Fitzsommons Vs. Ogden

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Court : US Supreme Court

Decided On : 1812

Appeal No. : 11 U.S. 2

Appellant : Fitzsommons

Respondent : Ogden

Judgement :

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Fitzsommons v. Ogden

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APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF NEW YORK

SYLLABUS

He who has equal equity may acquire the legal estate, if he can, so as to protect his equity. Between merely equitable claimants, each having equal equity, he who has the precedence in time has the advantage in right.

This was an appeal from the decree of the Circuit Court for the District of New York, sitting in chancery, entered by consent *pro forma* to bring the case before this Court.

The material facts as stated by WASHINGTON, JUSTICE, in delivering the opinion of the Court were as follows:

For the purpose of securing certain of his creditors, Robert Morris, on 14 February, 1798, conveyed to the appellants, as trustees for those creditors, a certain tract of land lying in Ontario County in the State of New York, containing 500,000 acres, described by certain bounds. Previous to this, he had made conveyances to sundry persons of considerable portions of this tract, and amongst others to the defendants, S. Ogden, J. B. Church and to G. Cottringer under whom the heirs of Sir William Pulteney claims, of which the appellants had full notice. He had also, by different conveyances, granted to the Holland Company more than three millions of acres of land purchased (as this tract of 500,000 acres had been) from the State of Massachusetts, all in the same county and adjoining the land in question.

On 8 June, 1797, a judgment, at the suit of Talbot and Allum against Robert Morris, was docketed in the supreme court of the State of New York, which, being prior in date to the conveyance made to the appellants, bound all the land which passed by it to the appellants. The bill states that Robert Morris, being confined in the jail at Philadelphia, in order to prevent any improper

use from being made of the above judgment, and on condition that the title to the land conveyed to the trustees should in no wise be impaired by it, procured Gouverneur Morris to advance the money for such judgment from motives of friendship; that the said judgment was assigned to Adam Hoops, the mutual friend and agent of the parties, which was done to prevent it from being used injuriously against the trustees and the creditors for whom they acted and also to preserve to Robert Morris the right of redemption in 1,500,000 acres which he had conveyed

to the Holland Company, in nature of a mortgage as he supposed. That A. Hoops afterwards assigned the said judgment to Gouverneur Morris, and on 16 September, 1799, Robert Morris confirmed the said trust deed (of which it is worthy of remark no mention had been made in the previous parts of the bill), and further agreed that any other land he might have in that county, which had not been previously conveyed, should be applied to pay that judgment in the first place, and the said last mentioned lands were to be sold upon an execution and to be purchased by A. Hoops under Talbot and Allum's judgment for the trustees, to which G. Morris assented, the trustees agreeing to mortgage the land to be purchased, to repay G. Morris the sum advanced for the purchase of the judgment.

It appears by the evidence that previous to the promise thus charged in the bill to have been made by G. Morris to R. Morris, the judgment of Talbot and Allum had been conditionally purchased by R. Morris, Jr., one of the appellants, avowedly for his individual use, from Cotes, Titford & Brooks who then held it by assignment. That when this purpose was effected, it was agreed that the assignment should be made to A. Hoops, though in reality for the use of R. Morris, Jr., and should remain in the hands of a third person as an escrow to take effect on the payment of the note given by the said R. Morris, Jr., for the purchase of the judgment, and that the same should belong to Thomas Cooper, who endorsed the said note, in case he should be compelled to discharge the same.

R. Morris, about the time when this note would become due, found himself unable to take it up, and on

this account, G. Morris had been solicited by R. Morris, and consented to pay the money and to retain the judgment to secure the advance. G. Morris in his answer, expressly denies that any communication was made to him by R. Morris of his motives for asking his assistance in procuring an assignment of the judgment or that the had ever heard or knew of the claim of the trustees to any part of this 500,000 acre tract, or that the same would, in any manner, be affected by the

