Marquette Law Review

Volume 17
Issue 4 *June 1933*

Article 7

Bankruptcy - Chattel Mortgages

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RECENT DECISIONS

BANKRUPTCY—CHATTEL MORTGAGES.—In December, 1929, the bankrupt, a corporation, purchased from the appellants a quantity of goods. The payment had been secured by notes which remained unpaid at maturity. In June, 1930, the bankrupt gave a new note and signed a chattel mortgage, which was acknowledged Aug. 27, 1930 and recorded on Sept. 12, 1930. On Jan. 10, 1931 an involuntary petition in bankruptcy was filed against the corporation, and it was adjudged a bankrupt. Appellant sought to reach the goods covered by the chattel mortgage. The trustee defended, claiming that to allow the foreclosure would give the appellant an unlawful preference. *Held,* that the bankrupt's estate is entitled to the property free of the lien of the chattel mortgage. *In re Wisconsin Refining Corporation, Heil Co.* v. *Kelley,* 63 (2d) 159 (C.C.A. 7th, 1933).

The trustee in bankruptcy, to establish a recoverable preference, must show (1) a transfer of property or money to a creditor, during insolvency and within four months of bankruptcy, (2) that the creditor had reasonable grounds for believing that the bankrupt was insolvent, and (3) that the effect of the transfer was to give the creditor a greater percentage of his debt than the other creditors of the same class. *In re Pingel,* 283 Fed. 664 (D.C. Mich., 1922); *Abele* v. *Beacon Trust Co.,* 278 Mass. 438, 117 N.E. 833 (1916). All liens acquired four months prior to the filing of the petition remain valid liens under the Bankruptcy Act, and are not disturbed by any bankruptcy proceedings. *Williams* v. *Bosworth,* 102 Miss. 160, 59 So. 6 (1912).

A chattel mortgage is valid under sec. 241.08, Wis. Stats., as between the parties, though not as to anyone else, without recording. Filing is a mere substitute for possession and thus fully as effective. *In re Antigo Screen Door Co.,* 123 Fed. 249 (C.C.A. 7th, 1903). As against the rights of a chattel mortgagee, a trustee stands in the position of an attaching creditor, 11 U.S. C.A. § 75a (2); *Lake View State Bank* v. *Jones,* 242 Fed. 821 (C.C.A. 7th, 1917). Where the law of the state makes a chattel mortgage invalid as against the creditors of the mortgagor, if it is not filed or recorded, it is also invalid for the same cause as against the trustee in bankruptcy. *In re H. G. Andrae Co.,* 117 Fed. 561 (D.C. Wis., 1902). Where the mortgage is recorded or filed, but not until a considerable time after its execution, or just before the commencement of the proceedings in bankruptcy, it is not necessarily invalid. *In re Roverts,* 227 Fed. 177 (D.C. Ga., 1915). Where the mortgagee unreasonably delayed the filing of the chattel mortgage, or because of a secret agreement with the mortgagor so to do, when filing was required by statute, the mortgage was void as against the trustee. *In re Richardson Co.,* 294 Fed. 451 (C.C.A. 2d, 1923); *Fourth National Bank of Macon* v. *Willingham,* 213 Fed. 219 (C.C.A. 5th, 1914).

Where a chattel mortgagee takes possession of the property within the four month period under the terms of a chattel mortgage valid only as between the parties when unrecorded, given in good faith prior to such period, the act of taking possession is not a voidable preference. *Bogden* v. *Fort,* 75 Col. 231, 225 Pac. 247 (1924); *Kettenbach* v. *Walker,* 32 Idaho 544, 186 Pac. 912 (1920); *Oklahoma State Bank of Enid* v. *Buckner,* 90 Okl. 109, 217 Pac. 189 (1923); *Riverside Machinery Depot* v. *American Steel Supply Syndicate,* 232 Mich. 22, 204 N.W. 766 (1925). Nor is there a voidable preference when property is sold under an equitable lien; since the payment of the proceeds of the sale for prefrence purposes relates back to the date of the contract, although the sale was made within four months of the filing of the petition in bankruptcy. *Britton* v. *Universal Investment Co.,* 262 Fed. 111 (C.C.A. 7th, 1919).

In the principal case, the recording act protected attaching creditors. The mortgage therein was given to secure an antecedent debt. It was executed more than four months prior to the filing of the petition, when the bankrupt was in fact insolvent; and, as the court found, the creditor had reason to know he was insolvent. It was recorded within the four months period. It is suggested that the court may well deny protection to creditors situated as the plaintiff therein since the security was never bargained for when the loan was made. Had the creditor filed his mortgage immediately, he would have been protected. His failure to record until within the four months period, gives the court an opportunity to deny protection to one who did not originally bargain for the security. See *In re Skepoka,* 32 F. (2d) 1012 (D.C. Neb., 1929).

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COMPARATIVE NEGLIGENCE—REDUCTION OF DAMAGES.—Plaintiff sued to recover damages for injuries caused by defendant's negligence. The jury returned a special verdict finding that defendant was negligent and that such negligence was the proximate cause of plaintiff's injuries; that plaintiff was also negligent and that his negligence also contributed to his injuries; that the total amount of plaintiff's damages were $4,220; that the proportion of negligence attributable to plaintiff was 25%. Judgment was entered in favor of plaintiff for 75% of the total injury; appeal. *Held,* judgment affirmed. *Engebrecht* v. *Bradley,* (Wis. 1933) 247 N.W. 451.

The instant case was decided under the Comparative Negligence Law, section 331.045, Wis. Stats. When the jury finds that the negligence of the defendant proximately causing the injury is greater than the negligence of the plaintiff proximately causing the injury, the correct method of determining the damages due plaintiff is (1) to find the total damages suffered by the plaintiff, and (2) to reduce such damages by the proportion which plaintiff's negligence bears to the combined negligence of plaintiff and defendant. [This was the method suggested by Professor Campbell in "Wisconsin's Comparative Negligence Law, 7 Wis. Law Rev. 223 at 228, 243 (1932), before any decision had been made by the Supreme Court. The same construction has been given to statutes with similar provisions regarding the reduction of damages, in other jurisdictions. *Norfolk & W. Ry Co.* v. *Ernest,* 229 U.S. 114, 33 Sup. Ct. 654, 57 L.Ed. 1097 (1913); *Tendall* v. *Davis,* 129 Miss. 30, 91 So. 701 (1922).] In *Paluczak* v. *Jones,* (Wis. 1932) 245 N.W. 655 the court states that "one of the parties may recover when there is a finding that his negligence is less than that of the other, but his recovery must be reduced in such ratio as his negligence bears to the other's." This would mean that if plaintiff were 25% negligent and defendant 75%, and the total damages suffered by plaintiff were $1,000; the plaintiff could recover that proportion of $1,000 as 25% bears to 75%, or $666.66. This statement is withdrawn by the principal case, and the morrect method is indicated, as above, whereby plaintiff recovers that proportion of $1,000 as 25% bears to 25% plus 75% or $750.

The Court considered the new law for the first time in *Brown* v. *Haertel,* (Wis. 1932) 244 N.W. 630; although it found as a matter of law that the plaintiff was guilty of contributory negligence, the Court refused to find as a matter of law that such negligence was equal to or greater than defendant's negligence, holding that except for unusual cases where the negligence of both