

New Jersey Court of Errors and Appeals

10

BETWEEN
FRANZ REALTY COMPANY,
Appellant,

and

MAURICE H. WELSH,
Respondent.

On Appeal from allowance of Employee's claim for wages as against Landlord's claim for Rent.

20

BRIEF FOR EMPLOYEE, MAURICE H. WELSH.

1. It is admitted by the appellant (par. 4 St. of Case) that Maurice H. Welsh, the employee, has a valid claim for wages for work performed for the Standard Electric Lamp Company, the insolvent corporation, within two months before the beginning of insolvency proceedings, amounting to \$310, and this claim has been held by the Court of Chancery to be preferred to the landlord's claim of rent for one year, \$1,200.

30

2. The landlord, Franz Realty Company, bases its claim for preference upon Section 4 of the Landlord and Tenant Act (Comp. Stats. 3066) which provides against the removal of goods by any

40

process whatever until the landlord's rent due, and not exceeding one year is paid. The case of *Wood vs. Carriage Co.* 49 Eq. 433, is cited as authority to show that the order of the court directing the receiver to take possession and sell is within the phrase of the statute "any other process."

3. All that the landlord can have in any event is a lien, and the appellant claims only a lien in this case. His lien under the warrant to distrain relates only to the time of actual seizure under the process of distress. In the meantime the goods remain the property of the tenant, who may consume or use or sell them at his pleasure.

Woodside vs. Adams, 11 Vr. 419.

Before this distress all the landlord has is a mere latent equity, and it is only by the distress that his claim is fastened on the goods so as to enable him to be considered a creditor, in which status he can question the efficacy of precedent liens, but this status does not of itself give him a right superior to such preceding liens. The superiority must depend upon some infirmity in the preceding lien questioned.

Green vs. McCrane, 55 Eq. 436 at 444-445.

If the officer removing goods has no notice of the landlord's claim he is not liable therefor.

Hand vs. Howell, 61 N. J. L. 142 at 144.

4. The right of the landlord arises only under the statute. Before this he had no charge or lien whatever on his tenant's chattels.

Green vs. McCrane, 55 Eq. at p. 444.

There is no doubt that the same power that gave him the right can take it away.

5. This section being in force, the various cor-

poration acts providing for preferences to employees were passed, culminating in the acts of 1892 (L. 1892 p. 426) and the corporation revision act of 1896 (L. 1896 p. 277). Secs. 83 and 84 of the 1896 revision which are in the exact words of the sections relating to the same subject in the act of 1892, give employees a first and prior lien upon the assets of the corporation for two months' wages next preceding the date when insolvency proceedings shall be actually begun against the corporation, not as in former acts, "before the adjudication of insolvency." 10

6. Section 84 provides that this lien shall be prior to all other liens that can or may be acquired upon or against the assets, excepting as against a chattel mortgage recorded more than two months before insolvency proceedings were begun, and a chattel mortgage recorded within two months of such proceedings, for money loaned or goods purchased within two months, and also real estate mortgages of said corporation. The word "assets" in former acts had been construed to mean whatever remained after the payment of special and general liens thereon. And under this construction, the landlord having a claim for rent under a distress against the chattels of the insolvent estate, as well as judgment and mortgage creditors was held to have priority over the lien for employees' wages. 20

Hinkle vs. Camden &c. Trust Co., 47 Eq. 333. 30

Wright vs. Wynockie Iron Co., 48 Eq. 29.

7. The provisions of these sections of the act of 1892 have been construed differently, and the court of Chancery has held that the word "assets" in this act means all the property of the corporation com- 40

ing into the hands of the receiver whether encumbered by liens or not, and that employees' wages would be prior to all other liens except the chattel mortgages and mortgages on real estate provided by the act.

Fitzgerald vs. Maxim Powder Co., 33
Atl. Rep. 1064.

And the act of 1892 was held to have repealed all prior legislation on the subject.

10

Mersereau vs. Mersereau Co., 51 Eq.
382-385.

