

Bankruptcy - Effect of Trustee's Failure to Record Copy of Order Approving Bond

W.J. B.

Repository Citation

W. J. B., *Bankruptcy - Effect of Trustee's Failure to Record Copy of Order Approving Bond*, 2 La. L. Rev. (1940)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol2/iss3/10>

This Note is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.

Notes

BANKRUPTCY—EFFECT OF TRUSTEE'S FAILURE TO RECORD COPY OF ORDER APPROVING BOND—The owner of Louisiana property was adjudicated a bankrupt in New York. In 1934 plaintiff's assignor, relying upon the record title, acquired the land from the bankrupt by deed which he then recorded. In 1936 the New York trustee transferred the land in question to defendant's assignor who recorded his deed in 1937. Certified copies of the adjudication in bankruptcy and the order approving the trustee's bond were not recorded until 1938. Plaintiff sues to cancel the deeds to defendant and his assignor as clouds on his title. The lower court ordered the deeds cancelled. *Held*, the bankruptcy proceeding in New York was not binding upon an innocent purchaser who relied upon the title disclosed by the public records. *Derryberry v. Materson*, 192 So. 78 (La. 1939).

In Louisiana it is well settled that acts affecting title to immovable property must be recorded in order to be effective as to third persons;¹ and actual knowledge of contrary claims which do not appear on the public records is not equivalent to registry.²

While the Bankruptcy Act provides that title, as of the date of the adjudication,³ vests in the trustee upon his appointment, it does not contain any provision purporting to modify, or limit in any way, state laws relative to the transfer of real property. Indeed, the provisions of the Act show a clear intention that state

1. Art. 2266, La. Civil Code of 1870: "All sales, contracts and judgments affecting immovable property, which shall not be so recorded, shall be utterly null and void, except between the parties thereto. The recording may be made at any time, but shall only affect third persons from the time of the recording. . . ."

2. *McDuffie v. Walker*, 125 La. 152, 51 So. 100 (1909); *Soniat v. Whitmer*, 141 La. 235, 74 So. 916 (1916); *Loranger v. Citizens' Nat. Bank*, 162 La. 1054, 111 So. 418 (1927); *Dalbey v. Continental Supply Co.*, 165 La. 636, 115 So. 807 (1928); *Coyle v. Allen*, 168 La. 504, 122 So. 596 (1929); *Westwego Canal & Terminal Co. v. Pizanie*, 174 La. 1068, 142 So. 691 (1932); *Bell v. Canal Bank & Trust Co.*, 193 La. 142, 190 So. 359 (1939).

3. Bankruptcy Act of 1898, § 70(a), 30 Stat. 561 (1899), 11 U.S.C.A. § 110(a) (1927), as amended by Act of June 22, 1938, c. 575, 52 Stat. 879 (1938), 11 U.S.C.A. § 110(a) (Supp. 1939). Under the Chandler amendment the title of the trustee relates back to the date of the filing of the petition. This is simply a recognition of the interpretation which the courts had placed upon the section in question in order to make it consistent with other provisions of the act. *Collier, Bankruptcy* (Gilbert, 4 ed. 1937) 1167, § 1449.

registry laws shall apply.⁴ This position is further supported by the few decisions in point.⁵

Under the Chandler Act the procedure requiring recordation by the trustee is clearly set out: Ten days after his qualification the trustee must record, in each county where the bankrupt owns real property, a certified copy of the order approving his bond.⁶ Such document, when recorded, shall impart the same notice that a deed or other instrument affecting property, if recorded, would impart.⁷

Where, as in the principal case, the trustee fails to record the documents, as directed by the Act, and a loss occurs, an action should lie against the trustee upon his official bond. Section 50 (b)⁸ of the Act provides that this bond shall be conditioned on the faithful performance of his official duties, one of which is to record the order approving his bond, and that an action may be brought on such bond by any person injured.⁹

W. J. B.

CHARITIES—TORT LIABILITY OF ELEEMOSYNARY INSTITUTIONS TO RECIPIENTS OF THEIR SERVICES—An action was brought against a charitable hospital for injuries sustained by a patient through the negligence of the institution's agents. The defense was that a charitable institution cannot be subjected to tort liability. *Held*, such institutions are exempt from liability for injuries to beneficiaries regardless of whether the employees negligently causing such injuries were selected with due care. *Wilcox v. Idaho Falls Latter Day Saints Hospital*, 59 Idaho 350, 82 P. (2d) 849 (1938).

By the great weight of American authority, eleemosynary

4. Section 21(f) of the Chandler Act provides: "A certified copy of any order or decree entered in a proceeding under this title . . . if recorded, shall impart the same notice that a deed or other instrument affecting property, if recorded, would impart." 52 Stat. 853, 11 U.S.C.A. 44(f) (Supp. 1939).

5. *Beach v. Faust*, 2 Cal. (2d) 290, 40 P. (2d) 822 (1935); *Vombrack v. Wavra*, 331 Ill. 508, 163 N.E. 340 (1928). The court in the latter case said: "Rules concerning a transfer of property are primarily a matter of state regulation. . . . In the absence of specific or particular provisions of the Bankruptcy Act, the law of the state determines the efficiency of acts and transactions to effect the transfer of the title to property, the time of the passing of the title, and whether the recording or filing of an instrument is required, and, if so, as to whom it will be void for the failure to record it." (331 Ill. at 511, 163 N.E. at 342.) The court further pointed out that it was manifest that the provisions of the act were designed to afford notice to third persons and to provide protection to those relying upon the public records.

6. Chandler Act, § 47(c), 52 Stat. 861, 11 U.S.C.A. § 75(c) (Supp. 1939).

7. Chandler Act, § 21(f), 52 Stat. 853, 11 U.S.C.A. § 44(f) (Supp. 1939).

8. Chandler Act, § 50(b), 52 Stat. 863, 11 U.S.C.A. § 78 (Supp. 1939).

9. Chandler Act, § 50(n), 52 Stat. 864, 11 U.S.C.A. § 78 (Supp. 1939).