judgment of Talbot and Allum, until some time after he had paid for the judgment, when it was accidentally communicated to him by A. Hoops, who held the assignment of the same for A. Morris, Jr., as before mentioned. Upon receiving this information, G. Morris, with the assistance of his counsel, Thomas Cooper, projected a plan for protecting the interests of the trustees from being sacrificed by a sale under the execution which might issue on that judgment. Articles of agreement were accordingly drawn and executed by G. Morris and A. Hoops on 29 August, 1799, by which it was stipulated that the whole of the lands in the County of Ontario, purchased by R. Morris from the State of Massachusetts, amounting to upwards of four millions of acres, should be sold under the judgment, and should be purchased by A. Hoops, who should convey a certain part thereof to G. Morris and should also mortgage that part of the said land which then belonged to the trustees to the said G. Morris for securing the advance made by him on the purchase of the said judgment. Although this large tract of country was, by this arrangement, to be sold under the above judgment, yet that judgment being posterior to the conveyances made to the Holland Company, as well as to the other defendants below, they were consequently not bound by the judgment, nor could the title of the grantees have been affected by a sale under it. The object of this agreement, however, in relation to those lands was to secure to G. Morris a supposed but totally unfounded claim which R. Morris had asserted to an equity of redemption in one of the large tracts sold by him to the Holland Company, and also an imaginary quantity of surplus land presumed by R. Morris to be somewhere within the bounds of this great tract of country which was to be sold, which surplus, as it afterwards turned out, had no

real existence. As to the land belonging to the trustees, which it is admitted was bound by this judgment, G. Morris was contented to receive a mortgage of that to secure his advance for the judgment.

A draft of an agreement was also made by Thomas Cooper, by the directions of G. Morris and delivered to A. Hoops to be carried to Philadelphia, and to be proposed to R. Morris and the trustees, but the terms of that agreement do not appear in any

part of this record, although it is fairly to be presumed that it did not vary materially from the above agreement between G. Morris and A. Hoops. This draft was not altogether approved by the parties in Philadelphia, and another agreement was accordingly drawn and executed by R. Morris, the trustees and A. Hoops, bearing date 16 September, 1799, which did not materially differ from the agreement of 29 August preceding except that, by the latter, the surplus land, if there should be any, was to be mortgaged to the trustees as a security for reimbursing the whole or such part of the aforesaid judgment as the trustees might be obliged to pay for the discharge of the mortgage to be given by A. Hoops for securing the advance made by G. Morris for the purchase of the judgment.

This agreement was afterwards shown to G. Morris, who expressed some displeasure at its departure from the plan which he had himself arranged; but the admits in his answer that he never communicated his disapprobation either to R. Morris or to the trustees.

It appears in evidence that there was a stay of execution on the judgment of Talbot and Allum for three years from the time it was entered, which of course would not have expired before 8 June, 1800. This stay was released by R. Morris at some period subsequent to the interview which took place at the jail between R. Morris and G. Morris, but the particular time when it was executed does not appear from the record. It is not, however, improbable that it was not long subsequent to the second of May, 1799, since it appears that on that day, R. Morris, Jr., in a letter addressed to T. Cooper, directing him to assign the said

judgment to G. Morris, requested him also to forward to him the form of a release to be executed by his father.

In pursuance of the arrangement which had been agreed upon between these parties as above mentioned, all the lands which R. Morris had purchased from the State of Massachusetts in the County of Ontario were advertised to be sold under the said judgment on 6 February, 1800. Hoops, as it had been agreed, attended

on the day of sale and bid for the land, but being overbid and not having the means to pay for the same in case it should be struck off to him, he prevailed upon the sheriff to adjourn the sale to 13 May following upon his engaging to pay the sheriff his poundage, which undertaking G. Morris, soon afterwards, on application, furnished him with the means of discharging.

On 22 April, 1800, G. Morris, without having communicated to R. Morris or to the trustees the slightest intimation that he had come to such a determination, assigned over the said judgment to the Holland Company for a full consideration paid therefor, and without notice, as they, the Holland Company, expressly allege in their answer, of the claim of the trustees or of the equity stated in their bill.

The same day, articles of agreement were entered into between Thomas L. Ogden . . . the Holland Company . . . and G. Morris by which it was stipulated that the sale of all the lands by the execution on the aforesaid judgment, should take place, and should be purchased by the said Ogden in trust to convey to the Holland Company the several tracts of land which had been granted to them by R. Morris and to the several persons to whom conveyances had been made within the limits of the 500,000 acre tract prior to the deed to the trustees, the tracts to which they were respectively entitled, or such parts thereof as three persons, Hamilton, Cooper and Ogden, should direct, and as to the residue of the said 500,000 in trust to convey the same to such persons in such parcels and upon such terms as the said Hamilton and others should direct. In execution of this agreement, Ogden attended the sale on 13 May,

