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Conflicts Of Laws—Tax Liability of a Foreign Jurisdiction Not Reduced to a Judgment Unenforceable

Robert W. Stephens

concessions agreement prior to negotiations for sale of the primary lease,[16] that the allegation of conspiracy to induce breach of contract lacks sufficient factual support to constitute a fairly arguable issue. It should be noted, however, that the Court apparently concluded there was a breach of the concessions agreement by Shelton Properties after termination of the sublease for nonpayment of rent and before sale of the primary lease. A reading of the record does not seem to support such a conclusion. The agreement provides that if the premises should revert and be "leased or operated as a *nightclub or restaurant* [Senrow Concessions] . . . shall continue in possession of concession rights,"[17] but plaintiff's affidavit shows that Shelton Properties used the premises "by leasing or renting the same out to various persons, corporations and entities as a place of public assembly for holding dances, and other forms of entertainment, including dinner functions."[18] Whether or not use of the premises for such functions can be said to be within the meaning of the word "nightclub" or "restaurant" seems deserving of comment.

J. O. D.

CONFLICTS OF LAWS

TAX LIABILITY OF A FOREIGN JURISDICTION NOT REDUCED TO A JUDGMENT UNENFORCEABLE

During the years 1954 to 1959, the defendant lived and conducted a public parking lot in Philadelphia, Pennsylvania. Then in force was a local tax ordinance[1] requiring him to obtain a license, file tax returns monthly, and pay a ten per cent tax on his gross receipts. Defendant complied with this ordinance but in December of 1958 an audit of his receipts showed that he still owed over five thousand dollars in back taxes. Notice of such deficiency was received by defendant, who failed to petition the administrative board for review within the requisite sixty days or to pay the amount allegedly due. Instead, defendant moved from Philadelphia to New York State. The failure to petition allowed the determination of the Board to become final. The city of Philadelphia, although having no judgment against the defendant in any state, brought an action in the New York State Supreme Court for the tax deficiency. The complaint was dismissed on defendant's demurrer. On appeal to the Court of Appeals, *held*, affirmed, one judge dissenting. Neither the full faith and credit

16. In its opinion the Court said: "There is, what is most important, no showing of any fraudulent connection between these parties prior to the breach of the contract by Shelton Properties, Inc., in 1956. Obviously the respondents, in the absence of such facts, cannot be held to be co-conspirators in a breach of contract which had occurred prior to the time they began negotiations to acquire the prime lease." Senrow Concessions, Inc. v. Shelton Properties, Inc., 10 N.Y.2d 320, 326, 178 N.E.2d 726, 729, 222 N.Y.S.2d 329, 333 (1961).

17. Record, p. 39. (Emphasis added.)

18. Id. at 104.

1. Philadelphia Code of Gen. Ord. ch. 9-601, subd. (4); ch. 19-1200.

requirement of the federal constitution, nor comity and public policy require the courts of New York to entertain an action brought to enforce the defendant's alleged liability under the laws of another state, where the liability is not reduced to a judgment. *City of Philadelphia v. Cohen*, 11 N.Y.2d 401, 184 N.E.2d 167, 230 N.Y.S.2d 188 (1962).

The federal constitution provides that "Full faith and credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other state."[2] Congress has further provided that both judicial and non-judicial records are entitled to such full faith and credit in every court within the United States.[3] The Supreme Court of the United States has stated that ". . . a judgment is not to be denied full faith and credit in state and federal courts merely because it is for taxes."[4] The same Court has also long held that non-judicial records are entitled to full faith and credit under the Constitution:

> For the protection of the Federal Constitution applies, whatever the form in which the legislative power is exerted; that is, whether it be by a constitution, an act of the legislature, or an act of any subordinate instrumentality of the state exercising delegated legislative authority, like an ordinance of a municipality or an order of a commission.[5]

In the area of tax enforcement, the courts in the past have refused to enforce revenue laws of sister states.[6] The reasons given have been twofold: first, tax laws are penal in nature; and second, to do so would require an examination of the tax laws of the sister state. This policy originated in the early refusal of the courts to enforce taxes of foreign countries[7] and was first applied to sister states by New York.[8] This practice of not enforcing the tax laws of another state was recently disapproved of by the United States Supreme Court in *Milwaukee County v. M. E. White Co.*,[9] where tax judgments were given full faith and credit. A recent statute in New York evidences this state's policy by declaring that the courts of New York are to recognize tax liabilities of those foreign states which extend a like policy to New York.[10]

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2. U.S. Const. art. IV, § 1.
3. 28 U.S.C. §§ 1738, 1739.
4. Milwaukee County v. M. E. White Co., 296 U.S. 268, 279 (1935).
5. Standard Scale v. Farrell, 249 U.S. 571, 577 (1919); accord, First Nat'l Bank v. United Air Lines, 342 U.S. 396 (1952); Hughes v. Fetter, 341 U.S. 609 (1951); Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943); Alaska Packers Ass'n v. Industrial Acc. Comm'n, 294 U.S. 532 (1935); Broderich v. Rosner, 294 U.S. 629 (1935).
6. For discussion of history see City of Detroit v. Gould, 12 Ill. 2d 297, 146 N.E.2d 61 (1957).
7. Ludlow v. Van Rensselaer, 1 Johns. R. 94 (Sup. Ct. 1806).
8. Maryland v. Turner, 75 Misc. 9, 132 N.Y. Supp. 173 (Sup. Ct. 1911); accord Matter of Martin, 255 N.Y. 359, 133 N.E. 753 (1921); Wayne v. American Steel Export Co., 227 App. Div. 585, 101 N.Y.S.2d 522 (1st Dep't 1950); Wayne v. Foster & Reynolds Co., 277 App. Div. 1105, 101 N.Y.S.2d 526 (1st Dep't 1950); In the Matter of the Estate of Bliss, 121 Misc. 773, 202 N.Y. Supp. 185 (Surr. Ct. 1923).
9. 296 U.S. 268 (1935).
10. N.Y. Sess. Laws 1962, ch. 677.

