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Article 12

Personal Property - Sales - Fraudulent Conveyances

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ex rel. Carter vs. Harper, 182 Wis. 148, 196 N.W. 451, 33 A.L.R. 269; Maercker vs. Milwaukee, 151 Wis. 324, 139 N.W. 199, L.R.A. 1915 F, 1196 annotated cases 1914 B, 199.)

To the second argument the court said that the amendment was valid although to a void ordinance because it was an amendment by name only, being in substance and manner of adoption an enactment, and therefore of an independent character. Here the court quoted from the appellant's own concession, "that an ostensible amendment of a void ordinance may in fact be an entirely new ordinance operating entirely prospectively and entirely free from dependence on a former void ordinance and therefore valid as a new ordinance."

To the third argument the court answered that the penalty of the original invalid ordinance was carried over into the amendment by its very terms and that the legislative intent by the subsequent amendment was to cure the invalid act. Hence the ordinance had a penalty.

And finally to the fourth contention the court remarked, "The reservation in the ordinance to the effect that the common council might upon petition, after public notice and hearing, and after report by its committee, make changes in the district, does not affect the appellant. The record is barren of any evidence that the common council ever granted a permit to any person, firm, or corporation for any use not in conformity with the ordinance. The appellant's rights are not affected by that provision, and his objection in this particular is not well founded. Gorieb vs. Fox. 274 U.S. 603, 47 S. Ct. 675, 71 L. Ed. 1228, 53 A.I.R. 1210."

The law of this case is in accord with the generally accepted views (See R.C.L. and Corpus Juris under Zoning and Constitutional Law—Police Powers) that a municipality has the right to regulate zoning if it acts within reason for the public good without seeking to determine in what manner any premises in the restricted district shall be used, and further that an amendment to a void ordinance is valid if the amendment is to cure the defect of the prior invalid ordinance, and is so complete and sufficient unto itself as to be virtually independent of the invalid ordinance.

By increasing an already long line of authorities, the decision tends to settle more thoroughly the rights of a municipality with respect to zoning.

CLYDE SHEETS.

PERSONAL PROPERTY—SALES—FRAUDULENT CONVEYANCES. International Shoe Co. v. Hughes, et al. 237 N.W. 77 (Wis.). Justice Wickhem, in this case resolves the matters of law involved into two

queries, "First, did the defendant partners, Hughes and Cujak, falsely and fraudulently misrepresent their net worth to the plaintiff in such a way as to give the plaintiff the right to rescind the contract as to Hughes and Cujak; second, assuming that the first question is answered in the affirmative and that the title of Hughes and Cujak to the goods sold was defective and voidable, was the defendant Chaimson an innocent purchaser for value and entitled to take free and clear from the plaintiff's equity of rescission?"

It seems that in the instant case the International Shoe Company sued in replevin to recover the possession of certain stock sold to Hughes and Cujak, partners doing business as the H. &. C. Bootery. Upon the strength of a financial statement offered by the partnership the plaintiff shipped a desired number of shoes to the defendants. A similar subsequent order was held up, pending a second financial statement; this further statement showed a $1,500 increase in assets, so the defendant shipped more stock: Later, being in failing circumstances, the partners contracted for the sale of their stock and fixtures to one Chaimson. Having received the bill of sale, Chaimson notified all creditors of the transaction. Plaintiff elected to rescind the sale of second shipment of goods. After the action had been commenced, Hughes and Cujak filed petition in bankruptcy.

The evidence showed that the second financial statement failed to list as partnership obligations debts amounting to $3,500, which one partner had incurred by borrowing on his personal credit, proceeds of which were used to pay partnership debts and which he expected the partnership to repay to him. The evidence further showed that there were no adequate books of account, the only method of listing liabilities being adding up bills upon the spindle, and that hardly three months after making the second statement the H. & C. Bootery was insolvent, owing almost six times the obligations listed in the statement, and with considerably less than one-half the assets claimed by the statement.

The Wisconsin court responds to this situation in much the same way that another court reacted to a somewhat analogous state of affairs; in Fechheimer & Co. v. Solomon, 33 Fed. 787, 2 L.R.A. 153, the learned judge remarks—"For this startling transformation of their condition they offer neither explanation nor excuse. There had been no disaster from flood or fire, no epidemic, none of those extraordinary circumstances which at times cause the stoutest houses to tremble." The Wisconsin justices seem satisfied that the transformation in the case at hand was startling enough to show misrepresentation of net worth.

The verdict also indicates satisfaction that the representations were representations of material facts—made to induce the sale—relied upon

by the plaintiff—relied upon with a right to do so. Such reliance under Wisconsin rulings is sufficient to render the sale voidable, whether the purchaser knew or did not know that the representations were false provided he either knew or ought to have known the truth of the statements before making them, or provided he made them recklessly. See First National Vank v. Hackett, 159 Wis. 113, 149 N.W. 703—"Evidence that the defendant in good faith believed the representations were true is immaterial." Also Krause v. Busacker, 105 Wis. 350, 81 N.W. 406; De Swarte v. First National Bank, 188 Wis. 455, 206 N.W. 887.

Having determined that the sale was voidable as to the partnership the court proceeded to analyze the question, whether the defendant Chaimson was an innocent purchaser for value without notice and consequently entitled to take free and clear of any claims to rescission the plaintiff might have. It is stipulated that there was complete compliance with the Bulk Sales Act. (St. 1929, 241.18-241.21. Were this not true, the sale would have been void under the ruling in Gazette v. Iola Co-op Mercantile Co., 164 Wis. 406, 160 N.W. 170 (incidentally the case in which the Bulk Sales Act was held to be a valid extension of police powers) where the judges ruled that "Where a sale of goods in bulk is void because provisions of the Bulk Sales Act have not been complied with, the purchaser upon garnishment by creditors of the seller must hold the goods subject to be reached by garnishment."

In Block v. Brackett, 214 Ill. App. 488, the court sustained the right of a creditor to cause execution and levy on property after receiving notice, stating "there is a manifest intention to afford creditors the opportunity of taking such steps in regard to the stock of goods as they may desire in order to protect themselves. The Wisconsin jurists do not feel the necessity of ascertaining intention since "if compliance with the Bulk Sales Act prevents title from passing to vendee or results in his failure to pay value until he receives notice of defect in title, vendee cannot become an innocent purchaser for value."

The local Supreme Court points out that under Chaimson's agreement property sold remained in the seller for over a month's time, that the purchase price was not to be paid until a date a month away, and then only provided no action of attachment or garnishment had been commenced by any of the seller's creditors and was then pending. Therefore since Chaimson did not pay value and was not obliged to do for some time and since he had not so paid, he might be ever so innocent but he could hardly be designated at purchaser for value. Therefore, the lower court verdict for the defendant is reversed, and the cause remanded with directions to enter judgment for the plaintiff in accord with this opinion.

BOB HANSEN.