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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATE OF CONNECTICUT,

Intervenor-Plaintiff,

vs.

STATE OF NEW YORK, ET AL,

Defendants.

BRIEF IN SUPPORT OF EXCEPTIONS OF DEFENDANT STATE OF FLORIDA TO REPORT OF SPECIAL MASTER

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EXCEPTIONS ARGUED

1. The Special Master has concluded that the issue in this case is controlled by constitutional considerations, contrary to the decision of this Court in Texas v. New Jersey that "the issue here is not controlled by. . . constitutional provisions or by past decisions . . . ." 379 U. S. 674, 683.

2. The Special Master has improperly concluded that a custodial taking by the state shown on the debtor's records as the place for payment or purchase would unlawfully impair the individual creditor's property rights, when such a taking protects those rights more fully than any of the alternative claims asserted in this case.

3. In concluding that the custodial claim to unclaimed money order funds by the state of original destination or payment is cut off by the sender's contract right to refund, the Special Master overlooks the fact that the only funds involved in this proceeding are those which cannot be refunded and which became and remained unclaimed from the time the obligation to the original payee accrued.

4. In concluding that the place designated on debtor's records for payment of money order funds does not constitute a creditor's address according to the debtor's books, within the rule of Texas v. New Jersey, supra, the Special Master has construed that decision to require a technically complete address supplied by the creditor to establish a factual foundation for a finding of legal residence, when the decision instead is based on a rule of equity and expedience and a presumption of residence which in the absence of contrary evidence is adequately supported by a debtor's record of the address at which payment is to be made to a creditor.

ARGUMENT

The defendant State of Florida respectfully submits that the Supreme Court should reject the recommended decree as set forth in the Report of the Special Master dated November, 1971, because it is based upon a misconception of constitutional law as applied to custodial escheat jurisdiction and upon a misapplication of the decision of this Court in Texas v. New Jersey, 379 U. S. 674 (1965).

The jurisdictional effect of such statutes as the Florida statute governing disposition of unclaimed property, Chapter 717, F.S., attached as an exhibit to this defendant's answer herein, has been expressly considered by this Court. The opinion in Security Savings Bank v. California, 263 U. S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391, states that in the enforcement of a similar California statute "the state does not seek to enforce any claim against [the depositor]. It seeks to have the deposit transferred" to state custody. See also Anderson National Bank v. Luckett, 321 U. S. 233; Standard Oil Co. v. New Jersey, 341 U. S. 428.

The cases appear to be consistent in regarding escheat proceedings as in rem actions in which constitutional requirements are met by actual service of process on the debtor. Certainly in the case of custodial proceedings, such as those under the uniform act applied by many of the states involved in this case, the only jurisdiction exercised is that over the fund for payment of the debt. This would appear to be the reason for the clear pronounce-

ment of this Court in Texas v. New Jersey, supra, that "the issue here is not controlled by . . . constitutional provisions or by past decisions" as to jurisdiction over intangibles. 379 U. S. 674, 683.

The rule applied in the Texas case, to the extent that it recognizes secondary escheat rights by the state of debtor domicile, as well as the alternative which the court held to be more rational, necessarily rests on the assumption that jurisdiction in such proceedings is based on service on the debtor, whether that service is accomplished in the state of domicile or some other state. In distributing escheat rights among such states based on creditor contact, however, this Court in the Texas opinion expressly abandoned the "technical legal concept of residence and domicile." 379 U. S. p. 680.

This defendant believes that the Report of the Special Master departs from both the letter and the spirit of the ruling in the Texas case insofar as the report concludes that a debtor's books must show a specific and complete address supplied by the creditor. As a matter of fact, the various forms and exhibits contained in the stipulated record show that the absence of a specific address for either the sender or sendee in money order transactions results necessarily from the sender's failure to specify a residence or address in addition to the place at which the money order is purchased or payable Identification of the place of payment and purchase on the debtor's records does, however, constitute a showing of a creditor's address in general terms.

Clearly the purpose of this Court in adopting in the Texas case a standard of "creditor's last known address as shown by the debtor's books," was not to facilitate notice to the creditor, nor was it based on any assumption that the debtor's records proved the creditor's residence or domicile. Instead the Court in that case, as well as the Master's Report in this case, recognizes that the place in which these transactions occur will coincide, at least proportionally, with actual creditor residence, which forms a fairer basis for escheat distribution than does corporate debtor domicile. As a matter of fact, if this Court should choose to consider the evidence rejected by the Master as to Western Union's analysis of 1963 transactions, this material will show that less than two percent of the money order purchase forms affirmatively show an address different from the state in which the transactions occurred.

The present controversy does involve a further refinement of the principle enunciated in the Texas case, because of the nature of the money order obligations here involved. The purchase of a money order, however, clearly creates an obligation due and owing to the payee or sendee. The nature of that obligation was considered by this Court in Western Union Telegraph Co. v. Pennsylvania, 368 U. S. 71, 82 S. Ct. 199, 7 L. Ed. 2d 139.

The money order conditions reflected by the exhibits in this cause, including the provision for cancellation and refund to the sender, are of course an essential and integral part of the contract required by the tariff

regulations filed by Western Union with federal regulatory authorities. These conditions fix the obligations of the parties. Western Union Tel. Co. v. Priester, 276 U. S. 252, 72 L. Ed. 555, 48 S. Ct. 243; Western Union Tel. Co. v. Esteve Bros. & Co., 256 U. S. 566, 65 L. Ed. 1094, 41 S. Ct. 584. In administering its laws, however, Florida does not seek to determine rights between the money order sender and sendee which would be governed by the contract provision. The state instead will continue to hold the property for the account of the person entitled to same, and merely seeks to enforce its custodial rights as to property which became unclaimed within this state.

CONCLUSION

For the reasons stated herein, as well as those more fully set forth in briefs previously filed in this proceeding, the Court is urged to reject the recommendation in the Report of the Special Master. In summary, the defendant State of Florida recognizes the desirability of disposing of this case by a rule that will be administratively feasible and have wide application, and contends that this result will be accomplished by adhering to the rule of the Texas case that the state entitled to escheat is that of the last known address of the creditor according to the debtor's records, and by concluding that the address specified by a debtor's records for payment to a creditor constitutes the creditor's last known address in the absence of conflicting proof. Recognition of escheat rights in the state of destination specified by such records as the place of payment to a money order sendee-payee accords with that rule. Although the application of the rule to bearer instruments (which do not name a payee or place of payment) is not directly presented upon the record in this case, the only debtor record of the creditor or payee's address in those instances would appear to be the place of issue. Escheat at that point would therefore be consistent with this defendant's position in this case.

Respectfully submitted,

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PROOF OF SERVICE

I, Winifred L. Wentworth, Assistant Attorney General of the State of Florida, hereby certify that I am one of the attorneys for the defendant, State of Florida, that I am a member of the Bar of the Supreme Court of the United States, and that on the 23rd day of February, 1972, I served copies of the foregoing Brief in Support of Exceptions of Defendant State of Florida to Report of Special Master, on each of the parties by depositing such copies in a United States Post Office, addressed as follows:

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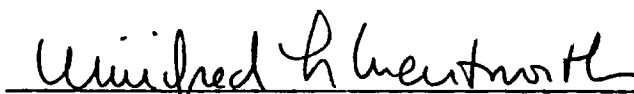

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