SUPREME COURT OF CALIFORNIA

Coast Bank v. Minderhout

61 Cal. 2d 311 (Cal. 1964) · No. L. A. No. 27261 · Decided May 21, 1964

SUMMARY

The California Supreme Court held that an agreement restricting the transfer or encumbrance of specified real property could create an equitable mortgage when the parties intended the property to secure a debt and the instrument was reasonably susceptible to that interpretation. The court further held that the restraint on alienation did not invalidate the separate lawful security interest, and it affirmed foreclosure.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Traynor, J.; Gibson, C. J.; Schauer, J.; McComb, J.; Peters, J.; Tobriner, J.; Peek, J.
JURISDICTION	California
DECIDED	May 21, 1964
DOCKET	L. A. No. 27261
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from a judgment foreclosing an equitable mortgage and ordering sale of the real property after the trial court overruled their general demurrer and entered judgment following their failure to answer.
STANDARD OF REVIEW	The court reviewed whether the pleaded facts and the instrument were legally sufficient to support an equitable mortgage and foreclosure; on demurrer, the pleaded allegation of the parties' intended meaning was accepted, subject to whether the instrument was reasonably susceptible to that meaning.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of California
PARTIES	W. J. Minderhout et al. v. Coast Bank

TOPICS

mortgages · foreclosure · equitable lien · contract interpretation · real estate

PRACTICE AREAS

real estate · mortgages · contracts · commercial litigation · remedies

QUESTIONS PRESENTED

1. Whether the agreement restricting transfer or encumbrance of specified property created an equitable mortgage or equitable lien securing the borrowers' debt.
2. Whether the pleaded allegation that the parties intended to create a security interest was a meaning to which the agreement was reasonably susceptible.
3. Whether the transfer restriction was an invalid restraint on alienation that prevented foreclosure of the security interest.
4. Whether the creation and foreclosure of the security interest remained lawful even if direct enforcement of the promise not to transfer or encumber might be subject to separate limitations.

HOLDINGS

1. A written executory agreement sufficiently indicating an intention to make identified property security for a debt creates an equitable lien or equitable mortgage enforceable against the property in the hands of purchasers or encumbrancers with notice. The agreement at issue could create such a security interest even though it was not a legally executed mortgage or deed of trust.
2. When the complaint pleads, and the defendants admit through demurrer and failure to answer, that the parties intended to create a security interest, the relevant question is whether the instrument is reasonably susceptible to that meaning, not whether that meaning appears from the instrument's face alone.
3. The agreement's restriction on transfer was a restraint on alienation, but it was valid insofar as it permitted the bank to accelerate the debt when the borrowers transferred or encumbered the property. The restraint did not invalidate the separate lawful creation or foreclosure of the bank's security interest.

KEY QUOTATIONS

> *"[E]very express executory agreement in writing, whereby the contracting party sufficiently indicates an intention to make some particular property, real or personal, or fund, therein described or identified, a security for a debt or other obligation ... creates an equitable lien upon the property so indicated, which is enforceable against the property in the hands not only of the original contractor, but of his ... purchasers or encumbrancers with notice."* (61 Cal. 2d at 314)

> *"Accordingly, the question presented is not what meaning appears from the face of the instrument alone, but whether the pleaded meaning is one to which the instrument is reasonably susceptible."* (61 Cal. 2d at 315)

> *"The creation of that interest was a separate lawful object of the agreement."* (61 Cal. 2d at 316)

FACTUAL BACKGROUND

Coast Bank made several loans to Burton and Donald Enright, who executed a promissory note. In a separate recorded agreement, the Enrights promised not to transfer or encumber specified San Luis Obispo County property without the bank's consent until their indebtedness was paid, and the agreement authorized acceleration upon default. While part of the debt remained unpaid, the Enrights conveyed the property to Minderhout and others without the bank's consent; the defendants admitted actual and constructive knowledge of the agreement. The bank was unable to collect the accelerated unpaid balance and sought foreclosure of the equitable mortgage it claimed the agreement created.

