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CASE COMMENTS

ESCHEAT: LAST KNOWN RESIDENCE OF THE CREDITOR DETERMINES WHICH STATE MAY ESCHEAT ABANDONED INTANGIBLE PROPERTY

Texas v. New Jersey, 379 U.S. 674 (1965)

The State of Texas, invoking the original jurisdiction of the United States Supreme Court,[1] brought an action against the States of New Jersey and Pennsylvania and the Sun Oil Company to determine which state had jurisdiction to escheat $26,461.65 in abandoned intangible personal property.[2] This property had been owed by the Sun Oil Company to approximately 1,730 small creditors in over fifteen states for periods ranging from seven to forty years. Florida was permitted to intervene[3] because it claimed the right to escheat obligations owed to creditors whose last known residence was in Florida. Adopting the Florida position the Supreme Court HELD, that intangibles may only be escheated by the state of the creditor's last known address as shown by the debtor's books and records, except when there is no last known address or if such address is in a state that does not provide for the escheat of such property. In such a case the state of the corporate debtor's domicile is the only state that may escheat. Justice Stewart dissenting.[4]

The problem of sequestering intangible property with multi-state connections was first presented to the Supreme Court in *Connecticut Mutual Life Insurance Co. v. Moore*.[5] The Court upheld New York's right to unclaimed insurance obligations issued to New York residents and payable to New York beneficiaries by nonresident life insurance companies. The Court avoided deciding whether New York's claim to the property would be superior to any claim for the same property by another state. It further failed to answer whether New York's right would be affected should the insured or the beneficiary move from New York before maturity. Later in *Standard Oil Co. v. New Jersey*[6] the escheat of the abandoned intangibles of a domestic corporation having only minimal contacts within the state was allowed. The Supreme Court indicated by way of dictum that full faith and

1. U. S. CONST. art. III, §2.

2. This sum is composed of three types of intangibles: (1) debts for which checks were issued but which were never delivered to the payee and were returned to the company; (2) debts for which checks were issued that were not returned to the company or presented for payment; (3) debts reflected on the records of the company for which checks have not been issued.

3. Order, 373 U.S. 948 (1963).

4. Texas v. New Jersey, 379 U.S. 674, ... (1965).

5. 333 U.S. 541 (1948).

6. 341 U.S. 428 (1951).

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credit would apply, thus barring the possibility of Standard Oil having to pay the claim to more than one state.[7] Subsequently, in *Western Union Telegraph Co. v. Pennsylvania*,[8] the Court rejected the full faith and credit argument declaring that any double liability would deny the debtor due process of law because Pennsylvania has no way to obtain jurisdiction over other states claiming the same property. Any states that were not parties to the suit could not be bound by the Pennsylvania decision, therefore, states should seek the original jurisdiction of the Supreme Court.[9]

The principal case is the first to arise after the *Western Union* decision and the Court was faced squarely with the issue of conflicting claims by several states. The State of Texas urged that because the debt was on the books of a Sun Oil Company office in Texas and the claims had originated there, it had the most significant contacts with the debt and should be allowed to escheat every item involved.[10] The Court states that because such a solution would require a case-by-case determination it would only add turmoil to a question that requires a clear rule applicable in every situation.[11]

New Jersey argued that it should have the exclusive right to escheat the abandoned property since the Sun Oil Company was incorporated in that state. While the Court agreed that this would be a simple rule to apply, it nevertheless indicated that incorporation was too minor a factor when extensive multi-state activities were involved.[12]

Pennsylvania claimed a superior right to the funds arguing that its laws and economy had contributed most to the prosperity of Sun Oil Company because Sun's principal place of business was in that state. In rejecting this argument the Supreme Court recognized the uncertainty of locating the principal place of business of large diverse corporations. Also, the Court reasoned that to allow Pennsylvania to prevail would be tantamount to changing a liability on the books of the company into an asset when the state decides to escheat.[13]

Finally, the State of Florida contended that because all intangible property results from a debtor-creditor relation and it is the right of

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7. *Id.* at 442-43.