The majority in the instant case examined *Milwaukee County*, the landmark case in the area, and said that since the City of Philadelphia has not reduced its tax claims to a judgment against the defendant, New York is not bound by the full faith and credit requirements. Although the majority, because of the demurrer, assumed that "the Philadelphia taxing ordinance is authorized by the laws of the State of Pennsylvania . . . is a 'public act' of the state . . . defendant(s) liability therefore has become perfect and complete and that the imposition of gross receipt taxes by a municipality is not repugnant to any public policy of our state."[11] Nevertheless, the Court held the New York public policy, as evidenced by its prior case law, to be that New York courts will not act as collectors of taxes for another state. The Court further points out that the state statute providing for reciprocal collection of taxes, reaffirms this state's enunciated policy with respect to foreign tax liabilities, and since Pennsylvania does not recognize the tax liabilities of New York in their courts, this Court will not recognize Pennsylvania's. The dissenting judge points out that the assumption has been made that the tax is "perfect and complete" under Pennsylvania law and thus the dissenter says that he is not bound to determine, ab initio, defendant's liability under tax laws of foreign states. Moreover, since the defendant is being sued under a final administrative determination, it should be given full effect as a judgment.

The majority avoids the full faith and credit argument by saying that "no case law authority controls."[12] However, because of the assumption that the defendant's liability has become perfect and complete on the defendant's demurrer, perhaps the reasoning of the dissent should be more carefully considered. In this area of binding administrative determinations the courts have been slow to move because of the allied problem as to what determinations are to be considered as binding and final. Determinations of liability in workman's compensation[13] and wrongful death[14] cases have been held to be entitled to full faith and credit. In this case, however, the age-old chestnut of enforcing sister state taxes has colored the majority's thinking. The Supreme Court in ruling that tax judgments are not to be denied full faith and credit has made it clear that the reasons for not enforcing taxes of sister states have lost their force. The theory that such taxes are penal in nature is a remnant of an age long past and hopefully forgotten. This has since been replaced by the theory that true penal laws are punitive in nature, while a revenue tax is a determination of a person's pecuniary obligation to the government which is quasi-contractual in nature. The courts have not refused to look into the laws of sister states in other matters, and indeed it is every day business, so there does not seem to be any reason why they should be hesitant to do so in tax

11. City of Philadelphia v. Cohen, 11 N.Y.2d 401, 405-6, 184 N.E.2d 167, 169, 230 N.Y.S.2d 188, 191 (1962).
12. Id. at 405, 184 N.E.2d at 168, 230 N.Y.S.2d at 190.
13. Bradford Elec. Co. v. Clapper, 286 U.S. 145 (1932).
14. First Nat'l Bank v. United Air Lines, supra note 5.

cases which are relatively few in number but where the desirable result would be to prevent tax delinquency on a national scale. The purpose of New York's statute providing a reciprocal remedy to states which allow the same to New York is obviously to make such remedies mutual. The purpose could be better accomplished by enforcing all tax laws of sister states. Such a move by the Court of Appeals would not go unnoticed by the other states and would have a great effect in providing for such a national remedy which would be completely mutual. The decision of the majority only prolongs what at best is a very questionable policy when compared with the necessity that governments receive the funds to enable them to dispense their services efficiently, especially in view of today's cosmopolitanism and the working realities of our federal system. Moreover, the present policy extends a protection to the tax evader, who is not particularly deserving of such protection. The majority has rejected an opportunity in this case to take a step in the right direction which could have been arrived at either by a detailed examination of the full faith and credit clause as applied to final administrative determinations, or by a new policy of enforcing all taxes of sister states. As the Supreme Court said in the *Milwaukee County* case:

> The very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin. That purpose ought not lightly to be set aside out of deference to a local policy which, if it exists, would seem to be too trivial to merit serious consideration when weighed against the policy of the constitutional provision and the interest of the state whose judgment is challenged.[15]

R. W. S.

CONSTITUTIONAL LAW

Black Muslim Attempt To Gain Recognition Within the Prisons

Petitioner, an inmate of Green Haven Prison and a member of the "Black Muslim" cult, instituted an article 78 proceeding to compel the Commissioner of Correction to permit him free exercise of his religion. Claiming that he was not allowed services and ministration from a clergyman of his choice, petitioner stated that the members of the cult were compelled to hold religious services in the prison yard. The Commissioner denied these allegations and stated that the petitioner desired ministration from an Islam temple headed by Malcolm X, an ex-convict. He maintained that it is the policy of correctional institutions in New York not to allow inmates to communicate

15. Milwaukee County v. M. E. White Co., supra note 4, at 276-77.