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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 : Respondent's Brief

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In the Supreme Court of the State of Utah

BANK OF AMERICAN FORK, a Utah corporation,

Plaintiff and Appellant,

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,

Defendants and Respondents.

Case No. 12223

RESPONDENTS' BRIEF

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

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Defendants and Respondents.

Case No. 12223

RESPONDENTS' BRIEF

STATEMENT OF THE CASE

Plaintiff bank's complaint seeks a declaratory judgment that Defendant banks are conducting an unlawful branch bank in American Fork through Defendant bank service corporation; an injunction restraining Defendant banks from branch banking in American Fork and an

injunction restraining Defendant bank service corporation from paying, sorting or posting checks in American Fork for Defendant banks.

DISPOSITION IN LOWER COURT

Plaintiff's complaint was dismissed by the lower court for failure to state a claim upon which relief could be granted.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks a reversal of the judgment of dismissal and judgment as prayed in its complaint. Defendants seek to have the judgment of dismissal affirmed.

STATEMENT OF FACTS

For the purpose of Defendants' motion to dismiss only, Defendants admit the facts pled in Plaintiff's complaint and accept the statement of the same as set forth in the statement of facts in Plaintiff's brief except that Defendants deny Plaintiff's statement that the activities of Defendant G L Corporation have wrongfully invaded the property rights of Plaintiff and Defendants deny causing Plaintiff wrongful injury.

At the argument upon Defendants' motion to dismiss, it was explained that the service actually being performed by G L Corporation was to magnetically encode checks (with the amount payable so as to make them readable by computer); to sort them and to post them to bank customer accounts by means of electronic equipment and that G L Corporation was not equipped or designed to deal with or furnish check cashing or other services to the public or even to customers of the banks using G L Corporation's computer accounting service.

ARGUMENT

POINT I.

PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Section 7-3-6, U.C.A. (1953) as amended provides as follows:

> "Business conducted at banking house — Branching of offices—Violation of section a misdemeanor.—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.

"With the consent of the bank commissioner any bank having a paid-in capital and surplus of not less than $60,000 may establish and operate one branch for the transaction of its business; provided, that for each additional branch established there shall be paid in an additional $60,000 (capital and surplus).

"All banking houses and branches shall be located either within the corporate limits of a city or town, or within unincorporated areas of a county in which a city of the first class is located.

"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 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.

"The term 'branch' as used in this act 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.

"Any bank desiring to establish one or more branches or offices shall file a written application therefor in such form and containing such information as the bank commissioner may reasonably require. No bank shall be permitted to establish any branch or office until it shall first have been shown to the satisfaction of the bank commissioner that the public convenience and advantage will be subserved and promoted by the establishment of such branch or office. The bank commissioner may, at his discretion, hold a public hearing on any such application to establish a branch. He shall give notice of such hearing by publication in three successive issues in a newspaper of general circulation in the county in which the branch is to be established. The decision of the bank commissioner granting or denying an application to establish a branch shall be in writing, state the reasons therefor, and shall be mailed to the applicant and all protestants. The bank commissioner may by order permitting the establishment of such branch or office designate and limit the character of work and service which may therein be performed.

"No branch shall be established at a location outside the corporate limits of a city or town in such close proximity to an established bank or branch as to unreasonably interfere with the business thereof.

"Any corporation or officer thereof violating any of the provisions of this section is guilty of a misdemeanor."

This statute plainly contemplates a system whereby the place or places at which a bank conducts its banking business with the public will be controlled by the state through the bank commissioner. The material references in the statute are to "the business of every bank" and "its banking house." "Branch" is not defined except to state what such term shall include. The statute when read as a whole makes abundantly clear that in defining "branch" the legislative intent of 1911 was to include offices and places where the essential business of providing banking services to the public is provided. Thus the statute provides that a "branch" includes "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."

Plaintiff's complaint does not allege that Defendant banks or any of the other Defendants are doing a banking business with the public at places other than at Defendant banks' long established banking premises. It does not allege Defendants have established an unauthorized branch bank at American Fork. It does not even directly allege that Defendants have done acts urged to constitute a banking business; i.e., received deposits, paid checks or lent money at an unauthorized office or place of business in American Fork.

In short, it asserts nothing constituting a violation of Section 7-3-6, U.C.A. (1953), and was properly dismissed.

POINT II.

THE PROCESSING OF CHECKS IN THE COURSE OF CHECK ACCOUNTING SERVICES SUPPLIED TO BANKS BY A BANK SERVICE CORPORATION DOES NOT CONSTITUTE BRANCH BANKING BY SUCH BANKS AT THE PLACE SUCH ACCOUNTING SERVICES ARE PERFORMED.

