

SUPREME COURT OF UTAH

Brigham Young University v. Tremco Consultants, Inc., 2007 UT 17

156 P.3d 782 (Utah 2007) · No. No. 20040744 · Decided February 2, 2007

SUMMARY

The Utah Supreme Court held that Brigham Young University could not use post-judgment collection procedures to impose liability for a SoftSolutions, Inc. judgment on officers, directors, and related entities that were not named parties. The court concluded that pursuing alter-ego, fraudulent-transfer, and related theories required a separate civil action with adequate notice and an opportunity to be heard. It vacated the supplemental order extending liability and held that the district court improperly denied the affected parties’ motion to intervene.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Nehring; Chief Justice Durham; Justice Parrish; Judge Carolyn B. McHugh; Judge Judith S. H. Atherton
JURISDICTION	Utah
DECIDED	February 2, 2007
DOCKET	No. 20040744
DISPOSITION	vacated
PROCEDURAL POSTURE	Duncan et al. appealed the district court's written orders denying their motions to intervene, to stay supplemental proceedings, and to vacate, alter, and/or amend a supplemental post-judgment collection order that extended liability for SoftSolutions' judgment to them.
STANDARD OF REVIEW	Due process and other legal questions were reviewed for correctness. To the extent factual review was necessary, the court applied summary-judgment review principles and indulged reasonable inferences in favor of Duncan et al.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Tremco Consultants, Inc., aka Tremco Legal Solutions, Inc., SoftSolutions, Inc., John Does 1-10, Kenneth W. Duncan, Lee A. Duncan, KWD Associates, L.C., Julee Associates, L.C. v. Brigham Young University

TOPICS

due process civil procedure intervention appellate procedure remedies

PRACTICE AREAS

civil procedure constitutional law appellate procedure remedies corporate law commercial litigation

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Duncan et al.'s motion to intervene.
2. Whether the district court could extend liability for SoftSolutions' judgment to nonparty individuals and entities through post-judgment collection procedures under Utah Rules of Civil Procedure 17(d) and 69(s).
3. Whether claims based on alter ego, fraudulent transfer, or Utah Code section 16-10a-1408 could be adjudicated in a summary post-judgment collection proceeding without commencing a civil action and providing full procedural due process.
4. Whether Duncan et al. received constitutionally adequate notice and an opportunity to be heard before their property was subjected to execution.

HOLDINGS

1. The district court exceeded its discretion by denying Duncan et al.'s motion to intervene because their inability to participate as parties materially contributed to the unconstitutional deprivation of their due process rights.
2. Duncan et al. were denied due process because the district court extended liability for SoftSolutions' judgment to them through summary post-judgment collection procedures without giving them adequate notice and a meaningful opportunity to defend against the underlying liability theories.
3. Rule 17(d) is procedural rather than substantive and does not create a cause of action that can impose personal liability for a judgment entered against another entity.
4. Claims based on alter ego or fraudulent transfer must be prosecuted as civil actions, not adjudicated through abbreviated post-judgment collection procedures under Rule 69(s).
5. Section 16-10a-1408 does not authorize enforcement of a claim against a shareholder of a dissolved corporation in a summary post-judgment collection proceeding; such enforcement must occur in a civil action.

KEY QUOTATIONS

“We hold that BYU could not pursue Duncan et al. for SoftSolutions' debt using only post-judgment collection procedures because those procedures did not afford those individuals a constitutionally permissible degree of due process of law.” (¶ 1)

“The bare essentials of due process thus mandate adequate notice to those with an interest in the matter and an opportunity for them to be heard in a meaningful manner.” (¶ 28)

“It is apparent that a claim founded on either theory is a civil action that must be prosecuted in the manner prescribed in the Utah Rules of Civil Procedure, commencing with the filing of a summons and complaint and not the abbreviated post-judgment collection procedures of rule 69.” (¶ 39)

“A violation of due process does occur if a court permits a cause of action that should properly be prosecuted as a civil action to proceed under those rules promulgated to assist in the collection efforts of a judgment creditor.” (¶ 41)

FACTUAL BACKGROUND

BYU held a judgment against dissolved corporation SoftSolutions for approximately \$1.67 million arising from a royalty dispute involving BYU's D-Search software. SoftSolutions had transferred the licensed technology to its subsidiary, STC, whose stock was later sold to WordPerfect, with proceeds distributed to entities controlled by Duncan et al. Because SoftSolutions had no assets, BYU used post-judgment collection procedures to seek execution against Duncan et al. and property allegedly traceable to the stock-sale proceeds, even though Duncan et al. had never been named as parties or served with a complaint.

PROCEDURAL HISTORY

BYU obtained a judgment against SoftSolutions arising from a royalty dispute and then pursued collection after discovering that SoftSolutions had no assets. The district court consolidated BYU's collection action with litigation against Tremco and later entered a July 2002 supplemental order extending liability to Duncan et al. as associates of an unincorporated association and authorizing execution against property allegedly traceable to SoftSolutions. After the Utah Supreme Court's prior decision declined to reach Duncan et al.'s claims for jurisdictional reasons, the district court entered written orders in 2004, which Duncan et al. appealed. The Supreme Court held that the post-judgment procedure violated due process and vacated the supplemental order.

DISPOSITION

vacated

REMAND INSTRUCTIONS

No remand was necessary. The court stated that vacating the supplemental order extinguished any proceeding that might merit remand and eliminated the need for Duncan et al. to intervene.

CASES CITED

- Brigham Young University v. Tremco Consultants, Inc., 2005 UT 19, 110 P.3d 678
- Softsolutions, Inc. v. Brigham Young University, 2000 UT 46, 1 P.3d 1095
- Murphy v. Crosland, 915 P.2d 491 (Utah 1996)
- Steenblik v. Lichfield, 906 P.2d 872 (Utah 1995)
- Pangea Technologies, Inc. v. Internet Promotions, Inc., 2004 UT 40, ¶ 8, 94 P.3d 257
- Chen v. Stewart, 2004 UT 82, ¶ 68, 100 P.3d 1177
- Richards v. Jefferson County, 517 U.S. 793, 798 (1996)

- Meyers v. Interwest Corp., 632 P.2d 879, 880 (Utah 1981)
- Gillett v. Price, 2006 UT 24, ¶ 13, 135 P.3d 861
- D.A. v. State (State ex rel. S.A.), 2001 UT App 307, ¶ 8, 37 P.3d 1166
- State v. Holland, 921 P.2d 430, 433 (Utah 1996)
- Spor v. Crested Butte Silver Mining, Inc., 740 P.2d 1304 (Utah 1987)
- Smith v. Grand Canyon Expeditions Co., 2003 UT 57, 84 P.3d 1154
- Amoss v. Bennion, 420 P.2d 47, 49 (Utah 1966)
- In re Madsen's Estate, 123 Utah 327, 259 P.2d 595 (1953)
- McBride-Williams v. Huard, 2004 UT 21, 94 P.3d 175
- Cheves v. Williams, 1999 UT 86, ¶ 52, 993 P.2d 191
- Tracy v. University of Utah Hospital, 619 P.2d 340, 341-42 (Utah 1980)
- Salt Lake City Corp. v. James Constructors, Inc., 761 P.2d 42, 44 n. 5 (Utah Ct. App. 1988)

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