

1964

San Juan County and State Tax Commission of Utah v. Jes, Inc. : Brief of Appellants

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Marr, Wilkins & Cannon; Paul B. Cannon; Attorneys for Respondent;

A. Pratt Kesler; F. Burton Howard; F. Bennion Redd; Attorneys for Appellants;

Recommended Citation

Brief of Appellant, *San Juan County v. Jen, Inc.*, No. 10146 (Utah Supreme Court, 1964).

https://digitalcommons.law.byu.edu/uofu_sc1/4600

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

CC114 1964

IN THE SUPREME COURT OF THE STATE OF UTAH

SAN JUAN COUNTY and STATE TAX COMMISSION OF UTAH, Plaintiffs and Appellants,

vs

JEN, INC., a corporation, Defendant and Respondent.

5 1964

C. Case No. 10146

Clerk.

APPELLANTS' BRIEF

APPEAL FROM THE JUDGMENT OF DISMISSAL OF THE DISTRICT COURT OF SAN JUAN COUNTY, HONORABLE F. W. KELLER

A. PRATT KESLER, Attorney General

F. BURTON HOWARD Assistant Attorney General State Capitol Building Salt Lake City, Utah

F. BENNION REDD San Juan County Attorney Monticello, Utah Attorneys for Appellants

PAUL B. CANNON Continental Bank Building Salt Lake City, Utah Attorney for Respondent

UNIVERSITY OF UTAH

APR 29 1964

TABLE OF CONTENTS

| | Page |
|---|------|
| STATEMENT OF THE KIND OF CASE..... | 1 |
| RELIEF SOUGHT ON APPEAL..... | 2 |
| STATEMENT OF FACTS..... | 2 |
| ARGUMENT | 4 |
| POINT I. | |
| THE STATE TAX COMMISSION OF UTAH IS A PROPER PARTY HEREIN AND IS ENTITLED TO PROSECUTE THIS APPEAL IN ITS OWN NAME..... | 4 |
| POINT II. | |
| SAN JUAN COUNTY IS A PROPER PARTY TO THIS ACTION AND IS ENTITLED TO PROSECUTE THIS APPEAL IN ITS OWN NAME..... | 5 |
| POINT III. | |
| THE NET PROCEEDS TAX LIABILITY IS PROP- ERLY THE OBLIGATION OF THE OWNER OR OPERATOR OF THE MINE OR THE PERSON IN- CURRING THE LIABILITY | 6 |
| POINT IV. | |
| THE TAX LIABILITY INCURRED BY THE DE- FENDANT IS NOT SATISFIED UPON A SALE OF ITS MINING CLAIMS AT PRELIMINARY TAX SALE | 11 |
| CONCLUSION | 15 |

Cases Cited

| | |
|--|-------|
| Anson v. Ellison, 104 Utah 576, 140 P. 2d 653..... | 14 |
| City of Anchorage v. Baker, 376 P. 2d 482 (Alaska 1962)..... | 9 |
| City of New York v. Shapiro et al., 129 F. Supp. 149..... | 11 |
| Crismon, Assessor, and Salt Lake Co. v. Rich, 2 Utah 111..... | 10 |
| Crystal Car Line et al. v. State Tax Commission, 110 Utah 426, 174 P. 2d 984..... | 8, 11 |
| Fisher v. Wright, 101 Utah 469, 123 P. 2d 703..... | 14 |
| Hayes v. Gibbs, 110 Utah 54, 169 P. 2d 781..... | 7, 14 |
| Kahn v. The Old Telegraph Mining Co. et al., 2 Utah 174..... | 6 |

TABLE OF CONTENTS — (Continued)

| | Statutes | Page |
|---------------------------|----------|-----------|
| Utah Code Annotated, 1953 | | |
| Section 17-4-2 | | 5 |
| Section 17-4-3 | | 5 |
| Section 17-5-24 | | 5 |
| Section 59-5-46 | | 4 |
| Section 17-5-50 | | 5 |
| Section 17-5-54 | | 5 |
| Section 59-5-58 | | 2 |
| Section 59-6-2 | | 4 |
| Section 59-8-2 | | 4 |
| Section 59-10-1 | | 7, 12, 13 |
| Section 59-10-16 | | 5, 6 |
| Section 59-10-33 | | 3, 14 |
| Section 59-10-47 | | 13 |

Other Authorities Cited

Texts

| | |
|---|----|
| 251 Am. Jur., Section 984..... | 7 |
| 58 C.J.S., Mines and Minerals, Section 97..... | 6 |
| 58 C. J. S., Mines and Minerals, Section 114..... | 6 |
| 84 C.J.S., Taxation, Section 643..... | 10 |

IN THE SUPREME COURT OF THE STATE OF UTAH

SAN JUAN COUNTY and STATE
TAX COMMISSION OF UTAH,
Plaintiffs and Appellants,

vs

JEN, INC., a corporation,
Defendant and Respondent.