Plaintiff has assumed in its brief that it properly alleged Defendant banks are paying checks in American Fork through the functioning of G L Corporation. Construing the allegations of Plaintiff's complaint as favorably to Plaintiff as conceivably may be done and assuming it does so allege, it still falls short of showing any basis for relief.

The basic activity of G L Corporation of which Plaintiff apparently complains is set forth in paragraphs 2 and 9 of Plaintiff's complaint. These read as follows:

> "2. Defendant, G L Corporation, is a Utah Corporation with its principal place of business in American Fork, Utah. It is organized and operated as a bank service corporation pursuant to the provisions of 7-3-32.5, U.C.A., 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.

> "9. Plaintiff alleges that by paying checks for Defendants, Bank of Pleasant Grove and State Bank of Lehi, which said banks are not located in the corporate limits of the City of American Fork, Defendant, G L Corporation, is, in fact, a branch bank of said Defendant Banks, acting as such without authority of law and in specific violation of Section 7-3-6, U.C.A., 1953."

The substance of Plaintiff's contention is simply that G L Corporation's computer processing of checks drawn on Defendant banks in the course of which checks are sorted and posted to bank customer accounts constitutes payment of the same and that such payment constitutes the American Fork computer center of G L Corporation a branch of each and every Utah bank using it.

This proposition is untenable.

The section of Utah's Uniform Commercial Code cited by Plaintiff, Section 70A-4-213, U.C.A. (1953), is directed to the question of when the payor bank becomes finally and irrevocably liable for an item to the presenting bank or person. It appears to take into account the commercial banking practice of posting checks to customers accounts in setting forth such posting as one of four alternative points beyond which the payor bank is responsible for an item presented for payment.

Defendants submit this statute has nothing whatever to do with determining what practices may constitute branch banking.

The only possible issue raised by Plaintiff's complaint is whether a bank may avail itself of independent off-premises computerized bank accounting services with respect to the check items it receives without running afoul of the branch banking restrictions contained in Section 7-3-6, U.C.A. (1953).

The obvious answer is yes.

In 1963, some 52 years after original Section 7-3-6 was adopted in Utah, the Utah Legislature enacted Section 7-3-32.5, U.C.A. (1953), which provides as follows:

> "'Bank service corporation' and 'banking services' defined—Sole stockholding bank authorized—Visitation and examinaton of bank service corporaton.—(1) The term 'bank service corporation' means a corporation organized to perform bank services for two or more banks, each of which owns part of the capital stock of such corporation. The term 'bank services' means services such as check and deposit sorting and posting, computation and posting of interest sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

> "(2) If stock in a bank service corporation has been held by two or more banks, and one or more of such banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding bank, the corporation may nevertheless continue to function as such and the other bank may continue to hold stock in it.
>
> "(3) Every bank service corporation shall be subject to visitation and examination as provided in section 7-1-7, Utah Code Annotated 1953."

This statute permits Utah banks to utilize new banking equipment and procedures developed over the last few years to keep up with the increasing flood of checks being written. This is done through the use of corporations organized to perform bank accounting services. These services include computerized check and deposit sorting, posting and any other clerical, bookkeeping, accounting, statistical or similar functions. Since the 1940's and 1950's posting has become mechanized. The elec computers now used can handle 100,000 items per hour. ROHNER, *Posting of Checks, Final Payment and The Four Legals,* The Business Lawyer, July, 1968, p. 1075, 1080.

Nothing in the bank service corporation statute re quires a bank service corporation such as Defendant G L Corporation to perform bank services such as posting checks in a bank's own banking house or to obtain the

consent of the bank commissioner before rendering bank services, including the posting of checks, in its own facilities. Any such requirement would be unnecessary, shortsighted and perhaps even unconstitutional since the effect would be to give the large banks an unfair competitive edge since they can afford their own in-house computers, whereas small banks generally cannot. See PENNEY, *Bank Statements, Cancelled Checks, and Article Four in the Electronic Age,* 85 The Banking Law Journal 659, 662-663 fn. 8 (Aug. 1968).

Defendants submit that the branch banking statute was not designed or intended to operate in the hypertechnical, unreasonable fashion argued by Plaintiff whereby a computerized off-premises accounting procedure instituted 50 years after the branch banking statute was adopted constitutes branch banking per se even though done pursuant to a new statute expressly authorizing the same. Instead the branch banking statute was designed and does by its express terms place *branches, offices* and *places of business* through which banks *do business with the public* under the control of the state.

Plaintiff stresses only the "checks paid" language of Section 7-3-6 and fails to recognize that it is not payment of checks with which the statute is concerned but dealing with the public at and through unauthorized locations.

