

Sunflower Oil Co. Vs. Wilson

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Appeal No. : 142 U.S. 313

Appellant : Sunflower Oil Co.

Respondent : Wilson

Judgement :

Sunflower Oil Co. v. Wilson - 142 U.S. 313 (1892)

U.S. Supreme Court Sunflower Oil Co. v. Wilson, 142 U.S. 313 (1892)

Sunflower Oil Company v. Wilson

Nos. 122, 123

Argued and submitted December 15, 1891

Decided January 4, 1892

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APPEALS FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

SYLLABUS

An oil company contracted with a railway company to purchase certain rolling stock and lease the same to the railway company at an agreed rental, the latter agreeing to purchase the same on or before a given day and pay for it in cash, or if it should be unable to do so, to turn it over to the oil company at the expiration of the contract in good order and condition. It was further agreed that freights earned by the railway by transportation for the oil company might be applied to the payment of the rental and of the purchase money. The railway company was insolvent and, before the expiration of the contract, its mortgage bondholders had proceedings instituted in equity for the foreclosure of their mortgage, in which W. was appointed receiver. The receiver continued to use the rolling stock. The oil company intervened, claiming to recover from the receiver the balance of the purchase money, and to secure the carrying on of the contract by the receiver and the retention by it of the amount of freights due from it, and their application to the payments of the rent and the purchase money. The receiver answered, declining to complete the contract, and averring that the rental had been paid in full and that there was a balance due him for freight. He also

filed a cross-petition to recover the surplus.

HELD

- (1) That the contract provided that if the railway company became unable to pay its current debts in the ordinary course of business, it should be released from its obligation on returning the property.
- (2) That the receiver had the right to return the property upon complying with the terms of the contract in respect thereto.
- (3) That notwithstanding the absence of a provision in the contract forfeiting payments already made in case of failure to complete the purchase, it was open to doubt whether an action at common law would lie to recover such payments.

(4) That the dismissal of the intervening petition did not necessarily involve the dismissal of the cross-petition, and that the court might do full justice between the parties.

(5) That the receiver was as much entitled to recover the money due upon the contract made with the railway company as with himself.

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(6) That as between the railway company and the receiver, the latter was entitled to the money, subject to any valid setoff of the oil company.

The Court stated the case as follows:

This was an intervening petition by the Sunflower Oil Company to enforce the specific performance of a contract by the railway company to purchase certain engines and cars until a balance of \$6,732.15, claimed to be due, should have been paid and discharged, and a cross-petition by the receiver to recover freights earned, in the sum of \$10,258.86, in excess of the rental of such engines and cars.

The case arises upon the following facts. In 1877, the Mobile and Northwestern Railway Company, for the purpose of raising money to build its road, executed a trust deed upon all its property, in the amount of \$250,000, to secure a series of bonds in that amount, to be negotiated. The railway company made early default in the payment of its interest upon these bonds, but notwithstanding its default, the bondholders suffered the property to remain in its hands and under the uninterrupted control and management of the company until November 15, 1886, when the original bill in this case was filed. During the continuance of such default, and in January, 1883, the president of the railway company contracted with the Baldwin Locomotive Works for two locomotives at a cost of \$7,600 each, to be completed in the autumn of that year. Just preceding their completion, the only locomotive the railway then had became permanently disabled, and, though the new locomotives ordered were nearing completion, the company had no money,

nor means of raising money, to pay for them. In this strait, the bondholders being unwilling to extend their assistance, application was made to the Sunflower Oil Company, appellant, for the means necessary to purchase the rolling stock and avert a total suspension of the company's business. Under these circumstances, a contract was executed October 6, 1883, between the oil company and the rail way company to the following effect: the oil company agreed to purchase from the Baldwin Locomotive Works two

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locomotives and tenders complete, named, respectively, "La Flour" and "Yazoo," at the price of \$7,600 each, and to invest the further sum of \$2,400 in box and flat cars, and to lease the same to the railroad to January 1, 1886, for \$1,408 per annum, payable in monthly installments. This was exactly eight percent upon the amount invested. The La Flour and the cars were to be paid for by the oil company in cash, and were at once to be and to continue its property until purchased by the railway company in the manner hereinafter provided. The Yazoo was to be purchased upon the obligation of the railway company, payable in six months from date, guaranteed by the mercantile firm of Fargason and Co., of Memphis, which guaranty the oil company agreed to procure, and until payment the title to the Yazoo was to remain in the Baldwin Locomotive Works. Should the railway company pay the obligation at maturity, the title to the engine was to vest in it; but should the same be paid by Fargason and Co., the title was to be and remain in the Sunflower Oil Company until the railway company should acquire title to it and the other property in the manner hereinafter set forth. Should the railway company promptly meet its obligation to the locomotive works for the Yazoo, then the rents payable to the oil company were to be reduced to \$800 per annum, payable monthly. The railway company agreed to take all proper care of the rolling stock and turn the same over in good order to the oil company at the end of the contract, "should said railroad company be then unable to purchase the same at the price hereinafter mentioned," and agreed to use the same upon its line of road and to turn the same over at the demand of the oil company should it at any time violate its agreement.