and purchased the whole of the lands taken in execution under the said judgment for the sum of $5,200, and received a sheriff's deed for the same. Hamilton, Cooper and Ogden, in virtue of the powers vested in them, directed conveyances to be made by Ogden to the Holland Company according to the bounds expressed in the several conveyances to them by R. Morris, except so far as such bounds would interfere with Watson, Cragie, and Greenleaf. In order to compensate the defendants, Samuel Ogden, Sir William Pulteney, and John B. Church for the land

taken on the westward of their tracts, by fixing the true meridian line of the Holland Company to the east, the eastern line of those persons is made to run in upon the lands claimed by the trustees so far as to give the former the full quantity of land mentioned in their respective conveyances. The direction, or award, as it is called, then proceeds to allot to the trustees 58,570 acres (not half the quantity they claimed) upon certain conditions, one of which is to pay to the said trustee, for the use of the Holland Company, $5,623 with interest from 22 January, 1800. This sum together with other charged upon such of the grantees as were benefited by this arrangement, were intended to reimburse the Holland Company the sums they had advanced, not only for the purchase of Talbot and Allum's judgment, but of another which, being posterior to the conveyance to the trustees, created, of course, no lien upon any part of the 500,000 acre tract.

The prayer of the bill is for a conveyance by Thomas L. Ogden of all the land to which the trustees are entitled according to its real boundaries upon the trustees' paying such proportion of the money due by Talbot and Allum's judgments as is fairly chargeable on their land, and for general relief.

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WASHINGTON, J. after stating the facts of the case, delivered the opinion of the Court as follows:

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The first point made by the counsel for the appellants is that G. Morris ought to be considered as a trustee of Talbot and Allum's judgment for the trustees. On this point it is contended that although in the first instance, G. Morris might have had no other inducement in purchasing that judgment than to perform a friendly service to R. Morris, yet he afterwards charged himself with the interests of the trustees by an express declaration contained in the agreement of 29 August, 1799, connected with the subsequent agreement of the 16 September, 1799, which, notwithstanding his disapprobation of some parts of it, he adopted by his silence

and subsequent conduct. The trust being thus established, it is then contended that the Holland Company, the purchasers of this judgment from G. Morris, took the same clothed with all the equitable rights of the trustees, which were attached to it in the hands of G. Morris upon the ground that a judgment is a chose in action, and the assignment passes no more than an equitable interest to the debt of which it is the evidence. Having arrived at this point, the title of the trustees is placed upon the well known principle which governs a court of chancery that between merely equitable claimants, each having equal equity with the other, he who hath the precedence in time has the advantage in right.

If the cause rested upon this state of the case, it would be incumbent on the Court to examine these principles and their application to the respective pretensions of the trustees and of the Holland Company. Whether an equity arising to a third person who claims the chose in action, and whose title depends upon a secret trust and confidence between him and the ostensible assignee, has equal equity with the person who afterwards purchases the judgment *bona fide* and without notice of a fact not disclosed by the previous assignments is a question which the Court deems it unnecessary to decide, because, though the equity of the trustees and the Holland Company should be admitted to be equal, yet the latter have acquired another title to the subject in controversy which a court of equity will never disturb. They -- or rather their trustee -- have got the fruits of their execution, and have obtained the legal estate in the land on which the judgment gave them only a lien. Having at least equal equity with the trustees, it was perfectly justifiable in them to obtain a superiority by buying in the legal estate.

Aware of this difficulty, one of the counsel for the appellants found it necessary to contend that the sale on 13 May was absolutely void, the execution having been taken out before it could lawfully issue in consequence of the stay on record which prevented its emanation prior to 8 June following. This, however is arguing against the fact, because we find that long prior to the sale and assignment of the judgment to the Holland Company, the *testatum fi. fa.* had issued by the consent

of R. Morris as well as of the trustees, who, on 6 Feb., 1800, had endeavored to render it effectual by a sale attempted on that day. The release of the stay is not spread on the record so that the terms of it or its date might be examined. But since the execution could not legally issue without a regular release filed in the court where the judgment was of record, and since the form of such a release was applied for by one of the trustees so early as 2 May, 1799, it must be presumed, against the trustees and in favor of the regularity of the proceedings, that the release was in due form, and bore date prior at least to the emanation of the execution.

