

NO. A11-2020

State of Minnesota
In Supreme Court

Scott L. Stevens,

Relator,

vs.

Commissioner of Revenue,

Respondent.

REPLY BRIEF OF RELATOR SCOTT L. STEVENS

MARK A. PRIDGEON (#88262)
7301 Ohms Lane
Suite 420
Edina, MN 55439-2339
(952) 835-8320

Attorney for Relator

JEREMY D. EIDEN (#0388289)
Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street, Suite 900
St. Paul, MN 5101-2127
(651) 757-1224

Attorney for Respondent

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ARGUMENT

I. The Tax Court and Respondent, Commissioner of Revenue, have misinterpreted and misstated Relator Scott L. Stevens' authority and role with TC Avanti. Twin Cities Avanti Stores LLC ("TC Avanti").

The Respondent Commissioner of Revenue misstates Relator Scott L. Stevens' authority within Twin Cities Avanti. The Respondent states: "Mr. Stevens actively participated with Mr. Nelson in discussions of who to pay and when. It is undisputed that Mr. Stevens was an integral part of TC Avanti's financial decisions." (Commissioner Respondent's Brief, p.15.) It is **not** undisputed that Mr. Stevens was an integral part of TC Avanti's financial decisions. Indeed, in Relator's Brief, Mr. Stevens argues that he had no independent authority in matters of finance and the company had two components: a financial component and an operational component. Mr. Stevens acknowledged that he played a significant role in the operations but had little, if any, discretion on finances. (Relator's Brief, p.12)

Even in the details, Respondent misconstrues essential facts. For example, Respondent states that Mr. Stevens entered into a consulting agreement to retain a financial consultant Robert Lovejoy. However, the record makes clear that Mr. Lovejoy was firmly allied with Bruce Nelson. Both shared a Wall Street investment banking background and worked with and for each other in various previous engagements. (RA 15, Scott Stevens's deposition p.18-19.) Mr.

Lovejoy's Affidavit notes that the amounts that were to be paid towards the expenses of TC Avanti were "limited in amount by projected cash balances and cash flow forecast prepared by Bruce Nelson." (RA 14, p.6 A-0103) Mr. Nelson maintained this meticulous control over the cash flow of TC Avanti by requiring cash flow information in meticulous detail. (RA 15, A-230)

Respondent continues to inflate Mr. Stevens's financial role by highlighting Mr. Stevens role in the discussions to sell a group of stores to a local competitor (Respondent's Brief, p.5) but apparently missed the point that \$500,000 of those proceeds were diverted from TC Avanti to one of Mr. Nelson's other entities. (RA 15, Ex A, p. 47-49) and (Relator's Brief, p. 16-17) Respondent notes that Mr. Stevens proposed the business model of "dealerizing" rather than operating stores but fails to note that he was proposing that plan because the working capital to "put inventory in the stores..." would never be available. As explained above, those funds would not be available because of the strict limits Mr. Nelson placed on the funds available to TC Avanti and the way those funds would be expended. (RA 15, Ex. A, p.66-67)

Respondent notes that Mr. Stevens had "relational" responsibilities with TC Avanti's suppliers but neglects to note that Mr. Nelson frequently sabotaged Mr. Stevens's efforts in that regard. (RA 15, Ex. A, p.115-116) and (Relator's Brief, p.12).

In regard to TC Avanti's unpaid tax liability, Respondent highlights Mr. Stevens role in the discussions between TC Avanti and the Minnesota Department of Revenue but fails to note that Mr. Nelson held the final authority not only on the amounts to be paid but also on any collateral to be offered for those agreements as highlighted in Relator's Brief at p.17-18.

It should also be noted, that in Respondent's Brief, Respondent describes "the Consultant" as negotiating payments on TC Avanti's gas tax liability and otherwise participating in the negotiations and efforts to pay the tax liability. (*Id.* p 7-11)

II. Estoppel should be a defense to personal liability.

Respondent's Brief further states that the question of Mr. Stevens' liability and the bankruptcy proceedings by TC Stores and TC Avanti are logically "two distinct and separate questions that have little relation to one another." (Respondent's Brief, p.19) However, the questions are logically and arithmetically intertwined. Had the bankruptcy plan succeeded, this case would be moot because TC Stores and TC Avanti would be paying the taxes at issue in this matter. It should be noted that the plan proposed by TC Stores and TC Avanti proposed a \$750,000 down payment against the taxes at issue here from the sale of a store owned by Stores. However, the Department's improvident release of their tax lien against Stores' assets eliminated the Department's security interest in Stores assets.