The railway company further agreed that it would, on or before January 1, 1886, purchase all said property from the oil company and pay for it in cash at the cost price, and should also have the right at any time before that date to purchase the whole by paying the cash price thereof, in which event the contract for rent should immediately cease and determine, but the other terms of the contract were to remain unimpaired. The railway company

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houses at several of its depots for the purpose houses at several of its depots for the purpose of receiving cottonseed in bulk for the oil company, and would provide scales for weighing seed, and would haul seed in bulk from various points along the line of its road for the oil company; that the agents of the railway company would weigh the cottonseed and purchase the same, if desired, free of cost for any such services; that it would haul all sacks for the oil company free of charge; that it would receive and haul all freights for the oil company at the Mississippi River, opposite Helena, free of charge for storage or commission, and that the freight paid should be at reasonable rates to be fixed at various times by the presidents of the two companies, but the freight on seed in bulk was not to exceed \$1.75 per ton, and that on seed in sacks was not to exceed \$2.00 per ton. It was further agreed that the railway company would not haul cottonseed in bulk for any other corporation or person, nor permit its agents to purchase or pay for cottonseed for any other corporation or person, and that it would give all needed facilities and preferences to the oil company to enable it to control all the cottonseed along the line of its road, "as it now is, or as it may be while this contract is in force." All freights earned were to be credited on the rental of the property, and, should there remain a surplus after paying the rent, it was to remain in the hands of the oil company and go as a credit upon the purchase money of said property. Interest was to be allowed said railway company on said surplus at the rate of eight percent per annum. The railway company was to furnish a monthly statement of freights at the end of each month while the contract continued, to be credited in the manner above stated. The contract was to continue in force until January 1, 1886, and on this day, January 1, 1886, a further contract was made extending the

time for one year from that date for the purchase by the railway company of such engines and cars.

In November, 1886, Moses H. Katzenberger and others, holders of a majority of the bonds, filed a bill in the District Court of the United States for the Northern District of Mississippi to enforce a sale of the property and franchises covered by the trust deed, and praying for a receiver pending the proceedings.

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Subsequently the bill was amended, and on December 16, 1886, Benjamin Wilson, the defendant and appellee in this case, was appointed receiver of the company. Having duly qualified, the receiver took charge of the road and began to operate the same under the orders of the court, using the rolling stock under an arrangement for that purpose. The same day the receiver was appointed, an order was made that the receiver continue any existing contract for the purchase or use of the rolling stock then used on said road until, for sufficient cause shown, such contract should be annulled. A subsequent order permitted him to "make any change in the contract heretofore existing" in relation to the rolling stock.

On February 14, 1887, the Sunflower Oil Company, appellant, which was not a party to the original bill, interposed by petition, setting up its contract with the railway company, alleging a balance due it of \$6,732.15 on the purchase of said engines and cars, and praying that the receiver be required to carry out the terms of said contract by continuing to carry freights for the appellant, and by allowing it to retain all moneys due or to become due the receiver for such services, as credits on such rental and purchase money accounts, until the full indebtedness of the railway company was discharged. The receiver answered denying that the railway company had ever made any binding contract to purchase such rolling stock and that the contract was a contract of rental with a mere option to buy; that appellant had retained of the freights earned by said railway the sum of \$10,258.86 in excess of the agreed rental of the property, and for the recovery of the same filed his answer in the nature of a cross-petition. The court was of the opinion that the relation between the parties was one of lessor and lessee, and

decreed that the oil company pay to the receiver the amount above named, being the excess of the earnings of the road in the hands of the oil company over the amounts due for rents. From that decree, the first appeal was taken. At the same time, an account was taken of the amount due the receiver for the surplus of freights earned by the railroad, while in his hands, over the rents due the oil company during the same period, which

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resulted in a further decree against the oil company, in favor of the receiver, for \$3,729.82. From that decree, the second appeal was taken to this Court.

