Michigan Law Review

Volume 43 | Issue 4

1945

CREDITORS' RIGHTS-GARNISHMENT-CONTENTS OF SAFETY DEPOSIT BOX RENTED TO JUDGMENT DEBTOR REACHED BY GARNISHING LESSOR

Craig E. Davids S.Ed.
University of Michigan Law School

RECENT DECISIONS

This section is divided into two parts; notes and abstracts. The abstracts consist merely of summaries of the facts and holdings of recent cases and are distinguished from the notes by the absence of discussion.

NOTES

CREDITORS' RIGHTS—GARNISHMENT—CONTENTS OF SAFETY DEPOSIT BOX RENTED TO JUDGMENT DEBTOR REACHED BY GARNISHING LESSOR—Execution against the judgment debtors having been returned unsatisfied, plaintiff secured a writ of garnishment from the municipal court against the defendant bank in November 1935. The garnishee's disclosure indicated that it held a small amount of cash with other collateral as security for loans made to the judgment debtors and the unknown contents of a safety deposit box. The box was rented by the judgment debtors in the usual manner and access to it could be gained only by simultaneous use of two keys—a master key retained by the bank and another key issued to the customer. The garnishee permitted the judgment debtors to open their box in December 1935. After further proceedings against the judgment debtors had been enjoined by a bankruptcy court in March 1936 the garnishee again permitted the judgment debtors access to their box in November and December 1936. After the stay order was lifted by the bankruptcy court in 1936, the municipal court, on motion of the garnishee in the trial of the cause dismissed the bank. *Held*, reversed. The contents of a safe deposit box constitute such "effects or estate of the defendant in the possession, custody, or charge of the garnishee" as would subject them to garnishment.[1] *Morris v. Beatty* (Chicago City Bank & Trust Co., Garnishee), 323 Ill. App. 390, 55 N.E. (2d) 830 (1944).

The issue in the principal case has been a highly controversial question since first presented to the courts. The older cases generally held the contents of a safety deposit box beyond the reach of garnishment proceedings against the lessor of the box.[2] The theory of these cases is that the garnishee, who nor-

[1] Ill. Ann. Stat. (Smith-Hurd, 1943) c. 62, § 1 provides: "Whenever a judgment shall be rendered by any court of record, or any justice of the peace in this state, and an execution against the defendant or defendants in such judgment shall be returned by the proper officer 'No property found,' on the affidavit of the plaintiff, or other credible person, being filed with the clerk of such court or justice of the peace, that said defendant or defendants has or have no property within the knowledge of such affiant, in his or their possession, liable to execution, and that such affiant hath just reason to believe that any other person is indebted to such defendant, or defendants, or to either or any of such defendants, or hath any effects or estate of such defendants, in his possession, custody, or charge, it shall be lawful for such clerk or justice of the peace to issue summons against the person supposed to be indebted to, or supposed to have any of the effects or estate of the said defendant, or defendants, or of either or any of such defendants, commanding him to appear before said court or justice, as a garnishee. . . ."

[2] Gregg v. Hilson, 8 Phil. (Pa.) 91 (1871); Hooper v. Day, 19 Me. 56 (1841); Wood v. Edgar, 13 Mo. 451 (1850); Bottom v. Clarke, 7 Cush. (Mass.) 487 (1851); McGraw v. Memphis & Ohio R.R. Co., 45 Tenn. 434 (1868); Smalley v. Miller, 71 Iowa 90, 32 N.W. 187 (1887).

mally had neither knowledge of the box's contents nor access to it without the customer's key, could not be said to have in its possession or control property of the judgment debtor as required by the garnishment statutes.[3] Shortly after the turn of the century the courts gradually began to break away from the old rule and this trend has developed during the past forty years into the weight of authority.[4] Most courts now hold the contents of a safety deposit box subject to garnishment either by virtue of the ample provisions of their respective garnishment statutes [5] or on the theory that a bailor-bailee for hire relationship exists between the renter and the safety deposit company and that a bailee of the debtor's property may be sued as garnishee.[6] Even today, however, a few jurisdictions hold that the contents of the box may not be reached, asserting that a

[3] In Gregg v. Hilson, 8 Phil. (Pa.) 91 at 91 (1871) the court declared, "The contents of the safe are in actual possession of the renter of the safe, they have not been deposited with or demised to the company."

In Smalley v. Miller, 71 Iowa 90 at 91 (1887), the court said that the garnishee "must have the property in his possession, so that he can surrender it, if the court so directs, in exoneration of his liability as garnishee."

[4] For a discussion of the trend by contemporary writers see 10 MICH. L. REV. 651 (1912) or 22 YALE L. J. 416 (1913).

The CYCLOPEDIA OF LAW & PROCEDURE, published in 1906, declares, "According to the weight of authority, property or funds deposited with a safety deposit company can not be reached by garnishment proceedings." 20 CYC. 1022.

CORPUS JURIS, the successor of CYCLOPEDIA, contradicts by saying, "Accordingly, a safety deposit company may be held accountable in garnishment for the contents of a box or vault rented by defendant." 28 CORP. JUR. § 105, p. 86.

And in RULING CASE LAW, the writer declares, "In the case of property placed in a safety deposit box, garnishment against the bank, which is the lessor of the box, is a proper remedy by weight of authority, though a slight conflict must be admitted." 12 R.C.L. § 35, p. 805.

