SUPREME COURT OF OKLAHOMA

Briscoe v. Hamer

150 P. 1101 (Okla. 1915) · Decided July 27, 1915

SUMMARY

The court held that a creditor of an insolvent bank could set off the bank's debt to him against his promissory note, even after the Bank Commissioner took possession of the bank's assets. Because the creditor's claim exceeded the note, he was entitled to extinguish the note and receive a judgment for the excess as a general unsecured claim against the insolvent bank.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Brewer
JURISDICTION	Oklahoma
DECIDED	July 27, 1915
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Briscoe appealed from a judgment entered against him on a promissory note in favor of the State Bank Commissioner after the trial court refused to permit him to offset the bank's debt to him for services.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of Oklahoma.
PARTIES	W. M. Briscoe v. State ex rel. J. D. Lankford, State Bank Commissioner

TOPICS

commercial litigation · bankruptcy · civil procedure · remedies

PRACTICE AREAS

banking law · commercial litigation · insolvency

QUESTIONS PRESENTED

1. Whether a creditor of an insolvent state bank may set off a mutual debt owed by the bank against the creditor's promissory note when the Bank Commissioner sues to collect the note.

2. Whether, when the creditor's mutual claim exceeds the note, the creditor may extinguish the note and obtain a judgment for the excess against the insolvent bank.

HOLDINGS

1. A creditor may set off a mutual debt owed by an insolvent bank against the bank's claim on the creditor's note when both debts existed at the time the Bank Commissioner took over the bank.
2. When the creditor's established mutual claim exceeds the amount of the note, the note is extinguished and the creditor is entitled to judgment against the insolvent bank for the excess, with the excess treated as a general unsecured claim.

KEY QUOTATIONS

> *"That section did not create the right of set-off, but recognized its existence and provided a method by which it could be enforced even after bankruptcy."* (283-284)

> *"Such counterclaims can be asserted as a defense or by the voluntary act of the parties, because it is grounded on the absurdity of making A. pay B. when B. owes A."* (283)

> *"Assignees, trustees in bankruptcy, and receivers are not purchasers for value, and take the estate of the insolvent subject to all set-offs, liens, and incumbrances, and in the plight existing at the date to which his title is ultimately referred"* (284)

FACTUAL BACKGROUND

The Alamo State Bank held Briscoe's $200 promissory note while owing him $250 for services. Before the mutual debts were settled, the bank became insolvent and was taken over by the State Bank Commissioner. The commissioner sued on the note, and Briscoe sought to offset the bank's debt against the note and recover any excess.

PROCEDURAL HISTORY

The State Bank Commissioner, after taking possession of the insolvent Alamo State Bank, sued Briscoe on a $200 promissory note. Briscoe asserted a set-off based on the bank's $250 debt to him for services. The trial court denied the set-off against the note, entered judgment on the note for the commissioner, and allowed Briscoe a separate judgment against the defunct bank. The Supreme Court of Oklahoma reversed and remanded for entry of judgment consistent with its opinion.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Reverse the trial court's judgment and remand for entry of judgment extinguishing Briscoe's note through the set-off and awarding him judgment against the insolvent bank for the excess, treated as a general unsecured claim.

CASES CITED

- Studley v. Boylston Nat. Bank, 229 U.S. 528, 33 S. Ct. 806, 57 L. Ed. 1316, 30 Am. Bankr. Rep. 165
- Lawson v. Warren, 34 Okla. 94, 124 P. 46, Ann. Cas. 1914C, 139
- Nix v. Ellis, 118 Ga. 345, 45 S.E. 404, 98 Am. St. Rep. 111

OPINION

BREWER, J.

The Alamo State Bank at and prior to the time of its failure held the promissory note of W.M. Briscoe in the sum of $200, and at said time was indebted to said Briscoe for services rendered it in the sum of $250. Before a settlement of said mutual indebtedness was made, the bank became insolvent, and was taken over by the State Bank Commissioner, who later caused this suit to be brought on the note.

Briscoe admitted the execution of the note, but alleged that he was entitled to offset the same with the amount the bank was indebted to him, to the extinguishment of the note in the hands of the Bank Commissioner, and to a judgment over against the insolvent bank for the amount of the excess of his claim over the amount of the note.