} Case
No.
10146

APPELLANTS' BRIEF

STATEMENT OF THE KIND OF CASE

This case came on to be heard on defendant's motion to dismiss on the ground that the plaintiffs' complaint failed to state a claim upon which relief could be granted. Thereafter, the parties stipulated additional facts not set forth in plaintiffs' complaint as facts upon which there was no dispute, and the matter was determined as upon a motion for summary judgment by the defendant, whereupon judgment was entered for the defendant in all respects. From such judgment for the defendant, plaintiffs' appeal.

RELIEF SOUGHT ON APPEAL

Plaintiffs seek reversal of the judgment and judgment in their favor as a matter of law.

STATEMENT OF FACTS

The defendant, Jen, Inc., is a Utah corporation. At all times relative to the tax assessments referred to hereafter, it owned and operated various unpatented mining claims or had interests in said property situated in and around San Juan County, Utah. More particularly, the defendant operated the Jen, the Jackie, Uncle Ben, Pasco, and a portion of the Enigma Fraction mines. Pursuant to Section 59-5-58, U.C.A. 1953, the defendant rendered its statement to the State Tax Commission for operations for the years 1957, 1958 and 1959. The same statement of operations was filed in 1960, based upon the 1959 production of defendant's mines, with a specific reservation that it was without admission of any liability by the defendant for the payment of any net proceeds tax owing for the year 1960. The sum of \$288,204.50, together with interest and penalties, was thereafter assessed against the defendant by the plaintiff, State Tax Commission of Utah, as the amount of net proceeds tax due for the year 1960. The Tax Commission thereafter assessed the sum of \$222,240.66 as the amount of net proceeds tax due from the defendant for the year 1961, based upon two times the net average annual proceeds for the preceding three calendar years, the 1960 operations having been calculated at zero. A similar assessment in the sum of \$113,661.96, together with penalties and interest, was assessed against de-

defendant for the year 1962, based upon two times the net average annual proceeds for the three next preceding years 1959, 1960 and 1961, the 1960 and 1961 operations having been calculated at zero.

As of January 1, 1960 the mining claims mentioned above were depleted and worked out and had no commercial value as such. The last mining operation on said claims was in December, 1959, and in December of 1959 the defendant abandoned the mining claims and has not claimed ownership therein since that time.

Thereafter, plaintiff, San Juan County, proceeded to foreclose its tax lien against the mining claims, and automatic tax sales were had under Section 59-10-33, U.C.A. 1953, based upon a lien for net proceeds taxes in the years 1960, 1961 and 1962.

A complaint by the plaintiffs herein was filed in February of 1963 in the District Court of San Juan County, which was answered by a motion to dismiss filed by defendant. Issues raised on this motion were:

1. The State Tax Commission has no right to sue.
2. San Juan County has no right to sue.
3. There is no personal liability for real property taxes, including real property taxes based upon annual net proceeds.
4. The tax has been satisfied by sale of the property to San Juan County on preliminary tax sale.

The parties stipulated to additional facts, and the matter as aforesaid was determined thereafter as if on motion for summary judgment, whereupon judgment was entered for the defendant.

ARGUMENT

POINT I

THE STATE TAX COMMISSION OF UTAH IS A PROPER PARTY HEREIN AND HAS A RIGHT TO PROSECUTE THIS ACTION.

Sections 59-5-52 to 59-5-64, U.C.A. 1953, inclusive, grant to the State Tax Commission the authority to make assessments upon mines and provide the manner of making such assessments. Section 59-6-2, U.C.A. 1953, provides that the Tax Commission shall transmit to the county auditor a statement of the property assessed by it, and the county auditor is required to enter such assessment on his assessment book or roll.

Section 59-8-2, U.C.A. 1953, provides that taxes resulting from an assessment of mines made by the State Tax Commission shall be collected by the county treasurer in a similar manner to which state and county taxes are collected.