Mingin vs. Alva Glass Mfg. Co., 55 Eq.
463-467.

20

8. It will be observed that the landlord consented that the receiver should sell all the property, merely giving notice of his claim, so it was the same position as in *Wright vs. Wynockie Iron Co.*, but giving the employees a lien prior to all other liens that can or may be acquired against the assets. A judgment recovered prior to the filing of the bill for insolvency has been held a lien subject to the lien of employees for wages. *Fitzgerald vs. Maxim Powder Co.* The terms "can or may be acquired" seem broad enough to cover a lien that "has been acquired" before the attachment of the wage lien.

30

It can hardly be doubted that the Legislature intended through these subsequent acts and revisions to secure to the employees at least two months wages against all and every other claim against the assets except the mortgages and chattel mortgages placed thereon under the stated circumstances.

40

9. If a landlord were permitted to take a year's rent, which had been allowed to accrue through his negligence, in this case \$1,200, it would be apt to entirely cut off employees who had worked for the

company during the statutory two months without any notice of the landlord's claim, and therefore without an opportunity to protect themselves. On the other hand, no hardship will be worked upon the landlord in subjecting his lien to that of the employee, any more than the hardship accruing to other lienors by judgment or otherwise, and there seems to be no good reason to suppose that his rights can be excepted from the general preference of wages over all other liens in the absence of language showing clear intention to make such exception. 10

10. The case of *Wood vs. Carriage Co.*, 49 Eq. 433, cited on the point of the meaning of "other process" was on conflicting claims of landlord and lien creditors and general creditors, and no wages question was involved.

11. In the case of *Massey vs. Camden &c. Ry. Co.* 8 Buch. 539 the court of Errors and Appeals held at page 541 that the intention of these acts was the creation of liens and priorities where the legislature thought they should exist, and that the only preferential claims that could be allowed were those mentioned in sections 83 and 84. 20

It is respectfully submitted that the judgment of the chancellor should be affirmed.

MICHAEL J. TANSEY,
Of Counsel with the Respondent. 30



Court of Errors and Appeals

THE FRANZ
REALTY CO.,) ON APPEAL FROM
Appellant,) CHANCERY.
vs.
MAURICE H. WELSH,) BRIEF. 10
Appellee.)

BRIEF OR JAMES R. NUGENT, of Counsel for the Appellant.

The question on this Appeal grows out of the distribution of the proceeds of sale of goods and chattels in the hands of the Receiver of The Standard Electric Lamp Company, an insolvent corporation.

The Franz Realty Company, the Appellant, claims one year's rent—\$1,200—for the premises occupied by the corporation at and before the time of insolvency, which it insists is preferred to the claim of Maurice H. Welsh, the Appellee, of \$310, for labor performed within two months next before the commencement of the insolvency proceedings. 20

The amount in the hands of the Receiver from the sale of the goods and chattels is not sufficient to pay the rent, hence the arising of the question at issue.

1. 30

The landlord's preference arises under Section 4 of the Landlord and Tenant Act, Com. Stat. Vol. 3, page 3066. This act provides that no goods and chattels can be taken under execution, attachment or other process (other process includes the decree adjudging the corporation insolvent and appointing the Receiver. Wood vs. Carriage Co., 49 Eq. 433) unless the landlord's rent to the extent of one year has first been paid. Section 5 prohibits the removal by any officer under 40

any writ or process of goods and chattels from the premises after notice given by the landlord, unless the landlord is first paid. Such notice was given by the Appellant to the Receiver, but the Receiver disregarded the notice and sold the goods and chattels without paying the landlord, the Appellant.

10 Under the Landlord and Tenant Act, cited, the landlord has a preferential right, to the extent of one year's rent, over executions, attachments and the decree appointing the Receiver in this case, on the goods and chattels, but extends to no other property or assets.

2.

