Hardt Vs. Heidweyer

Hardt Vs. Heidweyer

SooperKanoon Citation : sooperkanoon.com/87594

Court : US Supreme Court

Decided On : Apr-02-1894

Appeal No. : 152 U.S. 547

Appellant : Hardt

Respondent : Heidweyer

Judgement :

Hardt v. Heidweyer - 152 U.S. 547 (1894)
U.S. Supreme Court Hardt v. Heidweyer, 152 U.S. 547 (1894)

Hardt v. Heidweyer

No. 268

Submitted March 13, 1894

Decided April 2, 1894

152 U.S. 547

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

Whether a debtor in Illinois in failing circumstances has or has not the right by transfers of property to prefer certain creditors in the disposition of his assets, it is clear that he has not the right to transfer to such creditors property largely in excess of their claims to the injury of other general creditors.

A bill in that state by other creditors of the debtor filed several years after

Page 152 U. S. 548

such transfers were made, which attacks them and prays to have them decreed to be invalid and to have the assigned property distributed *pro rata* among the general creditors and which alleges that the plaintiffs were ignorant of the matters complained of, but now have knowledge acquired within a month prior to the filing of the bill, but which does not show how knowledge of the wrongs complained of was obtained, nor why they had not had earlier the same means of ascertaining the facts, may be dismissed, on demurrer, for laches on the part of the complainants.

On April 23, 1889, the appellants, as plaintiffs, citizens of the State of New York, filed their bill in the Circuit Court of the United States for the Northern District of Illinois, making as defendants the following persons, citizens of the State of Illinois: Sigismund Heidweyer, Norbert Stieglitz, the National Bank of Illinois, Siegmund Florsheim, Philip Florsheim, and Simon Florsheim. On January 15, 1890, they filed an amendment to their bill. To the bill, with its amendment, the defendants demurred on the several grounds of a want of equity in the bill, the laches of plaintiffs, a lack of jurisdiction, and a defect of parties. On May 5, 1890, this demurrer was sustained, and the bill dismissed. From the decree of dismissal the plaintiffs have appealed to this Court.

The facts, as stated in this bill and its amendment, are as follows: the plaintiffs were judgment creditors of the defendants Heidweyer & Stieglitz, a firm doing business in Chicago from July, 1875, to October 15, 1884. As early as January 1, 1884, the latter were hopelessly insolvent, their liabilities exceeding even their

nominal assets, as they well knew. By the assistance of friends, however, they were enabled to keep up the appearance of doing business until October. Early in September they ascertained and determined definitely that they must fail, make a general disposition of their property among their creditors, and go out of business. At that time their indebtedness amounted to about $240,000, their assets to about $150,000, of which $125,000 was the value of their merchandise and $25,000 that of their bills receivable and open accounts. Among other creditors were the following parties, to whom Heidweyer & Stieglitz claimed were due at the time the sums set opposite to their names:

Page 152 U. S. 549

National Bank of Illinois $12,000.00

Siegmund Florsheim. 2,628.00

Julius Heimann. 5,000.00

Julius Heimann, administrator 5,000.00

Florsheim Bros. 5,000.00

Philip Florsheim. 9,000.00

Simon Florsheim 5,000.00

Herman Hahlo. 2,500.00

Hahlo, Stieglitz & Co. 2,086.56

In fact, the true amount due to such parties was much less than the sums so named. In addition to this, the defendant Siegmund Florsheim was liable, as they pretended, as endorser on their commercial paper for the sum of $22,925.

It was their duty, so the bill avers, in view of their financial condition, under the policy of the assignment law of Illinois, to make in due form a general assignment

to some person of all their property for the benefit of their creditors, and without any preferences; but instead of doing this, they consulted with counsel as to the best means to prefer the creditors above named. On September 16th, by the advice of such counsel, they executed certain judgment notes, payable on demand to the parties, and for amounts as follows:

National Bank of Illinois $12,000.00

Siegmund Florsheim. 41,553.50

Florsheim Bros. 5,000.00

Philip Florsheim. 9,000.00

On the note in favor of Siegmund Florsheim, $16,000 was subsequently credited as paid. On October 13th they executed further judgment notes, payable on demand, as follows:

Julius Heimann, two notes, each . . . . . $ 5,000.00

Simon Florsheim 5,000.00

H. Hahlo & Co. 2,500.00

Hahlo, Stieglitz & Co. . . . . 2,086.56.

