

Broom Vs. Armstrong

Broom Vs. Armstrong

SooperKanoon Citation : sooperkanoon.com/86364

Court : US Supreme Court

Decided On : Dec-01-1890

Appeal No. : 137 U.S. 266

Appellant : Broom

Respondent : Armstrong

Judgement :

Broom v. Armstrong - 137 U.S. 266 (1890)

U.S. Supreme Court Broom v. Armstrong, 137 U.S. 266 (1890)

Broom v. Armstrong

No. 40

Argued October 30, 1890

Decided December 1, 1890

137 U.S. 266

APPEAL FROM THE SUPREME COURT

OF THE TERRITORY OF UTAH

SYLLABUS

In Utah, an action under the statute (3460 Compl.Laws Utah, 1888) to foreclose a chattel mortgage, if commenced while the lien of the mortgage is good as against creditors and purchasers, keeps it alive and continues it until the decree and sale perfect the plaintiff's rights and pass title to the purchaser.

Under 3206 of the Compiled Laws of Utah, the rule of *lis pendens* applies to an action to foreclose a mortgage of personal property.

The enforcement of a mortgagee's rights under a chattel mortgage by a suit for foreclosure is commended as affording a safer and more adequate remedy than is afforded by actual seizure and sale of the mortgaged property or by an action of replevin, detinue, or trover.

This case arose upon a complaint filed in the District Court of Weber County, Utah Territory, on the 22d of July, 1885, by James C. Armstrong, the appellee, against Mills H. Beardsley to foreclose a mortgage of certain chattels, made January 14, 1885, by Beardsley to Armstrong as security for the payment of his promissory note of that date to Armstrong for the sum of \$8,000, payable in four months, with interest from date at one percent per month, payable monthly from date until paid, both before and after judgment, until maturity, and if not paid at maturity, ten percent additional as cost for collection, which mortgage was duly recorded as provided by the laws of the territory.

On the 22d of September thereafter, Armstrong, with leave of the court, filed an amended complaint making John Broom and E. A. Whitaker parties defendant, in which he alleged that the two defendants, Broom and Whitaker, after the original

Page 137 U. S. 267

suit was instituted, had claimed an interest in the mortgaged chattels; that Broom's claim arose from his being a purchaser of the mortgaged property at a sale on August 13, 1885, under an execution issued upon a judgment dated March 18, 1885, against the defendant Beardsley, in favor of the Utah National Bank, for

\$3,160; that the property having been levied upon by the United States marshal and sold, as above stated, was delivered by the marshal to Broom as purchaser thereof, and put into his possession; that Whitaker's claim arose out of a mortgage upon the same property, made to him by Broom August 22, 1885, to secure the payment of four thousand one hundred and thirty dollars (\$4,130) advanced by him to Broom; that this action on the original complaint had been pending from the date of the filing thereof to that time; that a notice of the pendency thereof was filed in the Recorder's office of Weber County on the 11th of August, 1885, and that the defendants had due notice and actual knowledge of all these facts and proceedings at the time the levy was made on the mortgaged property and at the time Broom received and took possession of the same. Wherefore, in addition to his prayer for foreclosure against Beardsley in the original complaint, he prayed that the two defendants, Broom and Whitaker, and all persons claiming under them subsequently to the execution of said chattel mortgage be foreclosed of all right or claim or equity of redemption in the said property and every part thereof.

The defendants Broom and Whitaker, and the defendant Beardsley also, filed their respective demurrers to the amended and supplemental complaint as not stating facts sufficient to constitute a cause of action, both of which demurrers were overruled. Thereupon the defendants Broom and Whitaker filed their separate answer setting up, among other defenses, the levy upon the property mortgaged, the purchase by Broom at the judicial sale thereof, and the invalidity of the lien of the chattel mortgage after the expiration of ninety days from the maturity of the note which it secured. The case was submitted to the court on the pleadings and

Page 137 U. S. 268

proofs. A decree was rendered for the plaintiff in accordance with the prayer of the amended complaint, finding that Beardsley was liable for the principal and interest due on the note, with ten percent additional for collection, etc., and that the said amount was a valid lien upon the property described in the amended and supplemental complaint, and directing a sale of the mortgaged property to satisfy the same, with costs, etc. The supreme court of the territory affirmed the decree of the district court, and that decree of affirmance is brought to this Court for review

by the present appeal.

Page 137 U. S. 274

MR. JUSTICE LAMAR delivered the opinion of the Court.

