Michigan Law Review

Volume 40 | Issue 1

1941

EXECUTORS AND ADMINISTRATORS - LIABILITY OF ORIGINAL LESSEE'S ESTATE ON ASSIGNED LONG - TERM LEASE

Charles G. Schwartz
University of Michigan Law School

EXECUTORS AND ADMINISTRATORS — LIABILITY OF ORIGINAL LESSEE'S ESTATE ON ASSIGNED LONG-TERM LEASE — Defendant's testator had entered into a ninety-nine year lease with the plaintiff lessor, and shortly afterward, with the consent of the plaintiff, had assigned the lease to a corporation. The lease was renewable forever. Fourteen years later the original lessee died testate, leaving an estate of approximately $1,000,000. The lessor now seeks to have the court impound nearly all of the estate as security for future rent payments. At the time of suit there had been no default in rent installments. *Held*, plaintiff has no present cause of action. In the absence of any default in rent, mere privity of contract with the original lessee's estate does not render lessor's claim for security for future rent a "debt not due" in contemplation of the code provisions [1] defining allowable claims against an estate. *Meek v. City Nat. Bank & Trust Co.*, 65 Ohio App. 349, 30 N. E. (2d) 347 (1940).

It is clear that a lessee who enters into a covenant to pay rent continues liable notwithstanding that the lease has been assigned, the lessor has assented to the assignment and has accepted rent from the assignee.[2] On the other hand, the authorities are uniformly in accord with the policy of speedy settlement of decedents' estates, and the statutes of most American states have sought to effectuate this policy.[3] The situation in the instant case presents clear conflict between these well-settled principles, and raises the interesting question what forms of relief are available to a creditor holding a contingent claim against an

[1] Ohio Gen. Code (Page, 1938), §§ 10509-124, 10509-148.

[2] 1 TIFFANY, LANDLORD AND TENANT, § 157 (1912); 35 C. J. 994-995 (1924).

[3] Walker v. Byers, 14 Ark. 246 (1853); Quain's Appeal, 22 Pa. St. 510 (1854). And see 2 WOERNER, ADMINISTRATION, § 400 (1923).

estate.[4] Rarely have the courts directed an executor to retain sufficient funds to pay a long-term contingent claim should it arise. Where the basis of such denial has not been the strict construction of the statutory language defining allowable claims, as in the instant case, various other objections are interposed. Among these objections are (1) to impound may render the estate insolvent as to other creditors; [5] (2) to retain such funds would be an unconstitutional deprivation of the rights of legatees; [6] (3) the lessor has adequate security in the leasehold itself together with the general credit of an assignee of whom he has approved; [7] (4) this is a covenant payable primarily, in the contemplation of the parties, out of the profits of the land, and the lessee's estate should not be tied up indefinitely as security against the mere possibility that at some remote future time the assignee may be in default; [8] (5) it is, to say the least, impractical to defer administration of the lessee's estate for so long a period; [9] and (6) there is too much uncertainty as to the amount which may ultimately come due.[10] On occasion such relief has been granted, but on the facts of the handful of cases allowing this result, few, if any, of the foregoing objections existed.[11] On the other hand, in view of the fact that alternate forms of relief against the estate

[4] This situation should be distinguished from the case where the lessor is suing for accrued rent presently due. As pointed out by the court in the principal case, the great majority of cases cited as authority for plaintiff's position involve a present default. That the estate of the lessee is liable in such a case is clear, see 68 A. L. R. 590 (1930), and cases cited therein.

[5] Chicago Title & Trust Co. v. Corporation of Fine Arts Bldg., 288 Ill. 142, 123 N. E. 300 (1919) (claim for future installments of rent).

[6] In re Littleton's Estate, 129 Misc. 845, 223 N. Y. S. 470 (1927). In this case a New York statute allowing the court to order the executor to impound part of the estate to secure a contingent claim was held unconstitutional under the state and federal constitutions as an arbitrary and unjust deprivation of the legatee's rights, without due process of law.

[7] King v. Malcott, 9 Hare 692, 68 Eng. Rep. 691 (1852) (claim for security against future breach of covenant in lease).