On October 15th the counsel above referred to, acting for both

Page 152 U. S. 550

the creditors and the debtors, caused judgments to be entered upon said notes in the superior court of Cook county, Ill., in favor of the creditors for the amounts of principal and interest and attorneys' fees, the attorneys' fees amounting in all the cases to the sum of $3,564.04. Immediately after the entry of such judgments, executions were issued thereon to the Sheriff of Cook County, who levied upon the stock of merchandise of said firm of Heidweyer & Stieglitz, being all the tangible property of which they were possessed, and of the value of $125,000. Of

this merchandise, about $8,500 was replevied from the sheriff before the sale, and the remainder sold at great sacrifice, producing only $65,537.38, which sum was applied upon the executions, leaving a small balance due upon most of them. The only property of value which the said Heidweyer & Stieglitz, on October 15th, possessed, other than the stock of merchandise, were certain bills receivable, of the value of about $18,000, and certain accounts receivable, of the value of about $6,000. It is charged:

"That as a part of the same scheme of preference said Heidweyer & Stieglitz assigned and delivered said bills and accounts receivable to the defendant Simon Florsheim, in trust to collect the same for the benefit of said judgment creditors as to the amounts remaining unpaid on their aforesaid judgments, and for the benefit of himself as to a claim of thirteen hundred dollars, due to him by said Norbert Stieglitz individually, the surplus, if any, to be returned to said Heidweyer & Stieglitz, so that, out of said accounts and bills receivable so assigned, and out of said replevied goods subsequently surrendered or paid for, said defendants' judgment creditors, as aforesaid, have received the amounts of their judgments and interest and said attorneys' fees in full. Said defendant Simon Florsheim has received payment in full of his claim against the defendant Norbert Stieglitz, as aforesaid, and the entire scheme originally devised by and between said Heidweyer & Stieglitz and said judgment creditors has been successfully accomplished, and all the property of said defendants Heidweyer & Stieglitz has been appropriated to prefer said creditors to the exclusion of all others."

And that all these

"judgment notes,

Page 152 U. S. 551

judgments entered thereon, executions issued, levies and sales thereunder, transfers, assignments, and other dispositions of all their property, . . . are in effect but one instrument and one transaction, and, taken together, constitute a general assignment for the benefit of creditors,"

and

"were all entered into and consummated in pursuance of a conspiracy between the parties thereto to defraud the other creditors of said Heidweyer & Stieglitz."

It is further charged:

"That while it is true that all the transactions aforesaid constitute an assignment for the benefit of creditors, yet said assignment is fraudulent and void as to creditors in this, that said judgment notes were purposely given for sums greater than was due the payees thereof respectively at the time they were so given; that the sum provided in said judgment notes for attorneys' fees, being thirty-five hundred and sixty-four 4-100 dollars, and which was included in said judgments confessed, and thereafter collected thereon, was so inserted in said instruments with actual intent to hinder, delay, and defraud the creditors of said Heidweyer & Stieglitz, and actually has defrauded them, whereby said notes, judgments, and everything that was done under them became wholly fraudulent and void as to the creditors of said Heidweyer & Stieglitz, and that all of said transactions constituting such assignment were conceived and executed from beginning to end with the sole and only purpose of defrauding the law and defrauding all the creditors not intended to be protected thereby, including your orators."