There seems to be no dispute as to any material fact in the case. The note and chattel mortgage sued upon were executed on the 14th of January, 1885, recorded on the 17th of the same month, and became due on the 14th of May, 1885. The action for foreclosure was commenced, and the notice of pendency properly recorded, within the ninety days provided by the statute of Utah for the lien to continue in force after the maturity of the debt secured by the mortgage. By the terms of the mortgage, it was provided that the mortgaged property should remain in the possession of the mortgagor, who, in accordance therewith, retained such possession until the property was levied on and sold under execution against the mortgagor. This levy therefore was made after the ninety days from the maturity of the debt secured by the

Page 137 U. S. 275

mortgage had expired, and while the property was in the possession of the mortgagor.

The main contention of the appellants is that the district and supreme courts erred in holding that the appellee, by virtue of his mortgage and the pendency of the foreclosure suit, had a lien upon the property as against the levy and sale on the 13th of August, under which the appellant Broom made his purchase. This presents the question which really controls this case, *viz.*, did the appellee, on the day of sale, have any right or interest in the property superior to that of the appellant Broom?

To sustain their contention, the appellants rely upon sections 2805 and 2837 of the Compiled Laws of Utah. The former of these sections provides that

"Any mortgage of personal property acknowledged and filed as hereinbefore provided shall thereupon, if made in good faith, be good and valid as against the creditors of the mortgagor and subsequent purchasers and mortgagees from the time it is so filed for record until the maturity of the entire debt or obligation for the security of which the same was given and for a period of ninety days thereafter, *provided* the entire time shall not exceed one year."

Section 2837 provides that

"Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by a delivery within a reasonable time and be followed by an actual and continued change of the possession of the thing sold or assigned, shall be conclusive evidence of fraud against the creditors of the vendor or assignor, or subsequent purchasers in good faith,"

etc. It is contended with great earnestness that these two sections, taken together, constitute an express and mandatory enactment that any sale or assignment of goods and chattels, whether in the form of a chattel mortgage or otherwise, when unaccompanied by delivery of possession to the vendee, assignee, or mortgagee, shall be absolutely void as to creditors of the latter or subsequent *bona fide* purchasers after the expiration of ninety days from the maturity of the debt secured by the mortgage.

Page 137 U. S. 276

As opposed to the holding of the district and supreme courts that the commencement of the suit to foreclose keeps alive the lien of the mortgage, and continues it in force up to the foreclosure decree, it is insisted that the sections above quoted expressly limit the duration of the lien to the expiration of ninety days from the maturity of the debt; that to this clear and imperative limitation the statute makes no exception; that such a holding adds a condition which is not only not in the sections quoted, but is absolutely prohibited by them, and that said ruling is in contravention of the principle established by the courts that statutes

authorizing chattel mortgages are to be strictly adhered to, and are never to be extended by construction beyond their letter. We cannot accept this view without coming in conflict with the manifest intent and, in some cases, the express provisions of other sections of the Utah statutes applicable to this case, which should be construed *in pari materia* with those above quoted. Section 2801 in substance enacts that a mortgage of personal property executed, acknowledged, and recorded according to law shall be valid as to all parties, even though the possession of the property be not delivered to and retained by the mortgagee, if the mortgage itself provides that the property may remain in the possession of the mortgagor and be accompanied by an affidavit required by that section. The section reads as follows:

"No mortgage of personal property be valid against the rights and interests of any person (other than parties thereto) unless the possession of such personal property be delivered to and retained by the mortgagee or unless the mortgage provide that the property may remain in the possession of the mortgagor, and be accompanied by an affidavit of the parties thereto, or, in case any party is absent, an affidavit of the parties present and of the agent or attorney of such absent party that the same is made in good faith, to secure the amount named therein, and without any design to hinder or delay the creditors of the mortgagor."

As the equivalent of the mortgagee's taking possession of the mortgaged property upon default of payment and within ninety days thereafter, a remedy in case of such default is

Page 137 U. S. 277

provided by express statutory enactment. Section 3460 of the Compiled Laws above mentioned provides that

"there can be but one action for the recovery of any debt or the enforcement of any right secured by mortgage upon real estate or personal property, which action must be in accordance with the provisions of this chapter. In such action, the court may, by its judgment, direct a sale of the encumbered property, or so much thereof

as may be necessary, and the application of the proceeds of the sale to the payment of the costs of the court, and the expenses of the sale, and the amount due to the plaintiff, and sales of real estate under judgment of foreclosure of mortgages and liens are not subject to redemption, as in case of sales under execution."

