevent the establishment of de novo branches in communities outside of Salt Lake County where there is another unit bank in operation. In Provo, there is no unit bank *other* than the State Bank of Provo. Therefore, the purpose of the statutory restriction is met by allowing that bank to establish a branch of itself.

II. WALKER BANK'S ARGUMENT FAILS TO RECOGNIZE THE STATUTORY DISTINCTION BETWEEN BANKS AND BRANCHES.

In its argument under Point 2 of its brief, Walker Bank, rather than meeting defendants' contentions, misstates them and then attempts to dispose of the straw man it has thus created. We do not contend that plaintiff is not doing a banking business at its branch in Provo, and we do not contend that its Provo office is a different legal entity. What we do contend is that

plaintiff's office in Provo is a branch as defined in the applicable statute and that the legislature, in that statute, has distinguished between banks and branches with respect to the location of branches.

First of all it should be noted that the applicable sentence of the statute refers only to "bank or banks." Elsewhere in the same section the legislature has clearly distinguished between banks and branches in dealing with the location of the latter. Plaintiff's argument here is that when dealing with its own *branch*, the court should not apply the literal language of the statute as plaintiff advocates when dealing with defendant's *bank*. To apply plaintiff's own technique, its contention is that the statute should read:

"Except in cities of the first class, or within the 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, [*or a branch thereof*] regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank."

Secondly, plaintiff seeks to obfuscate the issue by blurring the question of a corporate entity with that of the statutory requirements as to location of branch offices. Plaintiff argues that the distinction between banks and branches "has no significance in resolving the question of where a banking institution is located and transacting business." Plaintiff cites as "grotesque" the situation as to First Security Bank of Utah, N.A.,

whose home office is in Ogden, with numerous branches in Salt Lake City and elsewhere in the State of Utah. But that bank, despite its numerous branches, including the one in Provo, *is located* in Ogden. For example, under 12 U.S.C. 94, a national bank may be sued only in the district court, state or federal, in which it is "located," and a national bank is located "only in the place where its principal office and place of business is as specified in its organization certificate." *Leonardi v. Chase National Bank*, 81 F.2d 19 (2d Cir., 1936); *Buffum v. Chase National Bank*, 192 F.2d 58 (7th Cir., 1951); *Mercantile National Bank v. Langdeau*, 371 U.S. 555, 9 L.ed 2d 523 (1963).

We submit the distinction made by the legislature between banks and branches in section 7-3-6 deals not with whether they are separate legal entities, but where and under what conditions branches may be located—the very issue presented in the case at bar.

The legislature first enacted what is now section 7-3-6 in 1911 when it sought to prohibit branch banking entirely. Therefore, the statute began:

"The business of every bank shall be conducted only at its banking house . . ."

Walker Bank claims we ask this court to judicially amend this sentence by inserting the word "main" before the words "banking house." We submit that the legislature could only have meant the main banking house when it enacted these words in 1911 as it was at that time expressly prohibiting all other banking offices.

In 1933 ,the legislature amended the statute by adding an exception for branches, so the statute was made to read as it now does:

“The business of every bank shall be conducted only at its banking house . . . except as herein-after provided.”

That “hereinafter provided” is the next paragraph of section 7-3-6 which authorizes the establishment of branches. Then follows a sentence making a clear distinction between the main banking house and a branch. That sentence deals with the location of banking offices and begins:

“All banking houses and branches shall be located . . . ”

Thereafter, and throughout the entire section of 7-3-6, the legislature has used the word “bank” when dealing with a unit bank or the head office of a chain and the word “branch” when dealing with the additional offices first authorized in 1933. In using these words in this statute, the legislature was not dealing with the concept of an octopus-like legal entity with numerous tentacles extending throughout the state, but with the problem of where and under what conditions additional offices—branches—for the conduct of the business of a bank (a legal entity) might be located.

We ask no judicial amendment of this statute. We ask only that the entire statute be read and applied to give effect to the legislative intent. On that basis, the decision of the Bank Commissioner and the Governor

in approving the application of the State Bank of Provo to establish a branch on the Brigham Young University campus was authorized by law.

Respectfully submitted,

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