[8] Quain's Appeal, 22 Pa. St. 510 (1854) (claim for ground rent accruing in future in a perpetual lease).

[9] In re Concklin's Estate, 150 Misc. 53, 268 N. Y. S. 348 (1933) (claim for security for mortgage).

[10] In re Heskett, 26 Ohio L. Abs. 290 (1932) (claim for security for future payment of rent). See also Bullard v. Moor, 158 Mass. 418, 33 N. E. 928 (1893).

[11] The same question as that in the instant case exists where decedent was an indorser of an unmatured promissory note, a mortgagor, or a guarantor of corporate bonds, etc. Some of the cases cited herein have reference to those situations. See Alsup v. Banks, 68 Miss. 664, 9 So. 895 (1891) (five-year lease, lessee dying after one year); Dunnigan v. Stevens, 122 Ill. 396, 13 N. E. 651 (1887) (indorser on promissory note, where presentment had been waived); Andrews v. Kelleher, 124 Wash. 517, 214 P. 1056 (1923) (deceased had jointly and severally guaranteed unmatured corporate bonds); Auriol v. Mills, 4 T. R. 94, 100 Eng. Rep. 912 (1790) (lessee had assigned, then died); Jewell v. MacFarland, 141 Kan. 40, 40 P. (2d) 330 (1935) (estate of co-lessee held under fifteen-year lease); Curley v. Hand's Estate, 53 Vt. 524 (1881) (indorser on promissory note); Greenleaf v. Allen, 127 Mass. 248 (1879). See also 24 C. J. 293 (1921), and 1 TIFFANY, LANDLORD AND TENANT, §§ 55a, 181c (1912).

of the lessee are available, the absolute extinction of any right in the lessor to security from the estate of the lessee would seem equally indefensible, and to constitute an impairment of the obligations of his contract.[12] If liability should vest, by default of the assignee, subsequent to the time limits set up by the nonclaim statutes, but before the estate has been distributed, little difficulty would be encountered, since these statutes are usually held not to bar such subsequently vesting contingent claims.[13] A solution compromising the conflicting interests would surely be the more desired goal. The right to proceed against the legatees to the extent that they have received assets, which was sought as incidental relief by the lessor in the principal case, presents practical limitations in effectiveness, especially when any length of time is involved.[14] A more satisfactory compromise could be reached by requiring the legatees to furnish bond as security to the lessor, to the extent that they have received assets. Although involving expense and some further possible difficulty,[15] still as between a lessor holding a possible and unsecured claim against the estate, and the donees, this would seem to be a more equitable result.

Charles G. Schwartz

[12] "The probate code committee of the Ohio State Bar Association has frequently discussed the possibility of in some way terminating liability under ninety-nine-year leases, but could see no way to do so without impairing the obligation of contract." Comment in Ohio Gen. Code (Page, 1938), § 10509-124.

[13] Generally the bar of the nonclaim statutes is held not to run against contingent claims until they have become absolute and enforceable by action. Binz v. Hyatt, 200 Mo. 299, 98 S. W. 637 (1906); Logan v. Dixon, 73 Wis. 533, 41 N. W. 713 (1889); South Milwaukee Co. v. Murphy, 112 Wis. 614, 88 N. W. 583 (1901).

[14] There would seem to be no way to prevent the legatees from dissipating these assets, and where the creditor must trace such assets, further difficulties would be encountered. For a full discussion of this right, see 3 WOERNER, ADMINISTRATION, §§ 574-578 (1923).

[15] The primary objection to such bond would be the expense. Conceivably, where an extended term and a substantial amount are involved, the cost may very nearly consume all the legatee received. Under such circumstances the desirability of this solution might well be questioned. In the event of a legatee's death, the further problem of maintaining the bond would arise. The logical solution would require those receiving the original assets, or their proceeds, from the legatee's estate to maintain the bond. To the extent that his estate is divided, the difficulties in tracing and distributing the cost of the bond would be multiplied. See 2 WOERNER, ADMINISTRATION, § 394 (1923), and 1 TIFFANY, LANDLORD AND TENANT, § 55 (1912).