At the time Section 7-3-6 was adopted, getting a check paid often involved a trip to the bank, personal presentation of the item and its payment in cash by a teller. Today check payment almost never involves direct contact with the presenting person. Instead it involves credits and charges at electronic speed.

Viewed in the light of the legislative intent, Section 7-3-6 and Section 7-3-32.5 are entirely harmonious. If they are deemed conflicting, Plaintiff still has no cause for complaint because the later enactment controls. *Thiokol Chemical Corporation v. Peterson,* 15 Utah 2d 355, 393 P.2d 391 (1964) and *Pacific Intermountain Express Co. v. State Tax Comm'n.,* 7 Utah 2d 15, 316 P.2d 549 (1957). Not one of the cases cited by Plaintiff deals with off-premises bank check sorting and posting; hence none support Plaintiff's position or are in any way particularly in point. The fair implicaton to be drawn from them as a whole supports Defendant's position.

First Nat. Bank of Logan v. Walker Bank & Trust Co., 19 Utah 2d 18, 425 P.2d 414 (1967), held a bank's new drive-in, walk-up facilities whereby the public was served not an unauthorized branch bank because the same were essentially on the bank's premises and constituted a feature of a modernization of an existing banking facility.

Plaintiff here seeks to deprive Defendant banks of the use of the modern computer facilities of a bank service corporation. Yet in the Walker Bank case this Court specifically held that "the legislative purpose in prohibiting the establishment of branches by banks not in conformity with the statute is not defeated by modernization programs."

In *West Side Bank v. Marine Nat. Exchange Bank,* 155 N.W.2d 587 (Wis. 1968), a collecting bank sought a determination that a drawee bank had proceeded past the point of no return in processing a check and could not return it pursuant to the maker's stop order. No issue regarding branch banking was presented.

Jackson v. First Nat. Bank of Cornelia, 292 F. Supp. 156 (N.D. Ga. 1968), held that the practice of operating an armored car bank messenger service whereby funds were transmitted between a bank and its customers, change was made and a teller's service was provided contravened a Georgia statute requiring the business of banking to be limited to the bank's established place of business.

The "Utah Walker Bank case" (Plaintiff's brief, p. 5), *First Nat. Bank v. Walker Bank & Trust Company,* 385 U.S. 252, 17 L. ed. 2d 343 (1966), held that Utah's

limitations on branch banking were absorbed by 12 U.S.C. § 36(c) and were thereby made applicable to national banks operating in Utah in order to achieve competitive equality between the two.

In *Dickinson v. First Nat. Bank in Plant City, Florida,* 400 F.2d 548 (5th Cir. 1968), the utilization of shopping center receptacles for night bags of money and checks and the furnishing of an armored car messenger service to transport customer funds to and from a bank were declared violative of a Florida law that a bank have only one place of business.

Jackson v. First Nat. Bank of Valdosta, 349 F.2d 71 (5th Cir. 1965), held only that the Georgia Superintendent of Banks was a proper party plaintiff to maintain a suit for a declaration that a national banking association could not lawfully operate a drive-in banking facility.

The last case cited by Plaintiff, *Continental Bank and Trust Company v. Taylor,* 14 Utah 2d 370, 384 P.2d 796 (1963), involved a practice of making automobile loans to the public through various insurance agents at their various homes, offices and places of business instead of at the premises of the bank. This Court there held such improper because such miscellaneous offices

through which bank loans were made to the public were not established and conducted through the procedure required by Section 7-3-6 U.C.A. (1953).

Defendant banks do not deal with or offer banking services to the public at any place besides their established banking premises and Plaintiff's complaint does not charge that they do. Plaintiff bank only complains that Defendant banks use the bank services of a bank service corporation. However, such services, including the computerized check and deposit sorting and posting denounced by Plaintiff, have been expressly authorized by the Legislature. The Legislature apparently saw no branch banking implications in its authorization of bank accounting services by bank service corporations. If it did, it felt no concern as its broad grant contains no qualifications or restrictions on the physical location of a bank service corporation's premises and place of business. The fact G L Corporation performs accounting work for Defendant banks does not constitute the place of business of G L Corporation anyone's branch bank.

Plaintiff cites no case in which the effect of off-premises bank accounting service was even presented as an issue, let alone as the basis for a branch banking argument. Defendant has found no case besides this one where such an argument was made. The branch bank cases are collected in an annotation in 23 A.L.R. 3rd 683.

CONCLUSION

Plaintiff's contentions and Plaintiff's complaint are as unmeritorious as they are unique. The trial court properly dismissed Plaintiff's complaint and its judgment should be affirmed.

Respectfully submitted,

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