The remaining balance would have been paid over 48 months. If the Joint Plan of Reorganization had been approved in the Spring of 2010, we would be almost half-way through the 48 month payment period. Given the substantial down payment, well over half the taxes would have been paid by now.

Respondent states that estoppel is not available as a remedy because the “Commissioner did not induce Mr. Stevens to incur this tax debt.” Respondent also states or asserts that the Respondent Department of Revenue never promised Mr. Stevens that “the Department believed the liens or the bankruptcy would relieve Mr. Stevens of personal liability...” Mr. Stevens has never made either argument. (Respondent’s brief, p.18-19)

Relator’s argument is that TC Stores and TC Avanti changed their position in reliance on the filing of the tax liens against TC Stores by filing the Chapter 11 Bankruptcy Petitions and proposing a Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code that made provision for **full** payment of all of the outstanding petroleum taxes at issue in this proceeding. Further, Relator argues, and the factual record supports this argument, that the erroneous release of the tax liens made the Chapter 11 Bankruptcy process impossible and therefore the payment of these tax claims through the bankruptcy proceeding impossible. As a result, the Department played a major role in **preventing** the payment of this tax

liability and therefore, should be estopped from collecting these liabilities against Mr. Stevens. (Relator's Brief, p.26)

The Respondent also states that no advice was given to Mr. Stevens by Respondent. However, as Relator's Brief makes clear, (pages 26-28) Relator is not arguing that Respondent gave advice. Rather, Relator is arguing that he, Mr. Nelson and TC Stores and TC Avanti relied upon the Respondent's **actions** in filing the tax liens. As noted in Relator's Brief, actions as well as advice serve as a basis for an estoppel claim. (*Id.*)

Finally, on page 19 of Respondent's Brief, Respondent asserts that:

"Mr. Stevens has never asserted that he changed his position personally, to avoid personal liability of [*sic*] taxes owed by Avanti-precisely because he could not. Mr. Stevens, as a responsible person with the requisite control over Avanti's business, was assessable and potentially liable when Avanti signed and filed the tax returns without payment. Whether TC Stores is also liable for tax debt and whether the lien on TC Stores was valid has no bearing on Mr. Stevens' liability."

Again, Respondent misstates Mr. Stevens' arguments which have been set forth above. Mr. Stevens has never asserted that he changed his position personally in reliance upon the Respondent's tax lien filing against TC Stores. However, it is undoubted that TC Avanti did change its position in reliance on the lien filing by filing for bankruptcy protection and proposing a Plan of Reorganization that would have paid these taxes. Respondent "pulled the rug out" from under TC Avanti by then releasing its tax lien on TC Stores. Therefore, the

taxes went unpaid. Respondent now seeks to saddle Mr. Stevens with these unpaid taxes, which are, after all, TC Avanti's liability. However, Respondent seeks to deny Mr. Stevens the benefit of the fact that TC Avanti changed its position in reliance on Respondent's tax lien filing against TC Stores. If Mr. Stevens steps into the shoes of TC Avanti for purposes of the tax liability, Mr. Stevens should step into the shoes of TC Avanti for the purpose of equitable estoppel.

CONCLUSION

The judgment of the Minnesota Tax Court should be reversed and the Tax Court should be directed to enter a judgment that the Respondent Commissioner of Revenue is estopped from collecting these taxes from Relator Scott Stevens. In the alternative, the summary judgment against Relator Scott Stevens should be reversed and the Tax Court should be directed to conduct a trial on the issue of his liability for these unpaid petroleum taxes.

January 19, 2011.

Respectfully submitted,



MARK A. PRIDGEON

Attorney at Law

Attorney for Relator

7301 Ohms Lane, Suite 420

Edina, MN 55439

Telephone: (952) 835-8320

Attorney Registration No. 88262