



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



The Arizona Department of Revenue v. Actions Marine, Inc.

Melvin G. and Martha Randall, husband and wife; M. Daniel and Lisa Randall, husband and wife; John D. and Belinda Randall, husband and wife

Court of Appeals Number (1 CA-TX 06-0006);

Supreme Court Number CV 07- 0288-PR

PARTIES AND COUNSEL:

Petitioner: The Arizona Department of Revenue is represented by two Arizona Assistant Attorneys General: Paula Bickett, Chief Counsel, Civil Appeals Division and Anthony Vitagliano, Chief Counsel, Tax, Bankruptcy & Collections Division.

Respondent: Action Marine is represented by Jack Schiffman, Trompeter, Schiffman, Petrovits, Friedman & Hulse.

FACTS:

The Randalls (“Owners”) were officers and directors of Action Marine, an Arizona corporation that sold marine products at retail. While continuing to do business as a debtor in possession during the pendency of its Chapter 11 bankruptcy, Action Marine had to pay taxes and file returns. 28 U.S.C. §§959 (b) and 960. The Department filed a proof of claim and requested that during its bankruptcy Action Marine file returns for transaction privilege taxes as required by A.R.S. §42-5008(A) and §42-5061(2006). Action Marine reported \$51,174.53 in transaction privilege taxes but did not pay the taxes to the Department before being liquidated after conversion to a Chapter 7 bankruptcy case.

After the bankruptcy closed, the Department filed a collection action against both Action Marine and the Owners for their corporation’s unpaid transaction privilege taxes. A.R.S. §42-1114 (2006) (The Department “may bring an action in the name of this state to recover the amount of any [unpaid] taxes, penalties, and interest.”).

The Owners responded, arguing among other things, that they could not be held personally liable for Action Marine's unpaid transaction privilege taxes under §42-5028 (liability imposed on “persons” who fail to remit additional charges collected to cover their anticipated transaction privilege tax liability).

The parties filed cross summary judgment motions. The tax court, J. Armstrong, granted summary judgment in favor of the Department, holding that “as sole owners, officers and directors of the defunct corporate defendant, [the Randalls] are responsible for payment of the subject [tax].” The Owners unsuccessfully sought a new trial.

The Owners appealed. The court of appeals reversed and remanded, ruling that officers and directors of a corporation liquidated in bankruptcy are not personally liable for unpaid corporate transaction privilege taxes, even though their duties included remitting such taxes to the Arizona Department of Revenue, given that the governing statute, A.R.S. §42-5028, does not specifically extend such liabilities to corporate officers and directors.

The Department seeks this Court’s review of that opinion.

ISSUE:

“The court of appeals erred in construing the terms “person” and “personally liable” in A.R.S. §42-5028 to refer only to the entity taxpayer and not to the persons responsible for paying transaction privilege taxes on behalf of the entity.”

DEFINITIONS:

A.R.S. §42-5028, states:

A person who fails to remit any additional charge made to cover the tax or truthfully account for and pay over any such amount is, in addition to other penalties provided by law, personally liable for the total amount of the additional charge so made and not accounted for or paid over.

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