LOUISIANA COURT OF APPEAL

Hemenway Furniture Co. v. Lindsay

161 So. 27 (La. Ct. App. 1935) · Decided May 2, 1935

SUMMARY

The Louisiana appellate court held that a vendor's lien on goods sold on account did not extend to a collateral note, and that the creditor failed to prove the seized goods remained unpaid. Because the creditor had no enforceable lien and the bankruptcy proceeding permitted seizure only under existing liens or mortgages, the seizure was illegal. The court reversed the judgment, ordered the seizure released, permanently enjoined the sale, and reserved the debtor's claim for damages.

CASE DETAILS

COURT	Louisiana Court of Appeal
WRITING FOR THE COURT	Mills
JURISDICTION	Louisiana
DECIDED	May 2, 1935
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from a judgment maintaining a seizure, recognizing a vendor's lien, dissolving a restraining order, and awarding damages and costs. The court treated the judgment as final and considered the appeal after previously issuing mandamus to compel allowance of a suspensive appeal.
STANDARD OF REVIEW	Appellate review of the factual and legal basis for the claimed vendor's lien, the legality of the seizure, and the propriety of injunctive relief; the court treated the challenged judgment as final and definitive.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Lindsay v. Hemenway Furniture Co.

TOPICS

injunctions · appellate procedure · bankruptcy · commercial litigation · remedies

PRACTICE AREAS

commercial litigation · civil procedure · bankruptcy · remedies

QUESTIONS PRESENTED

1. Whether a vendor's lien on goods sold on an open account extends to a collateral note given to secure the account.
2. Whether the creditor established that the specific seized goods remained unpaid and were therefore subject to a vendor's lien.
3. Whether the seized property could lawfully be sold after its release from bankruptcy custody when the creditor had no established lien, even though the property was not proven exempt.
4. Whether the judgment denying injunctive relief should be treated as final and whether a permanent injunction should issue.

HOLDINGS

1. A privilege existing on the original account does not extend to a collateral note when the note was taken only as collateral and not in payment of the account.
2. A vendor claiming a lien must prove both the sale of the specific articles and that those articles remain unpaid; Hemenway failed to meet that burden.
3. A creditor without an established lien may not seize and sell property released from bankruptcy custody when the property is not subject to seizure for an unsecured ordinary money judgment, even if the debtor has not proven the property exempt.
4. Because the judgment resolved the only real issue and was final and definitive in effect, the appellate court could reverse it and order a permanent injunction restraining the sale and release of the seizure.

KEY QUOTATIONS

> *"We know of no law which extends to collateral a privilege existing upon the original obligation."* (28)

> *"The burden of establishing its lien is upon the vendor."* (28)

> *"The law allows no vendor's lien for a general balance upon all the property sold and delivered and charged for in said account."* (28)

> *"The seizing creditor, therefore, having no lien, and the property not being subject to seizure under an ordinary claim, the seizure was illegal, even though the property is not exempt."* (29)

FACTUAL BACKGROUND

Hemenway Furniture sold furniture and household effects to Lindsay on an open account, and Lindsay later gave a note as collateral for the unpaid account rather than in payment of it. Hemenway sued on the collateral note, without claiming or obtaining recognition of a privilege in the judgment, and later seized the furniture. Payments exceeded the purchase price of the seized goods, and the record did not establish that the specific items remained unpaid. After Lindsay's bankruptcy, the property was released subject only to existing liens or mortgages, while Lindsay offered no proof independently establishing an exemption.

PROCEDURAL HISTORY

Hemenway Furniture Co. obtained a city-court judgment on a collateral note and seized furniture and household effects belonging to Lindsay. After Lindsay was adjudicated bankrupt, the bankruptcy court released the property subject to existing liens and mortgages. Lindsay sought to enjoin the sale, but the city court dissolved the restraining order, recognized a vendor's lien, and maintained the seizure. The Louisiana Court of Appeal reversed and remanded, ordering a permanent injunction and release of the seizure.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The motion to dissolve is overruled; a permanent injunction must issue restraining sale of the seized property; the seizure must be released; Hemenway Furniture Company must pay the costs of the seizure and subsequent proceedings. Lindsay's right to sue for damages for the illegal seizure is reserved.

CASES CITED

- State ex rel. Lindsay v. Hemenway Furniture Co., 159 So. 183 (La. App.)
- American Furniture Co. v. Bishop, 18 La. App. 268, 137 So. 751
- Forrey v. Strange, 158 La. 941, 949, 105 So. 21, 23
- Electrical Supply Co. v. Eugene Freeman, 178 La. 741, 152 So. 510