The amendment was intended to cover the objection of laches, and its allegations in respect thereto are as follows:

"And your orators further represent that at the time of the several transactions hereinbefore mentioned, they were, and ever since have been, residents of the City of New York, and that the judgment creditors aforesaid, who were defendants to this bill, were and now are residents of the City of Chicago; that immediately after the entry of the judgments aforesaid, your orators caused an investigation to be made as to the genuineness of the indebtedness represented by said judgments and the good faith of the judgment creditors in having them

entered and enforced in the manner set forth herein. That it was upon such investigation given out, represented, and stated to your orators by each of said judgment creditors, defendants herein, that their said judgments were for full value, and were entered aggressively by them for the sole purpose of realizing the moneys due them respectively, and that they did so without the knowledge, privity, or procurement of the debtors themselves, and said debtors then stated that they had still a large amount of property remaining in their hands in the form of book accounts and bills receivable, applicable to the payment of their other debts, and that they proposed to convert the same, and apply the proceeds thereof to such payment as soon as possible."

"Relying upon which statements and believing the same to be true, your orators refrained for a considerable time to take legal measures to collect the large indebtedness due them, in the belief also that the transactions as to said judgments were *bona fide,* and having no knowledge or information of any fact tending to show that they constituted, constructively, an assignment for the equal benefit of all creditors."

"A long time afterwards, and within, to-wit, less than one month from the time of bringing this suit, your orators for the first time learned not only that said judgments covered and took all the tangible property of said Heidweyer & Stieglitz, but that the entry thereof was procured by them for the express purpose of preferring said judgment creditors, and that at the same time they transferred all their remaining property to a trustee for the benefit of creditors, as heretofore in this bill alleged, thereby creating an assignment, as herein alleged. "

Page 152 U. S. 556

MR. JUSTICE BREWER, after stating the facts, delivered the opinion of the Court.

It will be perceived that nowhere in the bill is it alleged that the failing debtors, Heidweyer & Stieglitz, ever executed any formal written assignment for the benefit of creditors. It is charged that they gave to certain creditors judgment notes, and assigned and delivered their bills and accounts to one of the creditors in trust; that

these judgment notes, with the proceedings had thereon, and the assignments of bills receivable and accounts, were, in effect, but one instrument and one transaction, and constituted a general assignment for the benefit of creditors, and this, as plaintiffs insist, brought the case within the ruling in *White v. Cotzhausen,* 129 U. S. 329 , 129 U. S. 342 , in which this Court, by MR. JUSTICE HARLAN, said

"that when an insolvent debtor recognizes the fact that he can no longer go on in business, and determines to yield the dominion of his entire estate, and in execution of that purpose, or with an intent to evade the statute, transfers all, or substantially all, his property to a part of his creditors, in order to provide for them in preference to other creditors, the instrument or instruments by which such transfers are made and that result is reached, whatever their form, will be held to operate as an assignment, the benefits of which may be claimed by any creditor not so preferred, who will take appropriate steps in a court of equity to enforce the equality contemplated by the statute. Such, we think, is the necessary result of the decisions in the highest court of the state."

On the other hand, it is contended that the supreme court of the state has since that decision reached a different conclusion, and in support thereof reference is made to the opinion in *Young v. Clapp,* 147 Ill. 176, 184, where this language

Page 152 U. S. 557

is found:

"The thirteenth section of the assignment act does not prohibit preferences generally, but only preferences which are contained in written deeds of assignment voluntarily executed for the benefit of creditors. The language of the section is that 'every provision in any assignment hereafter made in this state for the payment of one debt or liability in preference to another shall be void."

A preference given by a debtor after he has made up his mind to execute a general assignment for the benefit of his creditors has been held to be void, upon the theory that such a preference must be regarded as a part of the assignment.

There is no such thing as a constructive assignment contemplated by the assignment act. That act does not take away the common law right of a debtor to prefer one or more of his creditors. A preference may be given by the execution of a judgment note resulting in the entry thereon of a judgment.

See also Schroeder v. Walsh, 120 Ill. 403; *Weber v. Mick,* 131 Ill. 520, 533; *National Bank v. North Wisconsin Lumber Co.,* 41 Ill.App. 383; *American Cutlery Co. v. Joseph,* 44 Ill.App. 194, and *Ross v. Walker,* decided November 27, 1893, by the appellate court of Illinois and reported in 26 Chicago Legal News 133.

