Union Trust Co. Vs. Grosman

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Appeal No. : 245 U.S. 412

Appellant : Union Trust Co.

Respondent : Grosman

Judgement :

Union Trust Co. v. Grosman - 245 U.S. 412 (1918)
U.S. Supreme Court Union Trust Co. v. Grosman, 245 U.S. 412 (1917)

Union Trust Co. v. Grosman

No. 106

Argued December 20, 21, 1917

Decided January 7, 1918

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

SYLLABUS

While a husband and wife, domiciled in Texas, were temporarily in Illinois, the former executed his note and the latter her continuing guaranty of payment. Assuming that the guaranty would have been enforced in Illinois, *held* that comity did not call for it enforcement by the court of Texas against the wife's separate property there if contrary to the public policy of Texas, for it is one thing for a court to decline to be an instrument for depriving citizens belonging to the jurisdiction of their property in way not intended by the law that govern them, another to deny its

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offices to enforce obligations good by the *lex domicilii* and the *lex loci contractus* against those whom the local laws have no duty to protect.

By the law of Texas -- the common law modified by statute -- a married woman's guaranty of her husband's note is not enforceable against her separate property. In this case, note and guaranty were part of one transaction, but the guaranty was a separate instrument executed by the wife alone.

If a contract, made and valid in one state, is unenforceable in the courts of another on ground of local public policy, it is unenforceable also, for the same reason, in the district court sitting in the latter state and having jurisdiction through diversity of citizenship.

228 F. 610 affirmed.

The case is stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit brought by the petitioner in the District Court of the United States for the Northern District of Texas upon two promissory notes made in Chicago by

Hiram Grosman and another, and a continuing guaranty executed in the same place by the respondent, Mrs. Grosman, the wife of Hiram Grosman, as part of the same transaction as the earlier note. A decree was rendered for the plaintiff in the district court, but, upon appeal by Mrs. Grosman, was reversed as against her by the circuit court of appeals on the ground that it subjected her separate property to the payment of the demand, contrary to the public policy of the state in which the suit was brought. 228 F. 610. Mrs. Grosman and her husband were domiciled in Texas, as the plaintiff seems to have known, and made the contracts while temporarily in Chicago. We assume for the moment that, if she had given the guaranty in Texas, it would have been void, and, on the other hand, that if she had been domiciled in Illinois when she made her promise, she would have been bound. The main question is which law is to prevail.

If this suit were brought in Illinois, it would present broader issues. On the one side would be decisions that *locus regit actum,* and the consideration that, when a woman goes through the form of contracting in an independent state, theoretically that state has the present

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power to hold her to performance, whatever may be the law of her domicile. It might be urged that the contract should be given elsewhere the effect that the law of the place of making might have insured by physical force. *See Michigan Trust Co. v. Ferry,* 228 U. S. 346 , 228 U. S. 353 . On the other hand, it is obvious that, practically, at least, no state would take any steps, if it could, before a breach of an undertaking like this. The contract being a continuing one of uncertain duration, the plaintiff had notice that, in case of a breach, it probably might have to resort to the defendant's domicile for a remedy, as it did in fact. In such a case, very possibly an Illinois court might decide that a woman could not lay hold of a temporary absence from her domicile to create remedies against her in that domicile that the law there did not allow her to create, and therefore that the contract was void. This has been held concerning a contract made with a more definite view to the disregard of the laws of a neighboring state. *Graves v. Johnson,* 156 Mass. 211, 212.

But when the suit is brought in a court of the domicile, there is no room for doubt. It is extravagant to suppose that the courts of that place will help a married woman to make her property there liable in circumstances in which the local law says that it shall be free, simply by stepping across a state line long enough to contract. *The Kensington,* 183 U. S. 263 , 183 U. S. 269 ; *Armstrong v. Best,* 112 N.C. 59; *Bank of Louisiana v. Williams,* 46 Miss. 618; *Baer v. Terry,* 105 La. 479, 480; *Palmer v. Palmer,* 26 Utah, 31. *See generally Seamans v. Temple Co.,* 105 Mich. 400; Dicey, Conflict of Laws (2d ed.) 34, General Principle No. II(B), and, as to torts, *id.,* 645, Rule 177. There is nothing opposed to this view in those decisions in which the courts have enforced similar contracts of women domiciled where the law allowed such contracts to be made. It is one thing

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for a court to decline to be an instrument for depriving citizens belonging to the jurisdiction of their property in ways not intended by the law that governs them, another to deny its offices to enforce obligations good by the *lex domicilii* and the *lex loci contractus* against women that the local laws have no duty to protect. *International Harvester Co. v. McAdam,* 142 Wis. 114; *Merrielles v. State Bank of Keokuk,* 5 Tex.Civ.App. 483. The case of *Milliken v. Pratt,* 125 Mass. 374, went to the verge of the law in holding a Massachusetts woman liable in Massachusetts on a contract that she could not have made there, because made by a letter in Maine, although her person remained always within the jurisdiction of Massachusetts. It is safe to conjecture that the decision would have been different if the law of Massachusetts had not been changed before the bringing of the suit so as to allow such contracts to be made. 125 Mass. 377, 383.

Texas legislation is on the background of an adoption of the common law. If the statutes have not gone so far as to enable a woman to bind her separate property or herself in order to secure her husband's debts, they prohibit it, and no argument can make it clearer that the policy of that state is opposed to such an obligation. It does not help at all to point out the steps in emancipation that have been taken and to argue prophetically that the rest is to come. We have no concern with the future. It has not come yet. The only question remaining, then, is whether the court

below was right in its interpretation of the Texas law. This was not denied with much confidence, and we see no sufficient reason for departing from the opinion of the court below and the intimations of all the Texas decisions that we have seen. *Red River National Bank v. Ferguson,,* 192 N.W. 1088; *Shaw v. Proctor,* 193 S.W. 1104; *Akin v. First National Bank of Bridgeport,* 194 S.W. 610,

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612; *First State Bank of Tomball v. Tinkham,* 195 S.W. 880.

If the decree would have been right in a court of the State of Texas, it was right in a district court of the United States sitting in the same state. *Pritchard v. Norton,* 106 U. S. 124 , 106 U. S. 129 .

Decree affirmed.