This remedy of a suit for foreclosure of a chattel mortgage has been adopted in most of the states, and has been much commended by the courts and text writers as a safer and more adequate remedy for recovering debts secured by chattel mortgages and enforcing the lien of the mortgagee than that of actual seizure and sale of the property by the mortgagee or than the action of replevin, detinue, or trover. A judicial sale of the property and the application of the proceeds as directed by the decree make a record which will protect the mortgagee from the embarrassments and charges of unfairness in the conduct of the sale which attend the actual taking possession and sale of the property by the mortgagee without a decree of the court. So

"that if it falls short of satisfying the debt, the mortgagee may have a decree for the residue, or, if there should be a surplus, that it may be awarded to the mortgagor, and so put an end to litigation. If the mortgagee himself should sell, there would be, in case of deficiency, an action at law to recover the remainder of the debt or, if there should be a surplus, the mortgagor might sue for it. Equity makes an end of these matters."

Bryan v. Robert, 1 Strob.Eq. 334, 342, per Chancellor Harper. We think a construction of the above-quoted sections of the statute should be in furtherance of these objects. But what avail would be such a remedy as a means of enforcing the mortgagee's right if his mortgage, valid and in full force at the commencement of his foreclosure

Page 137 U. S. 278

suit, is extinguished before a decree for the sale of the specific property can be rendered?

We are of opinion that the supreme court is correct in its conclusion that the foreclosure

"action having been commenced by plaintiff while the lien of the mortgage was good as against creditors [and purchasers] it kept the lien alive, and continued it until the decree and sale under it perfected his right with respect to it, and passed the title to the purchaser."

We think this conclusion follows necessarily from the very nature of the proceeding directed by the Utah statute. It is, in its primary and controlling character, an action brought by the creditor against the specific property which has been mortgaged to him by his debtor, to have it seized and sold for the payment of his debt. Its object is to reach the property to which the lien attaches and dispose of it by sale in whatever hands it may be found, whether in the mortgagor's, in those of third persons, or in those of the mortgagee himself. The special prayer of the original complaint is that a receiver may be appointed immediately by the court to take charge of, and hold possession of, said mortgaged property, and preserve the same until it can be sold on the judgment, order, or decree of the court. It is therefore a proceeding *in rem*, as much so as an attachment suit against the property of an absent debtor, or a suit instituted to partition real estate. And the property is within the power of the court until the judgment or decree is entered, so that the lien upon it may be enforced, as the statute requires. *Pennoyer v. Neff*, [95 U. S. 714](#) . The section with regard to foreclosure, which we have cited, is imperative. It expressly limits the mortgagee to that one action. Its language is: "There can be but one action for the . . . enforcement of any right . . . secured by mortgage upon . . . personal property." Of course the mortgagee cannot institute his foreclosure suit until after the debt secured by it becomes due and after the ninety days following begin to run. It is admitted that when this foreclosure suit was commenced, the mortgage was good against creditors and subsequent purchasers, and that it was superior to the bank judgment when it was obtained, after the suit was

commenced. If we accept the construction contended for by the appellants, it must follow that unless the decree of the court shall be rendered within the remainder of the ninety days, such decree cannot enforce the lien of the mortgage, and the effect would be not only to render futile the action which the statute authorized the party to bring, but to take from the court the power to give effect to its decree, which, under the statute, it is bound to render.

It was found by the court below, and we think the finding is fully sustained by the evidence -- in fact it is not disputed -- that the defendants Broom and Whitaker had actual notice and full knowledge of the mortgage of Armstrong and of the institution and pendency of the foreclosure proceedings before their claim of interest or right in the property had arisen. The notice of the pendency of the suit was recorded before the ninety days from the maturity of the debt had expired. Under the Utah statutes, the rule of *lis pendens* applies to an action to foreclose a mortgage of personal property, as well as to a similar action respecting real estate. Section 3206 of the Compiled Laws of Utah provides:

"In an action affecting the title or the right of possession of real property, the plaintiff at the time of filing the complaint, and the defendant at the time of filing his answer when affirmative relief is claimed in such answer or at any time afterwards, may file for record with the recorder of the county in which the property or some part thereof is situated a notice of the pendency of the action containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only, shall a purchaser or encumbrancer of property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names."

Section 2809 provides:

"An action for the foreclosure of a mortgage on personal property, or the enforcement of any lien thereon of whatever nature, may be commenced, conducted, and concluded in the same manner as provided by law for the foreclosure of a mortgage or lien on real property, and without the right of

redemption. "

Page 137 U. S. 280

We think, therefore, that the appellants Broom and Whitaker, having had full notice, actual and constructive, of the mortgage, and the pendency of the suit commenced before the expiration of the ninety days, acquired no valid title to the property in question, and that the purchase of the property by the appellant Broom was subject to the rights of the appellee under his mortgage. His mortgagee, with like notice, can have no superior rights in the premises. That appellee's mortgage was executed to secure a *bona fide* debt, and in good faith, is not disputed.

The decree of the supreme court of the Territory of Utah is

Affirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com