Section 59-5-46, U.C.A. 1953, gives to the Commission the power to sue and be sued in its own name; to have and exercise general supervision over the administration of the tax laws of the state and over assessors and over county boards and over county officers in the performance of their duties in connection with assessment of property and collection of taxes; and further to direct proceedings, actions and prosecutions to enforce the laws relating to the penalties, liabilities and punishments of persons and officers or agents of corporations for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property.

It is submitted that the State Tax Commission may, under specific statutory authority, join in this action in an attempt to collect taxes due, for and on behalf of San Juan County.

POINT II

SAN JUAN COUNTY IS A PROPER PARTY TO THIS ACTION AND IS ENTITLED TO PROSECUTE THIS APPEAL IN ITS OWN NAME.

It is contended by the defendant that the action should properly have been brought in the name of the San Juan County Treasurer. While conceding that this perhaps would have been more appropriate, the plaintiffs do not concede that the County is without authority to prosecute such an action. Pursuant to Section 17-4-2, U.C.A. 1953, a county can act only through the board of county commissioners or agents and officers acting under authority of such board or by other specific statutory authority. Counties are given the specific power to sue and be sued and to levy and collect taxes under their exclusive jurisdiction as authorized by law in Section 17-4-3. Nowhere can a like provision be found allowing the treasurer to sue or be sued, except in Section 59-10-16, which is specifically limited as set forth hereafter.

Section 17-5-24, U.C.A. 1953, gives to the county the right to control and direct prosecution of various claims and to defend the county in any matters to which it might be a party. Section 17-5-50, U.C.A. 1953, provides an omnibus clause granting the county any other powers necessary to discharge the duties of a county. Section 17-5-54, U.C.A. 1953, provides authority for levying taxes upon taxable property within a county for county

purposes. Section 59-10-16, U.C.A. 1953, gives the county treasurer authority to commence an action "in the name of the county" to sue for and collect taxes levied in one county on property thereafter removed to another county.

The plaintiffs respectfully submit that the county treasurer need not and should not, pursuant to the statutes heretofore mentioned, be a party in the above entitled action, and that San Juan County in its own name is a proper party-plaintiff.

POINT III

THE NET PROCEEDS TAX LIABILITY IS PROPERLY THE PERSONAL OBLIGATION OF THE OWNER OR OPERATOR OF THE MINE OR THE PERSON INCURRING THE LIABILITY.

The mining claims in question operated by the defendant are all unpatented claims. A patent is the instrument by which the fee simple title to a mining claim is granted. See 58 C.J.S., Mines and Minerals, Sec. 97. Once patented, the property becomes private property with which the former fee owner is no longer concerned. Legal title to mineral lands is thereafter vested in the patentee. *Ibid.* Sec. 114. See also *Kahn v. The Old Telegraph Mining Co., et al.*, 2 Utah 174.

The primary question presented to the Court is whether a mining company incurs personal liability by depleting mineral assets, paying no tax thereon, and then abandoning the depleted mining claim, the fee title to which was never owned by it.

Section 59-10-1, U.C.A. 1953, provides in part:

“Every tax has the effect of a judgment against the person . . . The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.”

Thus, the Utah Legislature has provided direct authority for personal liability of property taxes within the State of Utah. It is generally conceded that a tax can, by statute, be declared to be a debt due or the personal obligation of the person doing the business upon which the tax is levied or imposed. Accordingly, where a statute imposes a tax, that makes no provision for its collection, it may be assumed that the legislature contemplated the enforcement of the tax by ordinary remedies, and that debt or assumpsit will lie. The action in such cases is sustained upon the implied authority from the legislature to collect the tax by the ordinary means of collecting an obligation arising upon a contract, express or implied. 251 Am. Jur., Sec. 984.

In *Hayes v. Gibbs*, 110 Utah 54, 169 P.2d 781, after setting forth the various statutory provisions allowing personal liability, Mr. Justice Wolfe made the following significant comments in a concurring opinion therein:

“Here the express language seems to imply that the assessment is fundamentally against a *person* and not against the property regardless of person.

“Likewise, Section 80-5-14, dealing with undistributed or unpartitioned property of deceased persons, may be assessed against their heirs, guardians, executors or administrators or any one of them, *and* the payment of taxes made by

either *binds all* of the parties in interest for their proportions. The assessment binds persons not the property except as security for its payment." Ibid. p. 75

Mr. Justice Wolfe concluded:

"Certainly this smacks of an assessment against the person rather than a charge against the realty alone — the tax debt being a lien against the realty of the owner." Id. p. 75.

