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179 Md. 546, 20 A.2d 495

Court of Appeals of Maryland.  
 MAYOR AND CITY COUNCIL OF  
 BALTIMORE

v.

MARYLAND TRUST CO. et al.

**No. 36.**

June 10, 1941.

Appeal from Circuit Court of Baltimore City;  
 Eugene O'Dunne, Judge.

Proceeding by the Maryland Trust Company, trustee, for authority to assert its lien against property of Hotel Company for the benefit of bondholders, wherein a decree was passed directing the trustee to sell. The trustee's proceeding was consolidated with receivership proceeding with respect to the Hotel Company. The auditor's account allotted proceeds of sale of personalty to the City of Baltimore for the payment of taxes on tangible personalty and interest and penalties thereon, and from an order sustaining in part exceptions filed by the Maryland Trust Company to the auditor's account, and Mayor and City Council of Baltimore appeal.

Order affirmed in part and reversed in part and case remanded with directions.

West Headnotes

**[1] Corporations 101 ↪565(6)**

[101k565\(6\) Most Cited Cases](#)

Where city taxes were regularly levied and assessed upon tangible personalty belonging to hotel company either before or after hotel company's charter was forfeited and company passed into receivership, and there was no charge of fraud, all parties being fully aware of the amount of the assessment, the trustee, holding mortgage indenture to secure bond issue of hotel company, could not, after the date provided by

statute for filing of demand for a hearing before the Appeal Tax Court of Baltimore, raise exceptions to the fairness of such assessment. Code 1939, art. 81, § 190.

**[2] Corporations 101 ↪565(4)**

[101k565\(4\) Most Cited Cases](#)

A statute, limiting city's right to collect taxes to a period of four years from the time such taxes became due, did not bar city's claim for unpaid taxes for ten preceding years on tangible personalty of a hotel company, which had for eight years been in hands of receivers appointed by the court, since such personalty in hands of receivers was in "custodia legis". Code 1939, art. 81, § 160.

**[3] Corporations 101 ↪566(1)**

[101k566\(1\) Most Cited Cases](#)

Where chancellor, having jurisdiction over receivers of hotel company, denied city's petition for authority to enforce collection of taxes against real estate of company, and statements of amount of taxes due upon personalty were from time to time filed with the receivers, city's claim for taxes on personalty for preceding 10 years did not lose its status as a "preferred claim" against proceeds of judicial sale of personalty belonging to hotel company because of failure to petition chancellor for authority to enforce collection of such taxes on personalty, since, in view of chancellor's action with respect to real estate, any attempt to perfect city's lien upon personalty would have been a mere futility. Code 1939, art. 81, § 160.

**[4] Corporations 101 ↪566(1)**

[101k566\(1\) Most Cited Cases](#)

Where hotel company went into receivership in 1932 and in 1940 property was ordered sold at the suit of trustee for authority to assert lien of mortgage indenture held by trustee to secure company's bond issue, unpaid city taxes on personalty for 1931 to 1940, inclusive, together with interest and penalties, constituted a "preferred claim" against proceeds of judicial sale

of personalty belonging to hotel company. Code 1939, art. 81, § 160.

[\[5\] Corporations 101 ↪566\(1\)](#)  
[101k566\(1\) Most Cited Cases](#)

Interest and penalties upon unpaid taxes allowed by law form a part of such taxes and constitute a "preferred claim" to the same extent as do the taxes in the distribution of proceeds arising from a sale made by a ministerial officer of corporate property subject to such tax.

**\*547 \*\*496** Lawrence B. Fenneman, Deputy City Sol., and Michael J. Hankin, Asst. City Sol., both of Baltimore (Charles C. G. Evans, City Sol., of Baltimore, on the brief), for appellants. Frederick J. Singley and Frederick J. Singley, Jr., both of Baltimore (Hinkley & Singley, of Baltimore, on the brief), for appellees.

Argued before BOND, C. J., and SLOAN, JOHNSON, DELAPLAINE, COLLINS and FORSYTHE, JJ.

JOHNSON, Judge.

This is an appeal from an order of the Circuit Court of Baltimore City sustaining in part exceptions filed by Maryland Trust Company, Trustee, to the account of the Auditor as stated in the case of Maryland Trust Company, etc., Trustee, v. The Hotel Rennert Company of Baltimore City.

