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Bank Of American Fork v. G L Corporation, A Utah Corporation, Kay L. Jacobs, Calvin Swenson, Keith R. Anderson, Alvin G. Schow, Bank Of Pleasant Grove, A Utah Corporation, State Bank Of Lehi, A Utah Corporation, John Doe I, John Doe Ii, John Doe Iii, John Doe Iv, John Doe V And John Doe Vi : Appellant's Brief

IN THE SUPREME COURT
of the
STATE OF UTAH

BANK OF AMERICAN FORK,
a Utah corporation,
Plaintiff and Appellant,
vs.
G L CORPORATION, a Utah corporation, KAY L. JACOBS, CALVIN SWENSON, KEITH R. ANDERSON, ALVIN G. SCHOW, BANK OF PLEASANT GROVE, A Utah corporation, STATE BANK OF LEHI, a Utah corporation, JOHN DOE I, JOHN DOE II, JOHN DOE III, JOHN DOE IV, JOHN DOE V and JOHN DOE VI,
Defendants and Respondents.

Case No.
12223

APPELLANTS' BRIEF

Appeal from a Judgment of Dismissal of the
District Court of Utah County
Honorable Maurice Harding, Judge

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STATEMENT OF THE CASE

This action is a complaint stating two claims for relief. The first is an action for declaratory judgment to determine whether the activities of G L Corporation constitute a violation of Section 7-3-6, Utah Code Annotated, 1953. The second claim requests injunctive relief restraining Defendants from operating a branch bank.

DISPOSITION OF THE CASE BY THE LOWER COURT

The lower Court granted Defendants' Motion to Dismiss on the ground alleged therein that Plaintiff's Com-

plaint fails to state a claim upon which relief can be granted.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the Judgment of Dismissal of the Lower Court and a Judgment specifying and declaring that the activities of Defendant G L Corporation set forth in its Complaint constitute a violation of Section 7-3-6, Utah Code Annotated, 1953 and injunctive relief as prayed.

STATEMENT OF FACTS

Plaintiff is a Utah Corporation with its principal place of business at American Fork, Utah. (R. 3) Defendant G L Corporation is a Utah corporation with its principal place of business in the same city. (R. 3) The latter corporation is organized and operated as a bank service corporation pursuant to the provisions of Section 7-3-32.5, Utah Code Annotated, 1953 as amended and performs certain services for the Bank of Pleasant Grove and the State Bank of Lehi, including check sorting and posting to individual accounts of the drawer, maker or other persons to be charged. (R. 3) Defendant Bank of Pleasant Grove is a Utah corporation with its principal office in Pleasant Grove, Utah. (R. 4) Defendant State Bank of Lehi is also a Utah corporation with its principal office located at Lehi, Utah. (R. 4) The individual Defendants are officers and directors of G L Corporation. (R. 4)

Plaintiff has a present exclusive right to conduct banking business in American Fork pursuant to a franchise granted to it by the State of Utah and no other unit or branch bank has present authority to conduct such a banking business. (R. 4) The activities of Defendant G L Corporation have wrongfully invaded the property rights of Plaintiff and have caused Plaintiff irreparable injury. (R. 4, 5) American Fork is a city of the third class. (R. 4) The Bank of Pleasant Grove and the State Bank of Lehi are not located within the corporate limits of the City of American Fork. (R. 4)

ARGUMENT

POINT I

DEFENDANT G L CORPORATION, IS FUNCTIONING AS A BRANCH OF THE BANK OF PLEASANT GROVE AND STATE BANK OF LEHI IN VIOLATION OF SECTION 7-3-6, UTAH CODE ANNOTATED 1953.

Section 7-3-6 provides in pertinent part:

> "The business of every bank shall be conducted *only* at its banking house and every bank shall receive deposits and pay checks only at its banking house except as hereinafter provided. (Emphasis Supplied)
>
> * * *
>
> The term 'branch' as used in this act shall be held to include any branch, branch office, branch agency, additional office, or any branch place of business at which deposits are received or checks paid or money lent."

"The statutory definition of the term 'branch' includes any place of business at which . . . checks are paid

. . . . clearly, then, to constitute a place of business as a 'branch bank' it is not necessary that a complete banking operation be conducted. It is sufficient if only such limited banking functions are performed." *First National Bank of Logan v. Walker Bank and Trust Company,* 19 Ut. 2d, 18, 21; 425 P. 2d 414, 16

As the payment of checks constitutes branch banking a preliminary question which must be ascertained before determining whether Defendant G L Corporation's operation constitutes a violation of Section 7-3-6 is simply whether said Defendant pays checks for the Bank of Pleasant Grove and the State Bank of Lehi. In this regard Section 70A-4-213, U.C.A. 1953 defines what is meant by final payment of an item by a payor Bank as follows:

> "(1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:
>
> * * *
>
> (c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith.

