Michigan Law Review

Volume 38 | Issue 6

1940

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Michigan Law Review

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Pledges — Application of Collateral to Other Debts — Plaintiff's testator, in 1922, before delivery indorsed a demand note of the corporation of which he was president, waiving presentment for payment, demand, protest, and notice of protest. In 1925, when he was no longer president, he similarly indorsed another note of the corporation. Defendant was payee on both of these notes, which were given for obligations of the corporation. In 1929, the testator executed to defendant a personal note for his own use, to secure which he pledged stock pursuant to a pledge agreement “for the payment of this and of any other liabilities of the undersigned to said payee or assigns, due or to become due, or that may hereafter be contracted.” Defendant was given the power to sell the collateral on the maturity of the note. At the testator's death in 1932, defendant sold the collateral and applied the proceeds to the payment of the personal note, and the residue to the corporate notes. An action was brought for the wrongful conversion of the stock. Held, defendant was liable on the ground that the words “any other liabilities” could be construed to comprehend only the pledgor's individual liability on his personal notes.1 Perron v. First National Bank, 289 Mich. 629, 286 N. W. 859 (1939).

A pledgee has no right to apply collateral pledged to secure a specific debt for the extinguishment of any other obligation of the pledgor.2 When an agreement purporting to allow such application exists, a problem of construction arises to determine the legal effect of the specific provisions. In the principal case, the meaning of the words “any other liabilities” was uncertain, and the court followed the general rule construing strictly against the pledgee printed pledge agreements drawn by him. Where the contract of pledge contains similar lan-

1 While a presumption to this end might be indulged in, most courts merely decide each case on the basis of the terms of the contract and the facts attending its execution. See cases cited in 43 A. L. R. 1069 (1926); 87 A. L. R. 615 (1933).

2 Jones, Collateral Securities, 3d ed., § 355 (1912), and cases there cited.
guage and (1) the pledgor subsequently indorses his firm’s note, or a third person’s note, or (2) the nature of the pledgor’s liability on the second note is obviously different from that on the secured note, or (3) the pledgee subsequently acquires the pledgor’s note to a third party, the collateral can be applied only to the liability arising from the transaction at which the collateral was physically pledged. On the other hand, the application of the collateral to the other liability is allowed where the pledgor previously indorses the note of a corporation of which he is sole owner, or previously or subsequently issues other notes to the pledgee, because in such cases there is no uncertainty in the meaning of the terms. While there is abundant authority for the proposition that a court will construe the contract of pledge “according to the real intention of the parties” at the time of its execution, which would logically involve a consideration of the circumstances attending the transaction from which such intention could be inferred, it is doubtful that those courts actually mean intention, since

5 Torrance v. Third Nat. Bank of Pittsburgh, (C. C. A. 3d, 1914) 210 F. 806, joint and several as against contingent liability; National Bank of Kentucky v. Gallagher, 243 Ky. 740, 49 S. W. (2d) 1006 (1932), joint as against individual liability; In Re Evans, (C. C. A. 3d, 1917) 238 F. 543, third party added to second note; First Nat. Bank of Litchfield v. Southworth, 215 Ill. 640, 74 N. E. 771 (1905), one less party on second note; First Nat. Bank of Ardmore v. Gillam, 134 Okla. 237, 273 P. 261 (1929), signing individually and for the corporation on the prior note. Contra, Bradburn v. Wyoming Trust Co., 51 Wyo. 73, 63 P. (2d) 792 (1936), joint and several as against individual liability, but under a broader pledge agreement. The exact nature of the liability of an indorser who has signed before delivery and has waived all the steps necessary to hold him liable is not discussed herein. For an approach to the problem, see Brannan, Negotiable Instruments Law, 6th ed., § 63 (1938), and cases cited in 10 C. J. S. 962 (1938). The result may be influenced by distinguishing between the substantive and procedural rights of a person suing on a note. Heffner v. First Nat. Bank, 311 Pa. 229, 166 A. 370 (1933); Torrance v. Third Nat. Bank of Pittsburgh, supra.
7 Goldberg v. Wardell, (App. D. C. 1937) 92 F. (2d) 539, which can be distinguished from the principal case on the ground of sole ownership and the fact that the pledgor and the corporation were locally thought of as one and the same. But note the construction placed by the court on the term “liability.” Cf. Citizens’ First Nat. Bank v. Jones, 161 Ga. 655, 131 S. E. 529 (1926).
11 McCrea v. First Nat. Bank of Austin, 162 Minn. 455, 203 N. W. 220 (1925), considering the period of time separating the maturity of the two notes.
the admission of evidence for that purpose would be contrary to the parol evidence rule. Extrinsic circumstances may, however, be considered to show the meaning of ambiguous terms. Although no ambiguity in the true sense of the word exists in the phrase “any other liabilities,” in order to do justice as between the pledgor and pledgee, courts are apparently willing to raise an “ambiguity” because of the parties’ conflicting but reasonable interpretation of those words; thereby the courts justify a consideration of circumstances in addition to other provisions of the contract, e.g., such extrinsic facts as the purpose of the loan, and the presence or absence of continuous borrowing from the pledgee. In the principal case, extrinsic circumstances were not considered, but the court adopted the same attitude toward the pledge agreement in examining the other terms of the contract and the nature of the liability on the corporate notes. While modern banking practice dictates the use of printed forms as a practical matter in some instances, and the pledgor theoretically has an opportunity to object to the all-inclusive provisions before signing the contract, the use of blanket pledge agreements should, where practicable, be discouraged, and this can best be effectuated by adopting the realistic approach subscribed to by the great majority of cases.

13 “Once freed from the primitive formalism which views the document as a self-contained and self-operative formula, we can fully appreciate the modern principle that the words of a document are never anything but indices to extrinsic things, and that therefore all the circumstances must be considered which go to make clear the sense of the words;—that is, their associations with things.” 5 Wigmore, Evidence, 2d ed., 404 (1923). See also 3 Williston, Contracts, rev. ed., 1780 (1936).
14 In First Nat. Bank v. Illinois Trust & Savings Bank, (C. C. Ill. 1897) 84 F. 34, the court considered the terms of the provision giving the pledgee the right to sell. The pledgee in the principal case could sell “on the maturity of the above note,” and the court thought that there would also have been reference to the maturity of the indorsed notes, if the words “any other liabilities” included those notes.
16 Johnston v. American Finance Corp., 182 Okla. 567, 79 P. (2d) 242 (1938), distinguishing on this ground First Nat. Bank of Ardmore v. Gillam, 134 Okla. 237, 273 P. 261 (1929). The basis of this distinction is the fact that although the pledgee might expressly include the other notes which the collateral was to secure when the transaction was isolated and thus avoid the uncertainty of the general language, it would be impossible to do so when it was merely one of a series of transactions.