8. 368 U.S. 71 (1961).

9. *Id.* at 77-80.

10. Connecticut Mut. Life Ins. Co. v. Moore, 333 U.S. 541 (1948); Security Sav. Bank v. California, 263 U.S. 282 (1923); Atkinson v. Superior Court, 49 Cal. 2d 338, 316 P.2d 960 (1957); Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279 (1963); Griffith v. United Air Lines Inc., 416 Pa. 1, 203 A.2d 796 (1964); RESTATEMENT (SECOND), CONFLICT OF LAWS §379 (Tent. Draft No. 8, 1963).

11. Texas v. New Jersey, 379 U. S. 674, ____ (1956).

12. *Id.* at ____.

13. *Id* at ____.

the creditor to receive payment of the debt, the debt is property only to the creditor. The debtor has no proprietary interest in the property owed.[14] Furthermore, a state may only escheat property located within its borders. Thus, while the abandoned intangible property has no physical location in any state it is nonetheless real and has a location or situs as does other property.[15] Consequently, Florida urged that only the state of the residence of the creditor would have jurisdiction over the intangible property for purposes of escheat.[16] In accepting the rule proposed by Florida, the Court has successfully limited the right to escheat abandoned intangible property to only one state in every situation. By determining the last known residence from the debtor's books and records it has provided a readily accessible method for applying the rule.

The Court had previously expressed in *Severnoe Securities Corp. v. London & Lancashire Insurance Co.*[17] that the situs or location of intangible property is not the same for all purposes. Its situs is controlled by "a common sense appraisal of the requirements of justice and convenience in particular conditions."[18] For example, the Supreme Court has held that negotiable bonds and certificates of indebtedness issued by one state have their situs for inheritance tax purposes in the domicile of the deceased owner and not in the issuing state.[19] The instant case presented a question whether the ease and uniformity of a rule allowing the debtor state to prevail outweighed the strong equities in favor of the states in which the creditors resided until their death or disappearance. It was apparent that the prior holdings in *Standard Oil* and *Connecticut Mutual* were no longer satisfactory. The ever-increasing mobility of the population and the growing number of multi-state corporations called for a reappraisal in this area. An equally important consideration was the enactment

14. Baldwin v. Missouri, 281 U.S. 586, 592 (1930); Blodgett v. Silberman, 277 U.S. 1, 15 (1928); Liverpool & London & Globe Ins. Co. v. Board of Assessors for the Parish of Orleans, 221 U.S. 346 (1911).

15. Severnoe Sec. Corp. v. London & Lancashire Ins. Co., 255 N.Y. 120, 123, 174 N.E. 299, 300 (1931).

16. Brief for Florida as Intervenor, pp. 10-15, Texas v. New Jersey, 379 U.S. 674 (1965).

17. 255 N.Y. 120, 174 N.E. 299 (1931).

18. *Id.* at 123-24, 174 N.E. at 300.

19. Farmers Loan & Trust Co. v. Minnesota, 280 U.S. 204 (1930); see also Baldwin v. Missouri, 281 U.S. 586 (1930) (in which an Illinois resident, dying there, left credits for cash deposited in Missouri banks, coupon bonds of the United States, and promissory notes, all physically within Missouri, but the Court held that only Illinois could place an inheritance tax upon such intangible property); Rogers v. Hennepin County, 240 U.S. 184 (1916) (for the purpose of a state tax on the membership in a grain exchange, the Court held that the situs of the membership for such purpose was within the state where the exchange was located).

of escheat statutes by a large number of states covering abandoned intangible property. It had become obvious that without an adequate legislative or judicial ruling the courts would be filled with many states claiming the same intangible property under various local escheat statutes.