It is not disputed that Defendant G L Corporation performs the activity of final posting to the accounts of drawers, makers or other persons to be charged for its principals, the Bank of Pleasant Grove and the State Bank of Lehi. Plaintiff submit's that such activity under the terms of the Utah Uniform Commercial Code constitutes the payment of checks. See, *Western Bank v. Marine National Exchange Bank,* (Wisc.) 155 NW 2d

587; *When is a Check Finally Paid?,* 85 BANKING LAW REVIEW, P. 823

The question of whether certain bank services, performed outside the physical location of the principal banking house of a bank constitute branch banking has been raised in at least four principal cases. The first of these is the case *Jackson v. First National Bank of Cornelia* (Ga.) 292 F. Supp 156.

In that case, Plaintiff, as Superintendent of Banks of the State of Georgia, sued the Defendant seeking to prohibit the operation of an armored car messenger service. Defendant transmitted funds to and from its bank, made change and provided teller service of payroll cashing outside of its banking house.

The service which was so conducted was established and authorized under a ruling by the Federal Comptroller of the Currency and was carried on in the manner provided by regulations of the Comptroller.

The Federal Court, relying on the Utah Walker Bank case (385 U.S. 252), first stated that it was bound by the state of definition of branch banking. The Court determined that Georgia's statutes defined a branch as "any additional place of business of any parent bank not located within the particular city . . . where its parent bank was chartered." Georgia law also provided: "No bank shall carry on or conduct or do a banking business in this state except on the premises of the place of business (banking house) established and operated under

and pursuant to a permit from the Superintendent of Banks . . ."

The Court held that under the facts of the case the operation of the armored car messenger service, as described above, constituted the establishment of a bank in violation of Georgia law and authorized an injunction prohibiting further operations.

The case of *Dickenson v. First National Bank in Plant City, Florida,* 400 F. 2d 458, also discusses applicable Florida law. In the principal case, the Defendant was the Comptroller of the State of Florida, who was sued by the Plaintiff bank for declaratory judgment seeking to determine that its shopping center receptacles and armored car service did not constitute branch banking in violation of Florida state statutes. Both services were authorized and regulated by the Federal Comptroller of the Currency. In addition, the bank had put upon its deposit slips the notation "the transmittal of said currency . . . shall not be deemed to be a deposit until delivered into the hands of the bank's tellers at the said banking house."

The Court cited the case of *Jackson v. First National Bank of Valdosta,* 349 F. 2d 71 (Ga.) where the definition of branch was ". . . any branch bank, branch office . . . additional office . . . at which deposits are received, or checks paid, or money lent." In the Valdosta case, it was held that a proposed drive-in facility was an illegal branch because it cashed checks and the Court cited its prior opinion in great detail.

In reliance upon the Valdosta case, and the Florida statute permitting "only one place of business" for a bank, the activities of the bank were held prohibited by Florida law.

The Utah case of *Continental Bank & Trust Company v. Taylor,* 14 Ut. 2d 370, 384 Pac. 2d 796, is also controlling in principle. In that case, the Plaintiff bank filed an action for a declaratory judgment seeking to determine that Section 7-3-6, U.C.A. 1953, did not prohibit certain practices in regard to making automobile loans through insurance agents. The facts disclosed that the bank had established a course of dealing with various insurance agents under which the bank furnished them with forms of checks, promissory notes and advertising matter, advertising the bank as "your one stop automobile insurance and financing center." Insurance agents, either at their offices or homes, obtained from customers credit statements, and pertinent information about the automoible to be purchased, which was forwarded to the bank. At the bank, the information was entered on a credit application form; the bank then notified the agent by telephone of its determination; the agent filled out blanks on appropriate forms and the purchase was consummated.

The Utah Court quoted Section 7-3-6 in its entirety and determined that the insurance agents were, in fact, agents of the bank in conducting its business. It quoted the American Law Institute Restatement of Agency as follows: "Agency is the fiduciary relation which results

from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other to so act."

The Court found that there was a manisfestation of consent by the bank to the insurance agents that said agents should act in a fiduciary relationship on behalf of the bank for the purposes heretofore set forth. The Court concluded by saying, "We consider the language of Section 7-3-6, U.C.A., 1953, as amended, referring to and defining the term 'branch' as meaning and including any office or place of business where 'deposits are received or checks paid or money lent' by the bank. If such office or place of business is established and conducted by Section 7-3-6, U.C.A., 1953, as amended, it is proper and lawful. If such office or place of business is not so established or conducted, then it is not proper and it is not lawful."

In the present case, for the purpose of this preceeding it is deemed admitted by Defendant, G L Corporation, that it pays checks in American Fork for the Bank of Pleasant Grove and State Bank of Lehi. As such, this procedure is not established or authorized by Section 7-3-6 as the payment of checks is a function of a branch bank.

Plaintiff submits that such a branch bank is not proper nor is it lawful and that the Lower Court should not have granted Defendants' Motion to Dismiss and should have accorded Plaintiff injunctive relief in accordance with the prayer of its Complaint.

CONCLUSION

Because of the fact that the activities of Defendant G L Corporation in paying checks for its principals con-

stitute branch banking in violation of Section 7-3-6, Utah Code Annotated, 1953, it would appear that the judgment of the Lower Court is not in harmony with law. It should be reversed and a judgment by this Court entered to the effect that the paying of checks under the facts of this case constitutes branch banking and should be enjoined.

Respectfully submitted,

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