The case of *Crystal Car Line et al v. State Tax Commission*, 110 Utah 426, 174 P.2d 984, held that a general tax against personal property does not create a lien on either the property assessed or other property of the owner, but also significantly held that

The statutory provision that "every tax has the effect of a judgment against the person" means that the tax shall be collected in the same way as a judgment unless otherwise expressly provided and limited.

The defendant contends that all statutes providing for personal liability have been repealed. While this is true of certain provisions of Utah law, the above cited statutes are still in effect, and there is no direct statutory language denying or limiting personal liability. The plaintiffs can see no reason why an action may not lie for unpaid taxes where the remedy provided by law of sale is not practical. Such a position is supported by the concurring opinion of Chief Justice Larson in the *Crystal Car Line* case, *supra*, at page 442:

". . . . I see no reason why an action may not lie for unpaid taxes on personal property where the

summary proceeding of seizure under the tax laws is not practical.”

The remedy providing for seizure and sale of real property for ad valorem taxation under Utah law is not exclusive. In the present case, where the fee title to unpatented mining claims is held normally by a tax-exempt entity and the mine is depleted, it is fruitless and unrealistic to attempt to enforce a tax obligation by a seizure of worthless property.

A similar situation occurred in the recent Alaska case of *City of Anchorage v. Baker*, 376 P.2d 482 (1962) wherein it was held that delinquent property taxes against a leasehold interest in land owned by the United States may be collected by a personal action against the taxpayer. There, under a written lease between the taxpayer and the federally-owned Alaska Railroad, the taxpayer was required to pay all taxes and assessments levied on buildings or improvements on the leased land. The failure of the taxpayer to pay taxes due constituted a cause for forfeiture of his rights as lessee. Alaska law provides for the foreclosure of a tax lien by sale of the assessed property in the event of delinquency, which is similar to Utah law. The court pointed out that the sale of the leasehold interest in a tax foreclosure proceeding would be a fruitless act. The court held it unrealistic and unreasonable to regard this method as an exclusive remedy under the circumstances. It concluded that, where a method of collecting taxes provided by statute is not exclusive, and does not provide an effective remedy, a personal action could be brought.

The conclusions suggested above are supported in 84 C.J.S., Taxation, Sec. 643, which reads:

“ . . . In many jurisdictions the owner of real estate is personally liable for taxes levied on property and this is true notwithstanding the existence of a lien on the property for the collection of taxes. Personal liability may exist even in the absence of any provision for obtaining a personal judgment for such taxes.”

The defendant cites several cases arising under prior law granting to the local county assessor the right to bring a personal action for property taxes. Such statutes were repealed with the enactment of the Laws of Utah 1933. The language, however, from these cases is still pertinent in order to illustrate the Tax Commission's position herein. In the case of *Crimson, Assessor, and Salt Lake County v. Rich*, 2 Utah 111, involving taxes for the year 1873, the Court said:

“ . . . Sections 353 and 360 of the Compiled Laws of Utah afford ample and even summary powers and means for the collection of taxes without suit; and we think the rule is well settled that *when ample powers and means are afforded by statute* for the collection of taxes without suit, and when there is no statute providing for suit to be brought for taxes, no action can be maintained therefor . . . ” (Emphasis supplied.)

This is precisely the Tax Commission's contention in the present case: the statute does not afford ample power and means to collect the taxes owed by Jen, Inc., on its mining operations unless personal liability for the taxes will lie against the taxpayer.

Contrary to the dissenting opinion expressed by Mr. Justice Wolfe in *Crystal Car Line et al. v. State Tax Commission*, 110 Utah 426, 174 P.2d 984, the tax obligation which is given the effect of a judgment is a judgment. It can be sued on in another state and as such is entitled to full faith and credit in a foreign jurisdiction. See *State of Ohio, Dept. of Taxation v. Kliech Bros.*, 357 Mich. 504, 98 N.W.2d 636; *City of New York v. Shapiro et al.*, 129 F. Supp. 149.

It would be particularly incongruous to grant to the Tax Commission the right to sue upon a tax obligation in a foreign state and obtain a personal liability against a taxpayer who had removed himself from the jurisdiction of the State of Utah and, at the same time, to refuse to allow the Commission or the county to sue upon a similar obligation in the state where the obligation was incurred. The plaintiffs submit that there is sufficient statutory authority under the Utah Code to allow the relief prayed for, and even in the absence of specific authority, personal liability may exist where the public interest would be unfairly deprived of tax revenues in the absence of such remedy.

