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San Juan County and State Tax Commission of Utah v. Jes, Inc. : Appellants' Petition for Rehearing and Brief in Support Thereof

Utah Supreme Court

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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.

FILED
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Clerk, Supreme Court, Utah
Case
No. 10146

Appellants' Petition for Rehearing
and Brief in Support Thereof

Appeal From the Judgment of Dismissal of the
District Court of San Juan County,
HONORABLE F. W. KELLER, *Judge*

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No. 10146

Petition for Rehearing and Brief in Support Thereof

TO THE HONORABLE MEMBERS OF THE
SUPREME COURT OF UTAH:

Plaintiffs-Appellants respectfully move the Court, pursuant to Rule 76(e) of the Utah Rules of Civil Procedure, to grant a rehearing in the above entitled cause and upon a reconsideration and rehearing to modify its prior decision herein.

The decision should be reconsidered and a rehearing granted for the following reasons:

1. The decision implies that a preliminary sale to a county forecloses the lien for unpaid taxes.

2. The decision implies that there is no recourse against personal property in the collection of real property taxes. Such a decision fails to take into consideration Sections 59-5-79 and 59-5-80, U.C.A. 1953, wherein the Tax Commission is directly empowered to seize and sell all real and personal property of a delinquent taxpayer for the payment of the amount of the tax debt.

3. The decision implies that the preliminary tax sale of charged property extinguishes the lien against personal property created by Sections 59-5-79, 59-5-80 and 59-10-1, U.C.A. 1953.

4. The decision is ambiguous to the extent that it does not explain which liens are satisfied upon the sale of real property. The decision quotes from Section 59-10-1, which provides:

“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)

The Court proceeds to say that the recourse is “to the property” but fails to define whether it is to real property or personal property.

5. The Court misconstrued plaintiffs’ claim for relief. The only question before the lower court was

whether or not tax could be collected by maintaining an action for a personal judgment against a taxpayer. There has never been any question but that a taxpayer's personal property could be used to satisfy the payment of a real property tax obligation. This issue was not before the Court, and to the extent that the Court has determined that personal property cannot be used to satisfy real property taxes, it is in error because it failed to take into consideration Sections 59-10-1, 59-5-79 and 59-5-80, U.C.A. 1953.

Respectfully submitted,

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Brief in Support of Petition for Rehearing

PRELIMINARY STATEMENT

This action was originally commenced in the District Court of San Juan County by the State Tax Commission, in conjunction with that county, to obtain an *in personam* judgment against Jen, Inc. A motion to dismiss was filed by defendants, based upon the ground that plaintiffs' complaint failed to state a claim upon which relief could be granted. The District Court, on page 6 of its memorandum-decision, stated:

“One may readily draw the inference that our legislators have intended that all taxes should be paid. Such inference does not compel the conclusion that an action may be maintained to procure a personal judgment against a defaulting taxpayer.”

Thus, the issue presented to the Court is not whether the Tax Commission has recourse to the personal property of the defendant, but rather whether it can obtain a personal judgment against the defendant. Other collateral issues are involved, of course, but these should be considered in light of the motivation of the action as is set forth herein.

ARGUMENT

POINT I

A PRELIMINARY SALE TO A COUNTY
DOES NOT FORECLOSE A TAX LIEN.

Section 59-10-41, U.C.A. 1953, provides in part:

“When property assessed for taxes is sold to the county, at the preliminary sale, . . . the same shall not be deemed sold at preliminary sale for taxes subsequently assessed as aforesaid, but the sale under any such assessment is postponed until the time for redemption under the previous sale shall have expired . . .”

To hold that a preliminary sale to a county forecloses liens which have accrued against the real and personal property of the taxpayer by virtue of statute is to nullify the right of redemption provided in the cited section and Sections 59-10-56 through 65, U.C.A. 1953. Such a holding will interfere with established redemption procedures and should not be made unless necessary to dispose of the appeal. It is only the final sale which extinguishes the lien for taxes. The decision fails to differentiate between these procedures.

POINT II

UTAH STATUTES CLEARLY ESTABLISH THE RIGHT OF RECOURSE AGAINST PERSONAL PROPERTY TO SATISFY REAL PROPERTY TAXES.

Since 1937 the Tax Commission has had the right to seize and sell personal property to satisfy real property taxes. This right is established in Sections 59-5-79 and 80, U.C.A. 1953, and has been exercised many times. Chapter 5 of Title 59 is a chapter on the assessment of property. Included therein are real and personal property taxes, as well as assessments for net proceeds and

mine occupation taxes. Sections 59-5-79 and 80 were enacted by Laws of Utah, 1937, Chapter 101, which chapter dealt with the imposition of net proceeds and mine occupation taxes.

Section 59-5-79 provides in part:

“If the tax imposed by this chapter . . . is not paid when the same becomes due, the tax commission may issue a warrant . . . directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer found within this county for the payment of the amount thereof. . . .”

Section 59-5-80 provides in part:

“Immediately upon receipt of said warrant in duplicate the sheriff shall file the duplicate with the clerk of the district court in his county, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant, . . . and thereupon the amount of such warrant so docketed shall have the force and effect of an execution against all personal property of the delinquent taxpayer, and shall also become a lien upon the real property of the taxpayer against whom it is issued in the same manner as a judgment duly rendered by any district court and docketed in the office of the clerk thereof . . .”

Section 59-10-3, U.C.A. 1953, establishes the fact that every tax upon real property is a lien against the property assessed, but Section 59-10-1 provides, “every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent.”

To have the force and effect of an execution, it would appear that the Tax Commission or any other interested party would have the right to levy upon and sell all of the tangible personal property of a delinquent taxpayer, regardless of whether or not the lien upon real property is satisfied by the sale thereof. This right to execution upon personal property would exist until such time as the tax was paid.

