

Gazlay Vs. Williams

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Court : US Supreme Court

Decided On : May-18-1908

Appeal No. : 210 U.S. 41

Appellant : Gazlay

Respondent : Williams

Judgement :

Gazlay v. Williams - 210 U.S. 41 (1908)

U.S. Supreme Court Gazlay v. Williams, 210 U.S. 41 (1908)

Gazlay v. Williams

No. 164

Argued March 11, 1908

Decided May 18, 1908

210 U.S. 41

APPEAL FROM THE CIRCUIT COURT

OF APPEALS FOR THE SIXTH CIRCUIT

SYLLABUS

Where the trustee can only sell a lease subject to the claim of the lessors that the transfer of the bankrupt's interest in the lease gives a right of reentry under a condition therein, the bankruptcy court has jurisdiction of a proceeding, initiated by the trustee and to which the lessors are parties, to determine the validity of the lessor's claim and remove the cloud caused by the lessor's claim.

The passage of a lease from the bankrupt to the trustee is by operation of law, and not by the act of the bankrupt nor by sale, and a sale by the trustee of the bankrupt's interest is not forbidden by, nor is it a breach of, a covenant for reentry in case of assignment by the lessee or sale of his interest under execution or other legal process where, as in this case, there is no covenant against transfer by operation of law.

147 F. 678 affirmed.

June 16, 1902, W. H. Gazlay, Hanna F. Gazlay, Hulda G. Miller, Emma G. Donaldson, Julia G. Stewart, and Clara G. Kuhn entered into a written agreement as lessors with one J. D. Kueny whereby, in consideration of the rents to be paid and the covenants to be performed by said lessee, his heirs and assigns, they leased to said Kueny certain premises situated on the east side of Vine Street, south of Sixth Street, Cincinnati, Ohio, for a period of ten years, with the privilege of ten years additional.

The lease contained the following condition:

"Provided, however, that, if said lessee shall assign this lease or underlet said premises, or any part thereof, or if said lessee's interest therein shall be sold under execution or other legal process without the written consent of said lessors, their heirs or assigns, is first had, or if said lessee or assigns shall fail to keep any of the other covenants of this lease by

said lessee to be kept, it shall be lawful for said lessors, their heirs or assigns, into said premises to reenter and the same to have again, repossess, and enjoy as in their first and former estate, and thereupon this lease and everything therein contained on the said lessors' behalf to be done and performed shall cease, determine, and be utterly void."

On the ninth of April the lessors filed a petition in the Superior Court of Cincinnati, Ohio, against J. D. Kueny for the recovery of rent due under the lease. In their petition, the lessors asked that a receiver be appointed to take charge of all the property of said J. D. Kueny, including said leasehold estate, and that said leasehold premises and the unexpired term be sold, "subject, however, to all the terms, covenants, and conditions contained in the lease from pages 43-45 plaintiffs to said J. D. Kueny." The court thereupon appointed receivers to take charge of and manage said property, and later made an order directing said receivers to sell all of the personal property of said J. D. Kueny, including the leasehold estate, and under said order all of said property, including said leasehold estate, was sold to H. D. Brown, who took possession of the same, made extensive improvements thereon, and paid to the lessors the rent reserved under said lease, from the time he took possession, July, 1905, to January, 1906, when proceedings were begun against him in the District Court of the United States for the Southern District of Ohio, Western Division, to have him adjudged a bankrupt.

Pending the adjudication, a receiver was appointed who took charge of all of Brown's property, including said leasehold estate, and who, as such receiver, paid to said lessors the rent reserved in said lease for the month of January, 1906.

In February, 1906, the appellee herein, Fletcher R. Williams, was elected as trustee in bankruptcy of the estate and effects of said Brown, and on March 1, 1906, he filed in the bankruptcy proceeding an application for the sale of said leasehold estate, making the lessors parties thereto and asking that they be required to set up any claim they might have upon the same.

Process was issued and served upon all but one of the lessors on March 5, 1906, and on that one on March 9, 1906.

On March 6, 1906, said trustee paid to W. A. Gazlay rent for the month of February, 1906, the amount paid being the monthly sum named in the said lease. Thereupon said lessors, coming in for the purposes of the motion only, filed a motion to be dismissed from the proceedings on the ground that the court had no jurisdiction over their persons, which motion was overruled by the referee in bankruptcy. Thereupon the lessors filed an answer, "and, without intending to enter their appearance herein, but acting under protest and the direction of the court," alleged that the lease contained the condition, among others,

"that, if said lessee should assign the lease or underlet said leased premises or any other part thereof, or if said lessee's interest therein should be sold under execution or other legal process without the written consent of said lessors, their heirs or assigns first had; or if said lessee or assign should fail to keep any of the other covenants of the lease by lessee to be kept, it should be lawful for said lessors, their assigns or heirs, into said premises to reenter and the same to have again, repossess, and enjoy, as in the first and former estate, and thereupon this lease and everything therein contained on said lessor's behalf to be done and performed should cease, determine, and be utterly void. They further say that said lease and the premises thereby leased passed into the possession of Harry D. Brown, the bankrupt herein, without the written consent of said lessors, but with their acquiescence only, and that said condition in said lease is still in full force and effect as against said Harry D. Brown and his trustee in bankruptcy herein. That, at the time of filing of the application herein, so far as they know or are informed, the said lessors had no claim in said leasehold premises adverse to said trustee in bankruptcy."

The case was submitted to the referee upon these pleadings, an agreed statement of facts, and the arguments and briefs of counsel.