POINT IV

THE TAX LIABILITY INCURRED BY THE DEFENDANT IS NOT SATISFIED UPON A SALE OF ITS MINING CLAIMS AT PRELIMINARY TAX SALE.

It has been stipulated that the mining claims of the defendant were sold on a preliminary tax sale for delinquent net proceeds taxes assessed against the defendant.

This automatic preliminary sale was first had for delinquent taxes for the operations for the year 1960, and thereafter a similar sale was had for delinquent net proceeds taxes for the years 1961 and 1962. The defendant argues that the Utah statute contemplates that the tax lien shall be satisfied by the sale of the particular property upon which the delinquency was assessed to the county. It argues that even if personal liability for a tax can be justified under Utah statutes that there can be no further liability following the preliminary sale to the county because such sale satisfies the tax. In support of this proposition it cites Section 59-10-1, U.C.A. 1953, which provides as follows:

“TAX HAS EFFECT OF JUDGMENT — LIEN HAS EFFECT OF EXECUTION. — Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. *The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.*” (Emphasis supplied.)

Apparently, the trial court below placed considerable emphasis upon this statute. On page 5 of the memorandum decision issued by Judge Keller, he states:

“Even accepting the conclusions of Justice Wolfe to the effect that the levy of a tax is an assessment against the person, it appears to me that the only reasonable construction that can be given to the language of 59-10-1 is this: that the judgment as defined in the case last above cited is satisfied by payment of the tax *or by*

a foreclosure of the lien upon the real property to which it was attached.”

The plaintiffs submit that the sale contemplated by Section 59-10-1, U.C.A. 1953, is not a sale of property, as contemplated by this act. The only property which was subject to the preliminary sale by San Juan County herein was the depleted mining claim owned by the defendant which, as has been stipulated, was abandoned prior to January 1, 1960. At the time of foreclosure the defendant had ^{no} legal right in the mining claims, and the action of San Juan County in purporting to foreclose the same was a meaningless gesture. Even if the foreclosure had been valid, it is suggested that the county's remedy would have been meaningless because of the fact that the defendant did not own the fee title to the property, and the sale of an abandoned and depleted mining claim to the county through the automatic entry represented by the preliminary tax sale can scarcely be found to have satisfied a six hundred thousand dollar obligation.

Furthermore, the sale and foreclosure proceedings provided by Utah statute and referred to by defendant are deemed to be only a cumulative remedy. Section 59-10-47, U.C.A. 1953, provides:

“Such foreclosure shall not deprive the county of any other method or means provided for the collection or enforcement any such taxes, but shall be deemed and construed as providing an additional or cumulative remedy for the collection of general taxes levied and assessed against the real estate in such county.” See also *Fisher v.*

Wright, 101 Utah 469, 123 P.2d 703, and *Anson v. Ellison*, 104 Utah 576, 140 P.2d 653.

While there could be some questions as to which "foreclosure" is referred to in the preceding section, it is submitted by the appellants that the automatic preliminary sale provided for by Section 59-10-33, U.C.A. 1953, should not be construed to be an exclusive remedy for collection or enforcement of taxes where the foreclosure of lien after final sale is specifically deemed not to be exclusive.

Furthermore, if Mr. Justice Wolfe is correct in his assumption stated in *Hayes v. Gibbs*, 110 Utah 54, that the Utah tax is a debt against the individual owning the property *and* a lien on his property and therefore "smacks of an assessment against the person, rather than a judgment against the realty alone," it would appear that, while the lien against the property might be satisfied after the sale of the property to the county on preliminary tax sale, that nevertheless, the judgment against the person could not be satisfied until the taxes were paid or a statute of limitations had run. The defendant is asking that the Court find that a sale of the property for little or no consideration satisfies the effect of a judgment against a person resulting from delinquent property taxes. This request is unwarranted under Utah statute and certainly operates to place taxing authorities under an insurmountable burden in collecting taxes on properties.

CONCLUSION

Utah statutes contemplate personal liability for delinquent mining taxes. The remedy of foreclosure and sale afforded to the county for the collection of taxes is not exclusive, and as the State of Utah and San Juan County stand to suffer irreparable loss if a mining company is allowed to deplete the mineral assets of the state without paying a tax thereon, it is submitted that the judgment of the trial court should be reversed.

Respectfully submitted,

A. PRATT KESLER

Attorney General

F. BURTON HOWARD

Assistant Attorney General

F. BENNION REDD

San Juan County Attorney

*Attorneys for Plaintiffs and
Appellants*