The Hotel Rennert Company of Baltimore City, a body corporate, from its incorporation until February 10, 1932, when receivers were appointed by the Circuit Court of Baltimore City to take over its management, operated the Hotel Rennert located at Saratoga and Liberty Streets. On March 1, 1899, the Company executed a mortgage to the Continental Trust Company, Trustee, upon the hotel property and the furniture, **\*548** fixtures and supplies contained therein, to secure an issue of \$750,000 first mortgage gold bonds due and payable March 1, 1949. Some of

the bonds were retired by the operation of a sinking fund, but the issue has been in default as to both principal and interest since March 1, 1932, and there now remains due appellee, successor by merger, to the Continental Trust Company, Trustee, the sum of \$723,721.68 on behalf of the bondholders.

On February 10, 1932, a creditor of the Hotel Company filed a bill of complaint in the Circuit Court for Baltimore City, alleging insolvency of the Company, and on the same day the Chancellor assumed jurisdiction and appointed Charles P. Cody, Frederick J. Singley and John H. Shaab, as receivers, to take charge of the realty and personalty of the Hotel Rennert Company, to collect the outstanding debts due it and 'convert its property, estate and assets into money \* \* \*.' Of the receivers appointed, Frederick J. Singley is the survivor, and at the time of the receivership, taxes on the realty as well as corporation taxes owed by the Hotel Company were in default and sufficient moneys were not realized from the conduct of the receivership by operation of the hotel property to permit a substantial reduction of such taxes. Appellant on March 31, 1932, filed in the receivership case a claim for 1931 Maryland Corporation Taxes. Subsequently on October 6, 1932, an additional claim was filed by the city for 1932 Maryland Corporation Taxes, while on October 6, 1934, a new claim was filed by appellant for such taxes covering the years 1931 to 1934, inclusive.

On November 27, 1934, it filed a petition seeking authority to sell the real estate for State and City Taxes due thereon. This effort was resisted by the receivers, who answered the petition, and it is conceded that the Chancellor failed to grant the city's request for the sale of the real estate in satisfaction of such tax claims.

**\*549** On December 29, 1939, Maryland Trust Company, successor trustee under the indenture of mortgage dated March 1, 1899, filed its petition in

the court having jurisdiction over the receivers for authority to assert its lien for the benefit of the bondholders and two days later such authority was granted, while on February 27, 1940, the court passed its decree directing the trustee to sell. The receivership proceeding and the proceeding instituted by the trustee were consolidated, and at the sale the real property was bought by appellant for the amount of taxes due it. The personalty subject to the mortgage lien was sold for \$9,113.46, and this amount was increased by receipts from other sources to \$10,582.98.

The contention in this case relates to the proper application of that sum, which was by the Auditor allowed appellant upon its **\*\*497** claim of \$12,058.27 for taxes, interest and penalties thereon upon tangible personalty for the years of 1931 to 1940, both inclusive. Exceptions filed by appellee to that audit were heard by the Chancellor, who ordered the sum of \$4,085.52 distributed to appellant for taxes, interest and penalties thereon due it for the years 1935 to 1940, inclusive, and the remainder of the sum, amounting to \$5,777.46, was distributed pro rata between appellant upon its tax claim, with interest and penalties for the years 1931 to 1934, inclusive, amounting to \$7,252.95, and appellee on behalf of the claims of bondholders which amounted to \$723,721.68. No objection is raised by appellee to the allowance in full of taxes levied and assessed by appellant for the years of 1937 to 1940, inclusive, except as to penalties, and although in addition to allowing preferences for the years last stated the Chancellor also allowed the city's tax claims for the years of 1938 and 1936, appellee has not appealed. So that at the outset it will be seen that in distributing the sum of \$10,582.98, to which the exceptions related, the Chancellor accepted neither the contentions of appellee nor **\*550** appellant, for according to appellee's contention no taxes should have been allowed for the years 1931 to 1936, inclusive, while appellant insisted that taxes for those years

were allowable as preferential claims. It will also be noted that the Chancellor while denying a preferential status of the tax claims of the City for the years 1931 to 1934, inclusive, did allow such claims to participate ratably with the claims on behalf of the bondholders.