The *Page 282 court refused to permit him to offset his claim against the note, but allowed him judgment against the defunct institution, and rendered judgment on the note in favor of the commissioner. The failure to allow this set-off is the ground of this appeal. No brief is filed by the banking board, and we are not advised as to just what its contentions may be in the premises.

Section 303, Rev. Laws 1910, among other things, provides: "And the state shall have, for the benefit of the depositors' guaranty fund, a first lien upon the assets of said bank or trust company. * * *" Section 304, Id., provides that the Bank Commissioner shall take possession of the books, records, and assets of a failed bank, and shall "collect debts, dues and claims belonging to it," etc. In this situation of the law it seems to us that the position of the Bank Commissioner in taking charge and collecting the assets of a failed bank is quite analogous to that of a receiver or trustee in bankruptcy, or of an assignee for the benefit of creditors.

As we understand the law, a receiver, an assignee, or a trustee in bankruptcy takes the estate of an insolvent as he finds it, and succeeds to the rights of the insolvent, and only to such rights as the insolvent had at the time of the adjudication of his insolvency, and under such a situation mutual debts or credits between the estate of the insolvent and a creditor may be set off one against the other, and the balance only be allowed or paid, as the case may be.

The right of set-off in such cases is, however, usually limited to such mutual debts or credits as exist at the time of the insolvency. This right to set-off, though, is provided for in section 68 of the

Bankruptcy Law of July 1, 1898, c. 541, 30 Stat. 565 (U. *Page 283 S. Comp. St. 1913, sec. 9652), and it might be said, therefore, that this fact would destroy the analogy we have referred to.

But we find, however, that in the case of Studley v. BoylstonNat. Bank, 30 Am. Bankr. Rep. 165, 229 U.S. 528, 33 Sup. Ct. 808, 57 L.Ed. 1316, Mr. Justice Lamar, after quoting the clause in the Bankruptcy Act providing for the set-off of mutual debts, adds: "That section did not create the right of set-off, but recognized its existence and provided a method by which it could be enforced even after bankruptcy."

In the body of the opinion, it is said: "* * * The right of retention and set-off of mutual debts are frequently spoken of as though they were synonymous, while in strictness a set-off is a counterclaim which the defendant may interpose by way of cross-action against the plaintiff. But, broadly speaking, it represents the right which one party has against another to use his claim in full or partial satisfaction of what he owes to the other.

That right is constantly exercised by business men in making book entries whereby one mutual debt is applied against another. If the parties have not voluntarily made the entries, and suit is brought by one against the other, the defendant, to avoid a circuity of action, may interpose his mutual claim by way of defense, and, if it exceeds that of the plaintiff, may recover for the difference.

Such counterclaims can be asserted as a defense or by the voluntary act of the parties, because it is grounded on the absurdity of making A. pay B. when B. owes A." In the case of Lawson v. Warren, 34 Okla. 94, 124 P. 46, Ann. Cas. 1914C, 139, this court has gone quite extensively into the question of the rights of receivers, assignees, and trustees in bankruptcy in the estates which may come into their hands under the law; and that case *Page 284 quotes with approval from Nix v. Ellis, 118 Ga. 345, 45 S.E.

404, 98 Am. St. Rep. 111, as follows: "Assignees, trustees in bankruptcy, and receivers are not purchasers for value, and take the estate of the insolvent subject to all set-offs, liens, and incumbrances, and in the plight existing at the date to which his title is ultimately referred" — citing numerous authorities.

In the case of Lawson v. Warren, supra, many of the authorities are collected, and we shall not again set them out. This leads us to the conclusion that the court erred in refusing to allow Briscoe his set-off. As against the commissioner, his right of set-off having been fully established, and being in excess of his note, he was entitled to have his note extinguished, and a judgment over against the insolvent bank for the excess of his claim, which excess would stand on the same footing as the claims of other general and unsecured creditors of the bank, which, after the depositors were fully paid, would be entitled to payment out of the remaining funds or assets of the bank, if there were any.

The judgment of the trial court should be reversed, and the cause remanded, and judgment entered in conformity with the views herein expressed. By the Court: It is so ordered. *Page 285