The Act creating a preference for labor is Sections 83-84 of the Corporation Act, Com. Stat. Vol. 20, Page 1650, which provides that such lien shall be first and prior to any other lien that can or may be acquired, upon or against the assets of the corporation, except chattel mortgages given for certain purposes.

20 Such preference being for labor performed within two months next preceding the insolvency of the corporation, and does not vest until the happening of the statutory requirement, viz: the adjudication of insolvency.

Mingen vs. Alva Glass Mfg. Co. 55 Eq. 463.

30 The words of the Act giving labor the preference, it will be noticed, are over "any other lien that can or may be acquired." These words are in futuro and raise the question when such lien must be acquired? If the words were any other lien which has been or may be acquired, then there would be no question as to their meaning. Then follows in the Act the exception of chattel mortgages recorded within two months of the insolvency proceedings given for goods purchased, &c., implying that it was the meaning of the Legislature that labor should have a preference over liens acquired within such two months.

40 The Appellant or Landlord's right vested under the Landlord and Tenant Act more than one year before the adjudication of insolvency.

The preference given the employee being non-existent until adjudication of insolvency, it follows that it would have to be given a retroactive and unusual effect in order to divest the landlord's preference under another statute.

Besides, to give the Act creating the employee's lien the construction sought by the Appellee, would make both the landlord and the employee's rights subject to different courts, because as to attachments and executions issuing out of Court of Law, which in many cases terminate the business of the corporation, the landlord's right would be paramount, even though the corporation is insolvent; but if the "other process," being the adjudication of insolvency and order appointing a Receiver, issuing out of Chancery, then the rights of the parties would be reversed, although the real conditions might be the same. 10

The case of *Woodside vs. Adams* was referred to by the Vice-Chancellor, but that case involves a chattel mortgage, and a chattel mortgage is neither an attachment, execution nor other process, over which the landlord's preference is given. 20

There seems to be no adjudication of preferences between a landlord and an employee. The true construction would seem to be that the landlord has a preference as to goods and chattels over attachments, executions and other process, which includes under the case cited of *Woods vs. Carriage Company*, the decree and order appointing the Receiver in this case, and that the employee has a preference as to all other assets of the corporation. 30

Respectfully submitted by

JAMES R. NUGENT,
Counsel for Appellant.

of non-
allows th
of which

given th
ation of
de given

T
state
if

Court of Errors and Appeals

THE FRANZ
REALTY CO.,
Appellant, } On Appeal from Chancery
vs. }
MAURICE H. WELSH, } STATE OF THE CASE. 10
Appellee. }

AGREED STATE OF THE CASE IN THE ABOVE APPEAL

1.

The Standard Electric Lamp Co. was adjudged insolvent on Bill filed by Maurice H. Welsh, Complainant, on February 24th, 1915, and Richard Stockton appointed Receiver by Decree of the Court of Chancery, March 9th, 1915. 20

2.

The Receiver immediately qualified and took possession of the property of the insolvent corporation.

3.

The appellant, The Franz Realty Co., filed with the Receiver its claim for one year's rent amounting to \$1,200, and made demand on him for the payment of the same. The correctness of which claim is admitted by the Appellee. 30

4.

Maurice H. Welsh, the Appellee, filed with the Receiver his claim for \$310, for labor performed as an employee of the insolvent corporation within two 40

months of the beginning of insolvency procedures. The correctness of which claim is admitted by the Appellant.

5.

The Receiver advertised the goods and chattels for sale, and on March 25th, 1915, the Appellant, the Franz Realty Co., served on the Receiver the following notice:

10

IN CHANCERY OF NEW JERSEY.

Between
MAURICE H. WELSH,)
Complainant,)
and)
STANDARD)
ELECTRIC LAMP CO.,)
20 Defendant.)

On Bill &c.
NOTICE.

To Richard Stockton, Esq., Receiver, appointed in the above stated cause:

30 Please take notice, that the Franz Realty Co. claim a lien upon the goods and chattels of the said insolvent debtor, on the premises occupied by said debtor, or removed therefrom within thirty days last past, for one year's rent for said premises, at one hundred dollars per month, being the amount of rent agreed to be paid by the said debtor to the landlord, the said Franz Realty Co., and for which a distress has been levied.