The referee found that, the trustee being in lawful possession of said leasehold estate, the court had jurisdiction of the persons and subject matter of the suit; that the claim of the lessors, assuming that they had one and that it would be enforceable only after a sale, nevertheless was in the nature of a cloud upon the title of the trustee to said leasehold estate, and, as such, could be determined in this proceeding in advance of its happening, and he thereupon held that the lessors had no right, as against the trustee in bankruptcy herein, to forfeit the lease in the event of a sale by him under the court's order, and ordered the trustee to sell the same free from any claim or right on the part of the lessors to forfeit the same. To these findings and this judgment of the referee the lessors took exception and filed a petition for a review of the same in the district court in bankruptcy. The referee certified his proceedings to the district court, where, upon a hearing on the pleadings and facts, the findings and judgment of the referee were affirmed and the petition dismissed.

From this judgment the lessors took an appeal to the United States Circuit Court of Appeals for the Sixth Circuit. There, the cause was again submitted upon the same pleadings and facts as in the district court, and that court affirmed the judgment of the district court, and held that the clause in said lease providing for its forfeiture in case of a sale of the same under execution or other legal process, without the lessors' written consent thereto, had no application to a sale by the trustee in bankruptcy, and that therefore the lessors could not forfeit the lease in case the trustees herein should the lease in case the trustees herein should sell the same. 147 F. 678.

From this judgment, the present appeal was taken.

Page 210 U. S. 47

MR. CHIEF JUSTICE Fuller delivered the opinion of the Court.

The passage of the lessees' estate from Brown, the bankrupt, to Williams, the trustee, as of the date of the adjudication, was by operation of law, and not by the act of the bankrupt, nor was it by sale. The condition imposed forfeiture if the

lessee assigned the lease or the lessees' interest should be sold under execution or other legal process without lessors' written consent.

A sale by the trustee for the benefit of Brown's creditors was not forbidden by the condition, and would not be in breach thereof. It would not be a voluntary assignment by the lessee, nor a sale of the lessee's interest, but of the trustee's interest, held under the bankruptcy proceedings, for the benefit of creditors. Jones, in his work on Landlord and Tenant, lays it down (§ 466) that

"an ordinary covenant against subletting and assignment is not broken by a transfer of the leased premises by operation of law, but the covenant may be so

Page 210 U. S. 48

drawn as to expressly prohibit such a transfer, and in that case, the lease would be forfeited by an assignment by operation of law."

The covenant here is not of that character.

The doctrine of *Dumpro's Case*, 4 Rep. 119, 1 Smith, Leading Cases *85, is that a condition not to alien without license is determined by the first license granted, and District Judge Thompson expressed the opinion that it was applicable here, and that the sale to Brown, under the order of the Superior Court of Cincinnati, entered on the petition of these lessors for the recovery of rent, set the leasehold free from the forfeiture clauses, especially as that court did not direct that the sale be subject to the terms, covenants, and conditions of the lease, as prayed for in the petition. Moreover, the lessors, in their answer in these proceedings, stated that

"said lease and the premises thereby leased passed into the possession of Harry D. Brown, the bankrupt herein, without the written consent of said lessors, but with their acquiescence only, and that the said condition in said lease is still in full force and effect as against said Harry D. Brown and his trustee in bankruptcy herein."

In respect of the lessors, Brown may be treated, then, as if he were the original lessee, and the sale by his assignee in bankruptcy, under order of the bankruptcy

court, was not a breach of the condition in question. The language of Bayley, J., in *Doe v. Bevan*, 3 M. & S. 353, cited by the court of appeals, is applicable.

The premises in question in this case, being a public house, were demised by Goodbehere to one Shaw for a term of years, and Shaw covenanted that he, his executors, etc., should not nor would, during the term, assign the indenture, or his or their interest therein, or assign, set, or underlet the messuage and premises, or any part thereof, to any person or persons whatsoever without the consent in writing of the lessor, his executors, etc. Proviso, that in case Shaw, his executors, etc., should part with his or their interest in the premises, or any part thereof, contrary to his covenant, that the lessor might

Page 210 U. S. 49

reenter. Afterwards, Shaw deposited this lease with Whitbread & Company as a security for the repayment of money borrowed of them, and, becoming bankrupt, and his estate and effects being assigned by the commissioners to his assignees, the lease was, upon the petition of Whitbread & Company, directed by the Lord Chancellor to be sold in discharge of their debt, and was, accordingly, sold to the defendant, and, without the consent of Goodbehere, assigned to the defendant by the assignees, and he entered, etc. The trial judge ruled that this was not a breach of the proviso not to assign without consent, etc., inasmuch as the covenant did not extend to Shaw's assignees, they being assignees in law; wherefore he directed a nonsuit. The rule to set aside the nonsuit was discharged on argument before Lord Ellenborough, C.J.; LeBlanc, J.; Bayley, J., and Dampier, J. (delivering concurring opinions), and Bayley, J., said:

"It has never been considered that the lessee's becoming bankrupt was an avoiding of the lease within this proviso, and if it be not, what act has the lessee done to avoid it? All that has followed upon his bankruptcy is not by his act, but by the operation of law, transferring his property to his assignees. Then shall the assignees have capacity to take it, and yet not to dispose of it? Shall they take it only for their own benefit, or be obliged to retain it in their bands, to the prejudice of the creditors, for whose benefit the law originally cast it upon them?"

Undoubtedly that can never be."

Decree affirmed.

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