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BANKRUPTCY — CORPORATE REORGANIZATION — VALIDITY OF PROCESS OUTSIDE TERRITORIAL CONFINES OF FEDERAL DISTRICT COURT — Debtor corporation had contracted with defendant, operator of a retail store, whereby defendant agreed to sell debtor's products exclusively and to buy all of his supplies from debtor. While debtor was in the course of section 77B¹ reorganization proceedings, defendant refused to continue to comply with the contract. Defendant resided and did business in the same state and federal judicial circuit in which the reorganization court was located, but not within the territorial confines of the court, nor was process served upon defendant within the court's territorial jurisdiction. Debtor moved for specific performance of the contract. *Held*, debtor's motion should be denied on the ground that the court had no power to issue its process beyond its territorial limits.² *In re Avondale Farms Dairy Inc.*, (D. C. Pa. 1938) 25 F. Supp. 605.

The question of the jurisdiction of a federal court, in which reorganization proceedings are pending, to issue its process beyond its territorial confines is not specifically answered by either section 77B or its successor, chapter X of the Chandler Act.³ Section 77B (a) provides that the court shall have "exclusive jurisdiction of the debtor and its property wherever located" as well as the jurisdiction of a conservational equity receivership court.⁴ In addition, sub-

¹ 48 Stat. L. 912 (1935), 11 U. S. C. (Supp. 1936), § 207.

² The basis of the decision is not clear. Debtor argued that, since it had operated the store prior to defendant's assuming the lease, it owned the store's goodwill, and that such goodwill would be destroyed unless protected by an appropriate judicial decree enforcing the contract. Apparently debtor wished to obtain such a decree in a summary proceedings, for the court called attention to the distinction between plenary and summary process. Another rationale for the decision might be that, although the court had power to issue an injunction extraterritorially to protect debtor's property, debtor's interest in the continued performance of the contract was not such a property right as could be protected by a reorganization court.

³ 52 Stat. L. 883 (1938), 11 U. S. C. (Supp. 1938), § 501 et seq. The sections of Chapter X defining the court's jurisdiction in reorganization proceedings roughly parallel those of section 77B. Sec. 111 of Chapter X provides that the court shall have "exclusive jurisdiction of the debtor and its property, wherever located." Secs. 112 and 114 give the court bankruptcy jurisdiction, and § 115 grants conservational equity receivership powers. Sec. 113 authorizes the judge to grant a temporary stay of a "prior pending bankruptcy, mortgage foreclosure or equity receivership proceeding and of any act or other proceeding to enforce a lien against a debtor's property . . . [and] the commencement or continuation of a suit against a debtor." See also §§ 116 (4), 148, 165, 166, 212 and 228 (3).

⁴ Process of a United States district court cannot be served outside its district except on express statutory authority. *First Nat. Bank v. Williams*, 252 U. S. 504, 40 S. Ct. 372 (1920). And federal equity receivers are not recognized outside of the court of their appointment by other federal courts—*Great Western Min. & Mfg. Co. v. Harris*, 198 U. S. 561, 25 S. Ct. 770 (1905)—except, as provided by the Judicial Code, when "land or other property of a fixed character, the subject of the suit, lies within different States in the same judicial circuit. . . ." In that event the receiver's authority is recognized throughout the circuit and "In any case coming within the provisions of this section . . . process may issue and be executed within any district of the circuit in the same manner and to the same extent as if the property were wholly

section (o) of 77B grants bankruptcy powers to the court.⁵ Since jurisdiction is phrased primarily in terms of title to the debtor's property, it is arguable that, broadly interpreted, the statute confers power upon the court to issue its process anywhere throughout the United States.⁶ But the few courts in which the question has arisen have, with one exception,⁷ taken a narrower view, and have denied that extraterritorial service of process is effective,⁸ except in the case of turn over orders,⁹ injunctions to protect and preserve the debtor's prop-

within the same district. . . ." Section 56 of the Judicial Code, 36 Stat. L. 1102 (1911), 28 U. S. C. (1934), § 117. A federal equity court has power to compel debtors of the corporation in receivership to litigate their debts in ancillary proceedings when the debtors are located in the district in which the receivership suit is pending, although other requirements of federal jurisdiction are absent. *White v. Ewing*, 159 U. S. 36, 15 S. Ct. 1018 (1895). But this does not extend the issuance of the receivership court's process beyond its district. *Lion Bonding & Surety Co. v. Karatz*, 262 U. S. 77, 43 S. Ct. 480 (1923).

⁵ While a court sitting in bankruptcy has jurisdiction over all property in the bankrupt's possession wherever located, yet such court cannot issue process outside its district. *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U. S. 300, 32 S. Ct. 96 (1911); *Kelley v. Gill*, 245 U. S. 116, 38 S. Ct. 38 (1917).

⁶ One federal district court has taken this position. In *Thomas v. Winslow*, (D. C. N. Y. 1935) 11 F. Supp. 839, 29 Am. Bkcy. Rep. (N. S.) 360, it was held that the United States District Court for the Western District of New York, in which reorganization proceedings under section 77B were pending, had jurisdiction of a suit by the trustee of the debtor against a resident of Michigan and a Michigan corporation for an accounting of the debtor's money allegedly wrongfully appropriated while the individual defendant was an officer of the debtor, service of process being had in Michigan. Cf. 49 HARV. L. REV. 1111 at 1143 (1936).