The total amount of rent for which the said insolvent debtor is indebted to its landlord, the Franz Realty Co., is for seventeen months, viz: \$1,700, of which the last accrued \$1,200 is claimed as a lien on said goods and chattels as aforesaid

40

over the landlord's claim for rent, in the presence of Michael J. Tansey of counsel with the claimant, and George W. Anderson, of counsel with the landlord, and also in the presence of Richard Stockton, Receiver, and after testimony taken and argument thereon in open court, it appearing that the claim of Maurice H. Welsh, as employee for wages, is superior to the landlord's lien for rent:

10 It is thereupon, on this fifteenth day of October, 1915, ordered that the appeal of said Maurice H. Welsh from the Receiver's decision disallowing his claim for preference be sustained and that the said Receiver do forthwith pay to the claimant his said claim as filed in the sum of three hundred and ten dollars (\$310) in preference to the landlord's claim for rent.

Respectfully advised,

20 E. R. WALKER,
FREDERIC W. STEVENS, C.
V. C.

IN CHANCERY OF NEW JERSEY.

30 Between
MAURICE H. WELSH,)
Complainant,) On bill, &c.
and)
THE STANDARD)
ELECTRIC LAMP CO.,) NOTICE OF APPEAL.
Defendant.

40 The Franz Realty Company hereby appeals from the final order made in this court in the above stated cause, October 15, 1915, wherein the Receiver appointed in said matter is directed to pay out of the funds in his hands derived from the sale of the goods and chattels of said defendant company, the claim of the complainant for services rendered said company as an employee within two

months preceding the time when said company was adjudged insolvent, in preference to the claim of the Franz Realty Company for one year's rent for the premises occupied by the said Standard Electric Lamp Co., at the time of its insolvency, to the Court of Errors and Appeals.

JAMES R. NUGENT,
Sol'r and of Counsel with the Franz Realty Co.
Dated October, 1915.

10

I conceive there is good cause for appeal in the above stated cause.

JAMES R. NUGENT,
Of Counsel with Franz Realty Co.
Filed and served on the Sol'r of Maurice H. Welsh
and on the Receiver, October 15, 1915.

COURT OF ERRORS AND APPEALS.

20

THE FRANZ REALTY CO., Appellant,	}	PETITION FOR APPEAL.
vs. MAURICE H. WELSH, Appellee.		
On Appeal.		

To the Honorable the Court of Errors and Appeals, 30
the last resort in all cases:

The petition of the Franz Realty Co., the Appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a final order made in the Court of Chancery, by his Honor, the Chancellor, bearing date October 15, 1915, in a cause wherein the said Maurice H. Welsh was complainant and the Standard Electric Lamp Co. was defendant, in this respect, to wit:

10 that the said order adjudges that the claim of said Maurice H. Welsh, the Appellee, as an employee for wages, is superior to the claim of the Franz Realty Co., the Appellant, for rent due it as landlord for the premises occupied by said insolvent corporation, directing Richard Stockton, the Receiver, of said Standard Electric Lamp Co., appointed by order of the Chancellor in said cause, to forthwith pay the claim of the said Appellee for labor in preference to the said claim of the Appellant for rent.

20 And your petitioner appeals from that part of said order of the Chancellor which orders and directs as aforesaid upon the ground that the same is erroneous, for that the said claim of the Appellant for rent is superior to that of the said Appellee for labor, and the Receiver should have been directed to forthwith pay the Appellant his said claim in preference to the said Appellee's claim for labor.

Your petitioner therefore prays that the said order of the Chancellor may be reversed, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

JAMES R. NUGENT,
Sol'r and of Counsel with Appellant.

Agreed to by

30 JAMES R. NUGENT,
Sol'r and Counsel with Appellant.
MICHAEL J. TANSEY,
Sol'r and of Counsel with Appellee.