[1] Appellee objects to the allowance of taxes as preferential claims for 1935 and 1936 upon the ground that the City failed to pursue its remedy for the collection of such taxes with diligence, and as stated makes the further contention that in no event should the City be allowed to collect penalties for non-payment of any of the taxes. A further contention of the unfairness of the assessment was made before the Chancellor, but this was decided adversely to appellee in the lower court, and we do not understand the correctness of that view is questioned upon this appeal. Moreover, we are of the opinion that under the facts shown such contention was without merit inasmuch as such taxes had been regularly levied and assessed upon the property before or after the charter of the Hotel Company had been forfeited and the date of finality had long since passed, there being no contention of the existence of any fraud, for the parties were fully aware of the amount of the assessment. [Tidewater Oil Co. v. Anne Arundel County, 168 Md. 495, 178 A. 221](#); [Aejis Company v. State Tax Commission, 156 Md. 590, 144 A. 842](#); [Baltimore Steam Packet Co. v. Baltimore, 161 Md. 9, 155 A. 158](#); Code, Article 81, Section 190.

For the appellant it is contended (a) that the provisions of Code of Public General Laws, Article 81, Section 160, and Public Local Laws of Baltimore City (1938), Section 1124, page 632, limiting the right of the City to collect taxes for a period of four years from the time they became due have no application in the present case, because the property was in custodia legis, being under the jurisdiction of a court of equity, without whose **\*551** sanction and authority it could not

proceed to enforce their collection; (b) that taxes for 1931 to 1940, inclusive, together with interest and penalties constitute a preferred claim in the distribution, resulting from a sale of the property.

[2] [3] [4] In our judgment the soundness of appellant's contentions is not open to dispute upon the authorities last cited, unless we can find or assume that appellant has failed to pursue its rights with reference to having its tax claims for all the years allowed as preferences, and the court fails to find that in this regard the City has failed. True, it at no time filed with the Chancellor having jurisdiction over the receivers a petition to permit it to enforce its tax claims against the personalty. It did file such a petition to enforce the collection of taxes against the real estate, and the Chancellor failed or refused to permit such action to be taken. There was also filed from time to time with the receivers the amount of the taxes due upon the personalty. The personalty being in the custody of the receivers, who are under the jurisdiction of the court, could not without the court's consent have been subjected to distraint proceedings, and it is unreasonable to assume that the Chancellor, who refused to permit the real estate to be sold for taxes, would have looked favorably upon a petition to distraint upon the personalty, thus stripping the **\*\*498** realty of the furniture, fixtures and appliances and foreclose all possibility of a sale of the hotel property as a going concern. It seems to the court that under all the circumstances with which it was confronted, appellant cannot be held to have forfeited or lost its right to insist upon allowance of taxes for 1931 to 1940, inclusive, as preferential claims, for manifestly to have attempted to secure the court's sanction to perfect its lien upon the personalty would have been a mere futility. [Prince George's County Com'rs v. Clarke, 36 Md. 206](#); [Gould v. Baltimore, 58 Md. 46](#); [Hebb v. Moore, 66 Md. 167, 7 A. 255](#); [\\*552Thompson v. Henderson, 155 Md. 665, 142 A. 525, 58 A.L.R. 1213](#); [Madore v. Thompson, 155 Md. 676, 142 A.L.R. 529](#);

[Blakistone v. State, 117 Md. 237, 83 A. 151](#).

[5] The court concurs in the view of the Chancellor that interest and penalties upon unpaid taxes allowed by law form a part of such taxes and constitute a preferred claim to the same extent as do the taxes in the distribution of proceeds arising from the sale made by a ministerial officer. A similar view was entertained by this Court in [Blakistone v. State, supra](#), and was followed in [Baltimore Trust Co. v. Interocean Oil Co., D.C., 30 F.Supp. 560](#).

Appellee argues that the effect of the decision in [Blakistone v. State](#) should be limited, and that under the immediate circumstances of this particular case, such interest and penalties should not attach to the taxes so as to be given a preferential status. In our judgment, this contention is not supported by the weight of authority. Indeed, there are no special circumstances in the present case which warrant us in holding that the equities of the bondholders, who concededly must lose the major part of their investment, are not junior to the tax claims of appellant.

It follows from what has been said that the part of the order appealed from which denied a preferential status to appellant's tax claims for the years 1931 to 1934, inclusive, was erroneous, and must be reversed.

Order affirmed in part and reversed in part, and case remanded for the passage of an order not inconsistent with the views expressed herein, with costs to appellant to be paid out of the fund in appellee's hands.

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