⁷ *Thomas v. Winslow*, *supra*. The Supreme Court has several times declared that Congress could authorize the service of process of a federal court throughout the United States. *Toland v. Sprague*, 12 Pet. (37 U. S.) 300 (1838); *United States v. Union Pacific R. R.*, 98 U. S. 569 (1878).

⁸ *United States v. Tacoma Oriental S. S. Co.*, (C. C. A. 9th, 1936) 86 F. (2d) 363, decided that the United States District Court for the Western District of Washington, in which the debtor was in the course of 77B reorganization proceedings, had no power to issue its process beyond its territorial limits in order to compel certain officials of the federal government to make payments on an ocean mail contract between debtor and the United States. And *Bovay v. H. M. Byllesby & Co.*, (C. C. A. 5th, 1937) 88 F. (2d) 990, noted 11 So. CAL. L. REV. 356 (1938), held that service of process of the United States District Court for the Southern District of Mississippi, sitting as a 77B reorganization court, was ineffective against non-residents of Mississippi, in a suit to compel an accounting for moneys and securities of the debtor allegedly converted by defendants, when service of process was obtained in Illinois and Delaware.

⁹ In *re Greyling Realty Corp.*, (C. C. A. 2d, 1935) 74 F. (2d) 734, 27 Am. Bkcy. Rep. (N. S.) 413, cert. den. *Troutman v. Compton*, 294 U. S. 725, 55 S. Ct. 639 (1935), declared that the United States District Court for the Southern District of New York acquired jurisdiction by extraterritorial service of process, to compel a Georgia state court receiver to turn over property of the debtor to the trustee appointed by the federal court of New York under 77B proceedings. In *re Norfolk Weavers, Inc.*, (D. C. Del. 1935) 12 F. Supp. 495, the defendant, a resident of Virginia, was a purchaser of Virginia realty at a sale made pursuant to a power in a trust deed

erty,¹⁰ and stay orders prohibiting commencement or continuation of suits against the debtor.¹¹ Although there is not much authority for its position, the result reached by the court in the instant case seems preferable to the opposite conclusion. One of the chief purposes of section 77B was to eliminate ancillary receiverships, and not necessarily to give exclusive jurisdiction to the reorganization court of any and all suits concerning the debtor.¹² Since section 77B contemplates the continuance of business during the reorganization proceedings,¹³ speedy court action may at times be necessary, and can probably be best achieved by the reorganization court itself in the case of turnover orders, injunctions to protect the debtor's property from the enforcement of liens, and stays forbidding suits against the debtor. In the present case it would have been comparatively little trouble to defendant to defend the suit on its merits, for he resided and did business in the same state in which the reorganization court was located. But

executed by debtor. Prior to the sale, reorganization proceedings under 77B had been instituted in the United States District Court for Delaware and that court had issued a blanket injunction forbidding any proceedings to enforce liens against the debtor's property. When default and sale occurred, the reorganization trustee was in possession of the realty and operating it. The Delaware federal court found it had power to compel the purchaser to convey the property to the reorganization trustee, although service of process had been made upon defendant in Virginia, and also by registered mail. See 49 HARV. L. REV. 1111 at 1137 (1936).

¹⁰ Subsection (c) (10) of 77B authorizes the reorganization court to "enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien. . . ." Although it does not specifically permit extraterritorial service of process, in *Detroit Trust Co. v. Campbell River Timber Co.*, (C. C. A. 9th, 1938) 98 F. (2d) 389, it was held that the United States District Court for the Western District of Washington had power to enjoin defendant, trustee under a trust deed, from exercising its right to confess judgment on behalf of the debtor in a mortgage foreclosure of land owned by debtor, which land was located in British Columbia. See *Continental Illinois Nat. Bank & Trust Co. v. Chicago, R. I. & P. R. R.*, 294 U. S. 648, 55 S. Ct. 595 (1935), where the Supreme Court upheld the power of an Illinois federal court, in which railroad reorganization proceedings were pending under the famous section 77, to enjoin the sale of collateral pledged by the railroad as security for a loan from banks of New York and Missouri.

¹¹ By subsection (c) (10) of 77B a court in which reorganization proceedings are pending is empowered to "enjoin or stay the commencement or continuation of suits against the debtor. . . ." Again there is no specific authority for extraterritorial service of process, but in *re Midland United Co.*, (D. C. Del. 1935) 12 F. Supp. 502, upheld the power of a reorganization court to enjoin the further prosecution of a suit against the debtor in the federal district court of Illinois by a Michigan resident, although service of process had not been made within the territorial limits of the reorganization court.

¹² H. REP. 194, 73d Cong., 1st sess. (Committee on Judiciary 1933); S. REP. 482, 73d Cong., 2d sess. (Committee on Judiciary 1934); *Old Fort Improvement Co. v. Lea*, (C. C. A. 4th, 1937) 89 F. (2d) 286; *Memphis St. Ry.*, (C. C. A. 6th, 1937) 86 F. (2d) 891. For a summary of the legislative history of section 77B, see Friendly, "Some Comments on the Corporate Reorganization Act," 48 HARV. L. REV. 39 (1934).

¹³ Section 77B (c).

obvious burdens are imposed upon a California resident by compelling him, through extraterritorial service of process, to defend an action in New York. Because the terms of the statute are ambiguous, and because its policies do not demand an extension of jurisdiction, except in the above-mentioned instances, the self-imposed limitation on the powers of reorganization courts is proper. Chapter X of the Chandler Act does not change section 77B in this respect.¹⁴

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¹⁴ See note 3, *supra*.