POINT III

THE EXTINGUISHMENT OF A LIEN ON REAL PROPERTY DOES NOT SATISFY THE DEBT FOR TAXES NOR EXTINGUISH LIENS AGAINST PERSONAL PROPERTY UNLESS THE TAX OBLIGATION IS PAID THEREBY.

Unless there is a statute to the contrary, the lien against real property is extinguished upon the perfection of title under a tax sale. This does not say that the lien against real property is perfected after a preliminary tax sale. However, the general rule of law in this country, as established in Cooley, *Taxation*, 4th Ed., Sec. 1239, is as follows:

“[A] sale of land for taxes, where it is insufficient to pay all back taxes, does not discharge the lien; and a void sale for taxes does not discharge the lien. . .”

The Court, in its decision herein, has implied that a sale of real property for taxes which brings no money satisfies the tax debt. This is contrary to the law as set

forth above. It is also in disagreement with the case of *State Tax Commission v. Evans*, 79 Utah 370, 6 P. 2d 161, where this Court said at pp. 380-381:

“Property assessed for taxation is not relieved of the lien until the tax is paid or the property sold. . . . *Union Central Life Ins. Co. v. Black*, 67 Utah 268, 247 P. 486, 47 A.L.R. 372. Such decisions as have been called to our attention announce the rule dictated by common sense and experience, that whenever and for whatever reason a payment has been made on account of any tax, the amount paid must be credited on the total amount due, and the lien for the balance of the tax continues in full force on the taxed property. (Citing cases)

“Payment alone discharges the obligation for taxes, and, until payment, the state may proceed by all proper means to collect the tax.”

The perfection of title through valid tax sale proceedings may satisfy a tax lien on the particular property sold, but does not satisfy the general lien or debt for taxes which may exist against other property.

POINT IV

THE DECISION HERETOFORE ISSUED BY THIS COURT IS AMBIGUOUS.

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

“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.”

This statute makes reference to different kinds of property. It makes reference to personal property, upon which it creates a lien. And by its reference to “property sold” it seems to relate to real property. The fact that it is ambiguous is clearly demonstrated by the Court’s reliance on a preliminary tax sale of real property as grounds for holding the judgment for taxes satisfied under that section, which, on its face, merely relates to personal property. The decision does not clarify the right of taxing authorities to subject personal property to claims for taxation.

The decision is also ambiguous in that it fails to distinguish between “preliminary tax sale” and the “final May sale” of property which occurs four years thereafter. In reality, property is not sold for the payment of taxes until the May sale four years after the time a tax delinquency occurred. Any purported sale prior to that time is not based upon advertisement, passage of title or consideration.

At best, even a final tax sale of property merely extinguishes the lien for taxes as against that particular property. If such sale results in little or no consideration, it cannot be said to extinguish the lien for the same tax which exists co-extensively against all of the personal property of the taxpayer. This lien, under the plain meaning of Section 59-10-1, U.C.A. 1953, is not extinguished until the *personal property is also sold* or the tax paid.

POINT V

THE COURT MISCONSTRUED PLAINTIFFS' CLAIM FOR RELIEF.

As we have indicated in the Preliminary Statement, the Tax Commission desired to obtain an *in personam* judgment against the defendant-respondent herein, not to create a new liability which did not exist already under statute, but rather as a means whereby the obligation for taxes could be readily enforced in a foreign state. At the time of the commencement of this action Jen, Inc., had little or no property in Utah, but considerable holdings and business operations in other states. The purpose for bringing the lawsuit was to obtain an *in personam* judgment which could be docketed in other states and used to garnishee bank accounts or other personal property holdings of defendant.

While the Tax Commission could have attempted to reach the same assets by requesting full faith and credit for a tax warrant docketed under the provisions of Section 59-5-80, U.C.A. 1953, it was thought not advisable to attempt to reduce its claim to judgment to avoid a foreign court's interpretation of summary tax warrant procedures.

The claim for relief which the plaintiffs filed in the Court below was based upon this proposition and this proposition only. It became necessary to argue the personal liability question as stated by Judge Keller only as an adjunct to obtaining a personal judgment against a defaulting taxpayer.

We agree with the decision herein when it finds that no personal judgment is authorized as a general rule. However, the appellants submit, in concurrence with Mr. Justice Wade in *Peterson v. Ogden City*, 111 Utah 125, 140, that the case of *Crismon v. Reich*, 2 Utah 111, cited in the decision "does not prevent a suit to collect a tax where it is shown that the statutory means of collection . . . is not ample."

The entire thrust of appellants' brief and oral argument herein has been to contend that statutory procedures to enforce a well-defined tax liability are inadequate *here* because the respondent, Jen, Inc., has no property of any kind in this state.

In order to collect this particular tax liability, it must be reduced to judgment. If this cannot be sanctioned, well and good. However, appellants respectfully request the Court to modify its decision so as to avoid depriving tax collectors of remedies which are long established and clearly delineated and which will be extremely useful in other tax collection matters long after this case is forgotten.

To allow the decision to remain unmodified is to summarily strike Sections 59-5-79 and 59-5-80, U.C.A. 1953, without providing an opportunity for the Tax Commission and the various counties to present to this Court reasons or authorities why these statutes should be preserved.

CONCLUSION

As the decision herein affords no guideposts for appellants for their conduct and as it raises considerable doubt as to the propriety of long-established procedures used in all counties of this state, appellants respectfully petition the Court for a rehearing of this matter and for reconsideration and modification of the decision heretofore rendered.

Respectfully submitted,

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