PROCEDURAL HISTORY

Coast Bank sued to foreclose an equitable mortgage allegedly created by an agreement restricting the borrowers' transfer or encumbrance of specified property. The trial court overruled the defendants' general demurrer; when they failed to answer, the court entered a foreclosure judgment and ordered sale under Code of Civil Procedure section 585, subdivision 4. The defendants appealed, and the California Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- McColgan v. Bank of California Assn., 208 Cal. 329, 336-338, 281 P. 381, 65 A.L.R. 1075
- Daggett v. Rankin, 31 Cal. 321, 327
- Higgins v. Manson, 126 Cal. 467, 469-470, 58 P. 907, 77 Am. St. Rep. 192
- Dingley v. Bank of Ventura, 57 Cal. 467, 472
- Racouillat v. Sansevain, 32 Cal. 376, 388-389
- Burns v. Peters, 5 Cal. 2d 619, 625, 55 P.2d 1182
- Title Ins. & Trust Co. v. California Development Co., 171 Cal. 173, 201-202, 152 P. 542
- Earle v. Sunnyside Land Co., 150 Cal. 214, 227-228, 88 P. 920
- Peers v. McLaughlin, 88 Cal. 294, 297-298, 26 P. 119, 22 Am. St. Rep. 306
- Remington v. Higgins, 54 Cal. 620, 623-624
- Love v. Sierra Nev. Lake Water & Mining Co., 32 Cal. 639, 652, 91 Am. Dec. 602
- Richards v. Farmers' & Merchants' Bank, 7 Cal. App. 387, 395, 94 P. 393
- Imbach v. Schultz, 58 Cal. 2d 858, 860-861, 27 Cal. Rptr. 160, 377 P.2d 272
- Reid v. Overland Machined Prods., 55 Cal. 2d 203, 210, 10 Cal. Rptr. 819, 359 P.2d 251
- Beneficial Fire & Cas. Ins. Co. v. Kurt Hitke & Co., 46 Cal. 2d 517, 524-525, 297 P.2d 428
- Barham v. Barham, 33 Cal. 2d 416, 422-423, 202 P.2d 289
- Balfour v. Fresno Canal & Irr. Co., 109 Cal. 221, 225-226, 41 P. 876
- Fritz v. Gilbert, 8 Cal. 2d 68, 71, 63 P.2d 291
- Prey v. Stanley, 110 Cal. 423, 426-427, 42 P. 908
- Murray v. Green, 64 Cal. 363, 367-369, 28 P. 118
- Los Angeles Inv. Co. v. Gary, 181 Cal. 680, 682, 186 P. 596, 9 A.L.R. 115
- Bonnell v. McLaughlin, 173 Cal. 213, 216, 159 P. 590

- Seymour v. McAvoy, 121 Cal. 438, 442-443, 53 P. 946, 41 L.R.A. 544
- People v. Klopstock, 24 Cal. 2d 897, 901, 151 P.2d 641
- Chapman v. Great Western Gypsum Co., 216 Cal. 420, 426-427, 14 P.2d 758, 85 A.L.R. 917
- Hall v. Brittain, 171 Cal. 424, 425, 153 P. 906
- Vannucci v. Pedrini, 217 Cal. 138, 143-145, 17 P.2d 706
- Tu-Vu Drive-In Corp. v. Ashkins, 61 Cal. 2d 283, 38 Cal. Rptr. 348, 391 P.2d 828
- Sloman v. Cutler, 258 Mich. 372, 376, 242 N.W. 735
- B. Kuppenheimer & Co. v. Mornin, 78 F.2d 261, 263-264
- Fisher v. Safe Harbor Realty Co., 150 A.2d 617, 620 (Del.)
- Western States Fin. Co. v. Ruff, 108 Ore. 442, 449-454, 215 P. 501, 216 P. 1020
- Knott v. Shepherdstown Manufacturing Co., 30 W. Va. 790, 796, 5 S.E. 266