It is insisted that this construction of the statute should be accepted by this Court as controlling, and the case of *Union Bank of Chicago v. Kansas City Bank,* 136 U. S. 223 , 136 U. S. 235 , is cited, in which this Court said:

"The question of the construction and effect of a statute of a state regulating assignments for the benefit of creditors is a question upon which the decisions of the highest court of the state, establishing a rule of property, are of controlling authority in the courts of the United States."

But we deem it unnecessary to enter into any consideration of this question, or to determine whether there is any substantial difference between the views of the Supreme Court of Illinois and those of this Court, or whether, in case such difference be found to exist, it becomes the duty of this Court to defer to the opinions expressed by that, for there are questions nearer to the surface and controlling. Even if it be conceded

Page 152 U. S. 558

that there is not disclosed by this bill that which is equivalent to a voluntary assignment within the scope of the statute, and that, in the absence of restrictive statutes, a failing debtor has the right to prefer certain creditors, even to the entire exclusion of others, *Jewell v. Knight,* 123 U. S. 426 , 123 U. S. 434 , and cases cited; *Smith v. Craft,* 123 U. S. 436 , yet such debtor cannot, under pretense of preferring certain creditors, pay to them sums largely in excess of their demands, and thus prevent his other creditors from receiving any payment. Here, the charge

distinctly is that, while Heidweyer & Stieglitz claimed to owe the preferred creditors certain sums, for which they gave judgment notes, and which judgment notes were afterwards satisfied in full, yet the amounts in fact due to such creditors were much less than those so named and paid, and that is a wrong of which the creditors who receive no payment can justly complain. It is unnecessary, therefore, to inquire whether the transaction between Heidweyer & Stieglitz and these creditors was within the inhibition of the statute or not.

While this is so, we are constrained to hold that the plaintiffs have not shown due promptness in asserting their rights. It is said by counsel for defendants that it was the decision in *White v. Cotzhausen* which enabled the plaintiffs to perceive that they had been defrauded, and our attention is called to the fact that the opinion in that case was announced January 28, 1889, and this suit was commenced April 23, 1889. *Post hoc, propter hoc* is not, however, sufficient, and the rule of causation implies some other sequence than that of time. Nevertheless, the plaintiffs waited nearly five years before commencing any proceedings to charge the preferred creditors, and no satisfactory excuse for the delay is shown. It is well settled that a party who seeks to avoid the consequences of an apparently unreasonable delay in the assertion of his rights on the ground of ignorance must allege and prove not merely the fact of ignorance, but also when and how knowledge was obtained, in order that the court may determine whether reasonable effort was made by him to ascertain the facts. Thus, in *Stearns v. Page,* 1 Story 204, 215, 217, Mr. Justice Story observed:

Page 152 U. S. 559

"General allegations that there has been fraud or mistake or concealment or misrepresentations are too loose for purposes of this sort. The charges must be reasonable, definite, and certain as to time and occasion and subject matter. And especially must there be distinct averments of the time when the fraud, mistake, concealment, or misrepresentation was discovered, and how discovered, and what the discovery is, so that the court may clearly see whether, by the exercise of ordinary diligence, the discovery might not have been before made, for if by such

diligence the discovery might have been before made, the bill has no foundation on which it can stand in equity on account of the laches. . . . But the bill does not state what particular discoveries have been obtained, or when they were obtained, or by what inquiries, or in what manner, or at what time."

On appeal, this decision was affirmed, *Stearns v. Page,* 7 How. 819, 48 U. S. 829 , and in delivering the opinion of this Court, Mr. Justice Grier laid down the rule in this language:

"And especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see whether, by the exercise of ordinary diligence, the discovery might not have been before made."