[5] State ex rel. Rabiste v. Southern, 300 Mo. 417, 254 S.W. 166 (1923); Trowbridge v. Spinning, 23 Wash. 48, 62 P. 125 (1900); Wineman v. Clover Farms Dairy, 168 Miss. 583, 151 S. 749 (1934); Tillinghast v. Johnson, 34 R.I. 136, 82 A. 788 (1912).

[6] In the leading case of West Cache Sugar Co. v. Hendrickson (Zion's Savings Bank & Trust Co., Garnishee), 56 Utah 327 at 334, 190 P. 946 (1920) the court declared, "If we keep in mind that the relationship existing between the lessor of a safety deposit box and that of his customer is one of bailee and bailor for hire, we should encounter little, if any, difficulty in arriving at the conclusion that the contents of such boxes are subject to the process of garnishment or attachment."

The court stated in Washington Loan & Trust Co. v. Susquehana Coal Co., 26 App. D.C. 149 at 154 (1905), "There is no magic in two keys, a master key and a customer's key, to put property belonging to a defendant in an attachment beyond the reach of creditors and the process of the courts."

Accord, Lockwood v. Manhattan Storage & Warehouse Co., 28 App. Div. 68, 50 N.Y. Supp. 974 (1898); Medlyn v. Ananieff, 126 Conn. 169, 10 A. (2d) 367 (1940).

Much criticism has been leveled at courts adopting the bailment theory on the ground that the safety deposit company does not have the possession required of a bailee for hire; see VANZILE, BAILMENTS & CARRIERS, 2d. ed., 166 (1908); see also 3 CHI. L. REV. 147 (1936) and 11 MINN. L. REV. 440 (1927).

landlord-tenant relationship exists between the parties with possession of the box's contents being in the lessee debtor.[7] The duty to prove the contents of the safety deposit box rests upon the judgment creditor, but many courts lend their aid by ordering the box opened and inventory taken in the presence of the debtor.[8] Having dodged the issue in an earlier decision,[9] the court in the principal case held that the municipal court did have power to open the box by force, if necessary, in the general exercise of its equitable jurisdiction.[10] The court then reasoned that the bank, in permitting the debtors access to the box on three occasions after service of the garnishment writ, thereby nullifying any possible effort of the court in obtaining the contents by ordering the box opened, acted at its peril.

The decision is in step with the modern tendency of the cases and especially timely today when safety deposit boxes are so crowded with securities, jewels, cash, and other valuables. It is submitted that the majority of the jurisdictions are pursuing the wiser and more equitable policy of overlooking technical ob-

[7] Dupont v. Moore, 86 N.H. 254, 166 A. 417 (1933); Wells v. Cole, 194 Minn. 275, 260 N.W. 520 (1935).

The writer in 3 CHI L. REV. 147 (1935) suggests that the lack of possession in the renter is just as fatal to the landlord-tenant theory as the lack of possession in the safe deposit company is fatal to the theory of bailment.

Still a third theory of licensor-licensee has been advanced by the writer in 11 MINN. L. REV. 440 (1927).

[8] In West Cache Sugar Co. v. Hendrickson (Zion's Savings Bank, Garnishee), 56 Utah 327 at 335 (1920) the court said, "The court's orders may not be baffled merely because the lessee or owner of the safety deposit box refuses to surrender the key by which the box, in connection with the master key, is opened. If, therefore, there is any method or device available by means of which such boxes can be opened without destroying them and their contents, the courts have ample power to direct those who have possession and control of such boxes to open them by any available method, and to deliver the contents thereof into the custody of the law."

Accord, Horace Holding Co. v. Clements, 127 Misc. 83, 215 N.Y.S. 169 (1926); Trainer v. Saunders, 270 Pa. 451, 113 A. 681 (1921); Loyless v. Hodges, 44 Ga. 648 (1872).

[9] In Framheim v. Miller, 241 Ill. App. 328 at 332 (1926) the same court declined to decide whether the trial court had authority to order the garnishee to open the box, declaring, "Whether in the instant case the court had authority to order the garnishee to open the box, and in case it failed to do so, punish it as for a contempt, we do not decide as the question is not properly before us."

This case was strongly criticized in 4 JOHN MARSHALL L. Q. 536 (1939).

[10] The court justified its holding on § 24 of the Illinois garnishment statute which provides: "When it shall appear that any garnishee has in his hands, or under his control, any goods, chattels, choses in action or effects, belonging to or which he is bound to deliver to the defendant, with or without condition, the court or justice of the peace may make any and all proper orders in regard to the delivery thereof to the proper officer, and the sale or disposition of the same, and the discharging of any lien thereon, and may authorize the garnishee to sell any such property, or collect any choses in action, and account for the proceeds thereof; or, if the proceedings be in a court of record, the court may appoint a receiver to take possession and sell, collect or otherwise dispose of the same, and make all orders in regard thereto which may be necessary or equitable between the parties." Ill. Ann. Stat. (Smith-Hurd, 1943) c. 62, § 24.

jections of the law and enforcing the true spirit of the garnishment statutes by refusing to permit judgment debtors to evade their honest obligations by the mere placing of their valuable assets in a safety deposit box.

Craig E. Davids (*S.Ed.*)