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