But it is contended that the consideration for this release was the trust declared by G. Morris in August, 1799, or acquiesced in by him under the agreement of 16 September, and that his breach of trust in selling the judgment to the Holland Company with a view to the intended purchase of the lands in dispute by them, did away the effect of the release previously executed by R. Morris. That this was a legal consequence of the alleged breach of trust can scarcely be maintained. The release, being once regularly executed and delivered, could never afterwards be avoided at law by a failure of one of the parties to perform an act in consideration of which the release was given. It could extend no further than to charge G. Morris with a breach of contract for which he might be personally liable to the party aggrieved. But as to third persons claiming fairly under him, without notice of the alleged breach of trust, the legal effect of the release would remain unimpaired.

It is very obvious, however, that the whole of this argument is founded on an assumption of facts which are not proved and which cannot and ought not to be presumed. It does not appear from the evidence in the

cause that the trust assumed by G. Morris was the consideration of that release, and yet if the trustees would avail themselves of that circumstance to invalidate the sale and to deprive the Holland Company of the shield by which they have protected their equitable interest, such proof should be clearly made out. On the contrary, the Court must consider the fact as established (since it is asserted on

oath by G. Morris in answer to a charge in the bill that the object of G. Morris in purchasing the judgment was to confer a personal benefit on R. Morris only), that in consequence of this undertaking, made with the knowledge of one of the trustees and for the purpose of giving effect to this intention, the release was made, and it is fairly to be presumed that it was executed long prior to the arrangement made by G. Morris and the trustees in August and September, 1799, because, as has been before observed, the form of a release was applied for as early as 2 May preceding. If the date of the release was contemporaneous with or subsequent to the agreements of August and September, it was in the power of the trustees fully to have established the fact. Being essential to their argument, their having omitted to furnish the proof affords a strong presumption against them.

It is contended that the Holland Company ought to be considered in the light of purchasers of the judgment with notice of the trust, because, knowing, as they were bound to do, that the execution could not issue before 8 June, 1800, they were necessarily led to inquire into the right which they assumed of taking out execution at a prior day, and in making this inquiry they must have come to a knowledge of the trust. But the previous issue of the execution, fortified by the circumstance of the sale under it attempted in February and continued by adjournment to 13 May, rendered all inquiries into the cause of the release unnecessary. It was enough for them that the impediment to the issuing of the execution was removed at the time they purchased the judgment.

The cause appears to the Court to be so clearly in favor of the Holland Company and those claiming under them upon the point which has been examined that it seems almost unnecessary to notice those circumstances which detract from the equitable title of the trustees.

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But it is obvious that the injury of which they complain has arisen in a great measure from the want of energy in themselves and a kind of helpless dependence upon others, even after they were fully apprised of the steps which

were taking and which finally led to the loss from which they now seek to extricate themselves. Mr. Fitzsimmons was informed by A. Hoops prior to 22 April, 1800, that the agent of the Holland Company had gone on to New York, and the intention of this visit was most probably communicated to him, as Mr. Hoops, at the same time, advised him to have an understanding with G. Morris. If he received from this advice nothing further than a hint of possible mischief, it was sufficient to put them upon inquiry and exertion.

An attempt was made, though not much pressed, to charge G. Morris with a breach of trust and with the legal consequences thereof. That his declining to communicate to the trustees his intended sale of Talbot and Allum's judgment to the Holland Company upon terms which might seriously affect the interest of the former was unkind and a departure from the friendly conduct he had manifested towards them may be admitted. But since it must be taken as a fact in the cause that no promise of any kind had been made by G. Morris in favor of the trustees, or to his knowledge, in reference to their interests, prior to the agreement 29 August, 1799 (and even this agreement, or the draft made by Cooper and forwarded by Hoops to R. Morris and the trustees for their signature, is not alleged in the bill with any degree of certainty as a ground on which the trust is founded), and since the arrangement proposed by G. Morris in that agreement and draft was rejected by those parties and another substituted in their stead to which G. Morris was no party, it would be going too far for a court of equity, in such a case, and in favor of persons who would do nothing for themselves, to make G. Morris a trustee by implication for the purpose of charging him with a breach of trust. It is true that G. Morris might have communicated to the trustees his disapprobation of the change they had made in his arrangement, and his refusal to abide by that which they had proposed as a substitute, so as to have afforded them an opportunity to retrace their steps. But surely he was not in point of law as much bound to make such a

communication as the trustees were to obtain a certain knowledge of his assent to the agreement of 16 September. He had gratuitously offered to do a favor to the trustees upon certain conditions. They reject the offer as made and propose other

conditions. It was incumbent on them to obtain his assent to the new proposal if they meant to consider him in the light of a trustee.

The opinion given upon these points renders it unnecessary to consider the question of boundaries.

Decree affirmed without prejudice.