The total effect of the rule in *Texas v. New Jersey* is impossible to assess at this time, but the various escheat statutes will play an important part in its administration. While the rule provides many necessary answers it fails to provide for the administration among the states. The Uniform Disposition of Unclaimed Property Act[20] would settle this problem if enacted by all the states.[21] The key to the act is section 10, which provides that when abandoned intangible property held in one state is owed to an owner whose last known address is in another state, such property will not be escheated by the debtor's state, but will be delivered to the creditor's state if that state has provisions for the escheat of the property owed and also has a similar reciprocal provision.[22] It is interesting to note that the Uniform Act provides for a custodial proceeding rather than an escheat proceeding. By this it is meant that the state seeks only to gain possession of the property and not title. While it is not expected that many rightful claims will be made after the state has possession, the funds will always be available to the rightful owners.[23]

To simplify administration within the state, persons are compelled to report and deliver abandoned property to the appropriate state officer who will distribute the property according to the provisions of the act.[24] Should a person fail to comply, the state may examine his records[25] and compel delivery along with imposing a penalty.[26]

In the absence of individual initiative by all the states to adopt the Uniform Act or a similar one, it would be advisable for Congress

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20. 9A UNIFORM LAWS ANN. 253 (1955) [hereinafter cited as UNIFORM ACT].

21. Florida is among a slowly expanding minority of eleven states that have enacted the UNIFORM ACT with only minor variations. ARIZ. REV. STAT. ANN. §§44-351 to -378 (1956); CAL. CIV. PROC. CODE ANN. §§1500-27; FLA. STAT. §§717.01-.30 (1963); IDAHO CODE ANN. §§14-501 to -532 (Supp. 1963); ILL. ANN. STAT. ch. 141, §§101-30 (Smith-Hurd 1964); MONT. REV. CODES ANN. §§67-2201 to -2230 (Supp. 1963); N.M. STAT. ANN. §§22-22-1 to -29 (Supp. 1963); ORE. REV. STAT. §§98.302-.436 (1963); UTAH CODE ANN. §§78-44-1 to -28 (Supp. 1963); VA. CODE ANN. §55-210.1 to .29 (Supp. 1964); WASH. REV. CODE ANN. §§63.28.070-.920 (1961).

22. See FLA. STAT. §717.11 (1963).

23. UNIFORM ACT. §19; see FLA. STAT. §717.20 (1963).

24. UNIFORM ACT §§11, 24; see FLA. STAT. §§717.12, .25 (1963).

25. UNIFORM ACT §23; see FLA. STAT. §717.24 (1963).

26. UNIFORM ACT §25; see FLA. STAT. §717.27 (1963) (failure to report or deliver shall be a misdemeanor in Florida).

to provide adequate legislation to insure compliance.[27] Until this is done debtor states that have no intangible escheat provisions will be unable and perhaps unwilling to comply with the rule and there will be no way for creditor states to force compliance since no interstate discovery devices are available.

Although Florida received only $111.70[28] from the holding in *Texas v. New Jersey*, it has been estimated that the actual total of these abondoned intangible properties is in excess of $15 billion and is increasing at the rate of $1 billion per year.[29] It is reasonable to assume that any other rule presented that might have been adopted by the Court would have favored the highly industrialized eastern seaboard to a greater extent than the rule adopted. Because Florida is high among the retirement states and fewer major corporations have their principal place of business here, our creditors would seemingly outweigh our debtors. In conclusion, the rule of *Texas v. New Jersey* is a practical one that realistically faced a troubled area of the law, however the Supreme Court has moved as far as it can toward providing a complete solution. Because it seems unlikely that all fifty states will adopt the Uniform Act, the need is for a federal statute to regulate and provide orderly administration among the states.

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27. See Note, *A Federal Act To Resolve Conflicting State Claims to Abandoned Property*, 1 HARV. J. ON LEG. 151 (1964).

28. Brief for Florida as Intervenor, pp. 8-9, Texas v. New Jersey, 379 U.S. 674 (1965).

29. Wall Street J., Jan. 22, 1961, p. 1, col. 1.