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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.

PETITION FOR RE-HEARING

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The Defendant State of Florida presents this Petition for Re-Hearing of the above titled cause and respectfully shows:

GROUNDS FOR RE-HEARING

I

In its opinion in this cause the Court entered the decree recommended by the Special Master as to the disposition of unclaimed Western Union money order funds which several states sought to escheat, in affirmation of the allocation formula adopted in Texas v. New Jersey, 379 U.S. 674 (1965). The funds accordingly escheat to the state of the creditor's address as appearing in Western Union records. If no address appears in such records, then the right to escheat would belong to the domiciliary state of the debtor, Western Union. Pennsylvania v. New York, _____ U.S. _____, No. 40 Orig. at 7, (June 19, 1972).

For the purposes of this petition, the Defendant State of Florida accepts the Court's confirmation of the Special Master's conclusion that the funds in question may be escheated by the state "in which the records of Western Union placed the address of the creditor." Id. at 7; Report of the Special Master at 20-21. Petitioner also accepts the determination that the money order application forms constitute records from which these addresses may be obtained. Pennsylvania v. New York, supra, at 9.

Petitioner urges, however, that in every instance in which such records reflect an applicant's failure to supply an address different from that of the issuing office, then the address of the Western Union office at which the creditor would be entitled to a refund or payment constitutes an "adequate" record of the creditor's address for purposes of this proceeding. The Court recognized that a residence address is not always available and recommended that in the future the states require Western Union to keep adequate address records. Id. at 9. The petitioner urges, however, that the failure to record the residence addresses of creditors was not due to the fact that Western Union did not attempt to obtain this information. The money order application forms presently require the creditor's address to be listed. Stipulation of Facts, p. 5-6, Para. II, subpara. 7. It is clear from the face of such forms, Exhibit 2 of the stipulated record, that in every instance the failure to obtain records of other creditor addresses results from an omission by the purchaser to complete the last line designated "sender's address." State legislation requiring Western Union to keep "adequate records" would therefore appear to be an impractical or impossible remedy for this problem.

For this reason, petitioner urges that a state's right to escheat should not be conditioned upon the existence of creditors' residence addresses in the debtor's records. Instead it is suggested that the record of the place of refund or payment, which is always obtainable from

Western Union's records, should in the absence of conflicting records constitute the business address of the creditor for the purpose of determining which state shall have the right of escheat. This conclusion would accord with the expressed intent of the Court in Texas, *supra*, quoted repeatedly in the briefs in this cause, that the rule based on a debtor's record of a creditor's address was not meant to incorporate legal residence or domicile concepts. 379 U.S. 674, 601, Note 11.

II

The Court's present policy of allowing the funds in controversy from unclaimed money orders to escheat to the debtor domiciliary state results in the inequity of proceeds from many separate small transactions flowing to the state where a debtor has chosen to incorporate, in conflict with the principle by which a debt is treated as property of the creditor and not the debtor. This procedure was expressly rejected by the Court in Texas v. New Jersey, *supra*, as a means of disposing of such unclaimed funds. The Court stated that:

[I]t seems to us that in deciding a question which should be determined primarily on the principles of fairness, it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the state in which the debtor happened to incorporate itself.
Id. at 680.

If all of the unclaimed funds from those money order forms which do not list the residence address of the creditor are escheated to the debtor domiciliary state, the standard which was rejected by the Court in Texas v. New Jersey, supra, may in effect be applied in the case sub judice. Unlike the Texas case, where only small portions of the obligations had no creditor's address on the debtor's records, in this case the greater share will apparently continue in the future to go to the domiciliary state since, as argued in Point I, supra, state legislation cannot as a practical matter prevent the sender from failing to list his residence address. By looking to the address of the creditor the Court in Texas recognized that the debts were assets of creditors and attempted to distribute them proportionately to the number of creditors in each state. Id. at 681. The equitable principles of this policy will be defeated by allowing the debtor domiciliary state to escheat all funds for which there is no address declared by the creditor, other than the location at which he is entitled to refund or payment.

Considering the address of those creditors who did not list a residence address on the money order form to be the state in which the Western Union office for refund or payment is located

will more equitably allocate the funds. This distribution would be accurate as well as equitable. In fact, if the Court has considered the evidence proffered to the Special Master concerning Western Union's 1963 transactions (Report of the Special Master, p. 5-6), this material will show that less than two percent of the money order purchase forms list an address in a state different from the state in which the transactions occurred. It is urged, therefore, that the address of the Western Union office in which the creditor purchased his money order, and at which refund is payable, be considered in the business address of the creditor when no other address is listed on the purchase form.

CONCLUSION

The State of Florida accepts the Court's decision to allow unclaimed funds to escheat to the state which is shown in Western Union's records as the address of the creditor. For the reasons stated herein, however, it is urged that when no other address is shown by such records, the address of the office where the funds are refundable constitutes the address of the creditor as shown by the

debtor's records. This disposition would fully accord with the reasoning and result of Texas v. New Jersey, supra.

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 defendants, State of Florida, that I am a member of the Bar of the Supreme Court of the United States, and that on the 13th day of July, 1972, I served copies of the foregoing Petition for Re-Hearing on each of the parties by depositing such copies in a United States Post Office, addressed as follows:

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