Similar declarations may be found in several subsequent cases. *Badger v. Badger,* 2 Wall. 87, in which is found this quotation:

"The party who makes such appeal should set forth in his bill specifically what were the impediments to an earlier prosecution of his claim, how he came to be so long ignorant of his rights, and the means used by the respondent to fraudulently keep him in ignorance, and how and when he first came to a knowledge of the matters alleged in his bill."

Godden v. Kimmell, 99 U. S. 201 , 99 U. S. 211 ; *Wood v. Carpenter,* 101 U. S. 135 , 101 U. S. 140 , in which this Court said:

"A general allegation of ignorance at one time and of knowledge at another is of no effect. If the plaintiff made any particular discovery, it should be stated when it was made, what it was, how it was made, and why it was not

Page 152 U. S. 560

made sooner."

See also Lansdale v. Smith, 106 U. S. 391 , 106 U. S. 394 ; *Hammond v. Hopkins,* 143 U. S. 224 , 143 U. S. 251 ; *Felix v. Patrick,* 145 U. S. 317 , 145

U. S. 332 ; *Foster v. Mansfield, Coldwater &c.; Railroad,* 146 U. S. 88 ; *Fisher v. Boody,* 1 Curtis 206; *Carr v. Hilton,* 1 Curtis 390; *Moore v. Greene,* 2 Curtis 202.

Tested by this rule, it is apparent that this bill must be held deficient in not showing how knowledge of the wrongs complained of was obtained by the plaintiffs. It is alleged that they were ignorant, and now have knowledge, and that they acquired such knowledge within a month prior to bringing the suit, but how they acquired it and why they did not have the same means of ascertaining the facts before are not disclosed.

What were the wrongs complained of? So far as the mere preference is concerned, that was obvious. If the attorneys' fees were improper, *Young v. Clapp, ubi supra; Hulse v. Mershon,* 125 Ill. 52, the fact that such attorneys' fees were specified in the notes and included in the judgments was a matter of record. That the stock of goods sold at sheriff's sale for less than its value does not, of itself, show wrong on the part of the parties thereto, plaintiffs or defendants. No act is shown tending to prevent a fair sale, and the result, that of realizing less than the value, is a common experience of such sales, and of itself proves nothing amiss. If these plaintiffs failed to attend such sales, they cannot complain of the result, and if they did attend, they should have seen to it that the property brought its value. At any rate, there is no pretense of a want of knowledge on the part of these plaintiffs. There remain, therefore, as the concealed wrongs only these matters: first that the judgment notes were in excess of the real demands; second that Heidweyer & Stieglitz transferred their bills and accounts receivable in trust to Florsheim, and that that trust included an individual debt of one of the partners. That the plaintiffs knew of the existence of these bills and accounts is shown, and their alleged ignorance is only of the fact of their transfer in trust.

Now it is a matter of common experience that when there

is so pronounced a failure on the part of a firm carrying such a large stock, there is made by the creditors a thorough examination of the situation. That such an examination, if made, would disclose any substantial difference between the true indebtedness to these preferred creditors and the amount of the notes given to them seems reasonably certain, and if no such examination was made, it indicated indifference on the part of the other creditors. If the plaintiffs relied on the mere statements of these defendants, why did they cease to rely upon such statements, and how did they become advised of their untruth? So with reference to the bills and accounts receivable, knowing what they were, they could easily have ascertained whether they were collected, and, if so, by whom. If collected by other than their debtors, that fact certainly should have provoked inquiry. If collected by the debtors, why were the moneys received not appropriated in payment of other than the preferred claims?

These are matters in respect to which the bill fails to enlighten us. Indeed, so far as disclosed, it would seem that when the debtors failing, and failing for so large a sum, appropriated all their tangible property to the payment of a few of their creditors, the others, including these plaintiffs, accepted the situation, and made no inquiry or challenge of the integrity of the transaction for nearly five years. Such indifference and inattention must be adjudged laches. Upon this ground alone, and without reference to any other questions discussed by counsel in the briefs, the decree of the circuit court is

Affirmed.