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MR. JUSTICE BROWN, after stating the facts in the foregoing language, delivered the opinion of the Court.

(1) This case turns upon the construction of the contract of October 6, 1883, between the Sunflower Oil Company and the Mobile and North western Railway Company, the substantial provisions of which were that the oil company should purchase of a manufacturer certain rolling stock, which it should lease to the railway company at a rent equal to eight percent upon the cost price, the latter agreeing to purchase the same of the oil company on or before January 1, 1886, and pay for it in cash, with a proviso that in case it should be unable to purchase the same, it should turn it over to the oil company, in good order and condition at the expiration of the contract.

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There is no doubt of the general proposition that mere inability to pay is no defense to the performance of a contract or to a promise to pay. A person making purchase of an article is conclusively presumed to intend to pay for it and to have had his ability to pay in contemplation when he made the purchase, and if this proviso had not been inserted, no doubt could have arisen regarding the proper

interpretation of this contract. But here was a contingency carefully introduced into this contract upon the happening of which the railway company was to be discharged of its obligation to the oil company by returning to it the rolling stock in good order and condition. We are bound to assume that this provision was inserted for some purpose, and are bound to give it its proper effect. At the time the contract was entered into, the railway company was financially embarrassed, its only locomotive had been crippled beyond repair, and it had neither money nor credit with which to purchase another. In this extremity, it entered into negotiations with the oil company, which was itself desirous of increasing its facilities for obtaining cottonseed and a monopoly of that article along the line of said road. But in making the advance necessary to secure the requisite amount of rolling stock, the oil company naturally sought to protect itself in every possible way against loss. This it did

(1) by retaining to itself the title and ownership of such rolling stock until the same should be fully paid for;

(2) by leasing it to the road at a rental equal to eight percent upon the value of the property;

(3) by retaining the freights due the road for carriage of cottonseed, and crediting them first, upon the rent, and second upon the purchase price of the property;

(4) by providing for the return of the property in good order and condition in case the road was unable to purchase the same for cash by January 1, 1886, subsequently extended to January 1, 1887. The last was a proviso doubtless inserted out of abundant caution in order to put beyond question the return of the property in case the road should fail to pay for it in full before the expiration of the contract. Under these circumstances, we find it difficult to give these words any other than their ordinary meaning -- viz., that if the

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railway company became so deeply involved as to be unable to pay its current debts in the ordinary course of business, it should be released from its obligation

upon returning the property. In ordinary speech, a person is said to be unable to make a purchase when he has neither money nor credit sufficient for that purpose, though the entire value of his assets may be greater than the purchase price of the property. It is unnecessary to decide, however, whether the proviso in question created a mere option, or whether anything less than the total insolvency of the company constituted an inability to purchase within the meaning of the contract, since the appointment of a receiver at the suit of bondholders seems to be most conclusive evidence of inability to carry out its contracts, and indeed to have been the very contingency contemplated in the proviso. It is unnecessary even to decide whether this inability to purchase could be asserted at all by the railway company, since the defense in this case is set up by the receiver, acting in the interest of all the creditors, and claiming that, in view of the insolvency of the company, the oppressive character of the contract and the greatly reduced price at which he could secure similar property, payment ought not to be compelled from the funds in his hands.

The receiver did not, simply by virtue of his appointment, become liable upon the covenants and agreements of the railway company. *High on Receivers* 273; *Hoyt v. Stoddard*, 2 Allen 442. Upon taking possession of the property, he was entitled to a reasonable time to elect whether he would adopt this contract and make it his own or whether he would insist upon the inability of the company to pay and return the property in good order and condition, paying, of course, the stipulated rental for it so long as he used it. *Turner v. Richardson*, 7 East 335; *Commonwealth v. Franklin Insurance Co.*, 115 Mass. 278; *Sparhawk v. Yerkes*, ante, [142 U. S. 1](#) . Of course, if he elects to take property subject to a condition, he is bound to perform the condition before he can obtain title to the property. He may, however, decline to assume this obligation and return the property to the purchaser upon complying with the terms of the contract with respect to such return. The case is not

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unlike that of *Express Company v. Railroad Company*, [99 U. S. 191](#) . In that case, the express company agreed to loan the railroad company \$20,000 upon its

notes, to be expended in repairs and equipments. In consideration of this, the railroad company agreed to provide the necessary privileges and facilities for the transaction of all the business of the express company over its road, and to charge a certain sum for transportation, which was to be credited monthly toward the payment of the loan with a proviso that, if the loan were not paid within a year, the contract should continue in force for a further period or until the whole had been repaid. A mortgage upon the road having been foreclosed, the receiver repudiated the contract, forbade the express company from further using the cars of the railroad company unless upon conditions whereby the contract was virtually surrendered or ignored, and the express company was compelled to abandon the road, although the money loaned, with a portion of the interest thereon, was still due and unpaid. It filed a bill for specific performance, alleging that, the railroad company having conveyed away its property and being in part insolvent, the violation of the contract could not be compensated by any damages that might be recovered at law. This Court dismissed the bill, holding that, as the plaintiff had no lien and the contract was simply for the transportation of persons and property, the Court could not require either a specific performance by the receiver or the satisfaction of the plaintiff's demand by money, and that the express company had therefore no standing in a court of equity.

The case of *Coe v. New Jersey Midland Railway*, 27 N.J.Eq. 37, is also instructive in this connection. In that case, the Rhode Island Locomotive Works Company entered into an agreement with the railway company to furnish the latter certain locomotives and tenders, as upon lease but with the agreement that upon payment in full of the rent reserved, they should become the property of the railway. The rent was payable in installments, for which the company gave its notes. At the time of the appointment of the receiver, there was due for rent about \$120,000, and the locomotives

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were then in possession of the receiver and in use upon the road. Petitioners based their claim to relief upon the ground that the receiver requested them to leave the locomotives in his possession for use on the road, he guarantying to

keep them in good order and promising to apply for authority to pay the claim. In defense, the receiver alleged a notice by bondholders not to pay the rent or deliver the certificates therefor, which had been issued upon his application, because the property was not worth the amount agreed to be paid, and it was not for the interest of the trust that the rent should be paid. It was held that petitioners had no equity arising from the conduct of the receiver to have the contract specifically performed, without regard to the advantage or disadvantage of the trust fund; that although they appeared to be willing, up to the time they were warned not to do so, to pay for the property according to the agreement, it might have been an improvident act on their part; that the fact that the receiver had applied for leave to issue the certificates to pay the rent did not bind them, and that the court would not grant the prayer of the petitioners until satisfied that it was for the interest of the trust that it should be done; but that the petitioners would be allowed just compensation for the use of the property while held by the receiver.

(2) Notwithstanding the absence of a provision in the contract forfeiting payments already made in case of a failure to complete the purchase, it is open to doubt whether an action at common law would lie to recover such payments. The courts of Massachusetts, Maine, and Illinois hold that partial payments are forfeited, while those of Connecticut, Michigan, Minnesota, and Georgia hold that upon equitable grounds, the buyer is entitled to a return of the money. There seems to be no doubt, however, that a court of equity may require the return of the money paid, less the amount of any damage sustained to the property and a reasonable compensation for the use of the same, particularly if there be a clause in the contract providing that upon a certain contingency the property shall be returned to the seller.

(3) Under the circumstances of this case and in view of the

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fact that a court of equity takes jurisdiction of all questions with respect to this property as ancillary to its jurisdiction over the main case, the dismissal of the intervening petition does not necessarily involve a dismissal of the cross-petition,

and the court, having jurisdiction of the entire proceeding, may proceed to do complete justice between the parties.

(4) In the view we have taken of this case, it is unnecessary to consider whether the manifestly illegal stipulations in this contract had the effect of vitiating the entire agreement. It bears evidence upon its face of having been extorted from the necessities of the railway company, and contains many provisions which fail to commend it to the consideration of a court of equity.

There is no practical distinction between these two appeals. By his order of appointment, the receiver was authorized to take possession of the money and assets and all other rights and property of the railway company, wherever the same might be found, including its equitable interests, things in action, and other effects, and he is as much entitled to recover moneys due upon contracts made with the railway company as with himself. No question arises with regard to the rights of other creditors, as was the case in [*Galveston Railroad v. Cowdrey*](#), 11 Wall. 459; *American Bridge Co. v. Heidelberg*, [94 U. S. 798](#) , and *Gilman v. Telegraph Co.*, [91 U. S. 603](#) , and, as between the railway company and the receiver, the latter was entitled to the money, subject to any valid set-off of the oil company.

There was no error in the disposition of either of these two cases by the court below, and both decrees are therefore

Affirmed.

MR. JUSTICE LAMAR was not present at the argument, and took no part in the decision of this case.