



INTERIOR BOARD OF INDIAN APPEALS

Clarence Runs After v. Aberdeen Area Director, Bureau of Indian Affairs
and Cheyenne River Sioux Tribe

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

CLARENCE RUNS AFTER

v.

ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS,
AND CHEYENNE RIVER SIOUX TRIBE

IBIA 80-14-A

Decided October 27, 1980

Appeal from decision by area director upholding superintendent's denial of refund and refusal to terminate payments from appellant's Individual Indian Money account made pursuant to an assignment of income claimed by appellant to be invalidated by his discharge in bankruptcy.

Affirmed.

1. Bureau of Indian Affairs: Administrative Appeals: Acts of Agents of the United States

Where review is sought of action by BIA officials disbursing IIM account funds pursuant to agency regulation, their handling of the disbursements is reviewable by the IBIA under 25 CFR 2.3.

2. Indians: Civil Rights--Indians: Indian Civil Rights Act of 1968

A complaint that transfer of funds from an IIM Account violates due process provisions of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1976), lies outside the review authority of the Department of the Interior.

3. Indian Lands: Allotments: Alienation--Indian Lands: Assignments

An Indian tribe, seeking to enforce debt collection of loan secured by mortgage of trust lands and assignment of income from trust lands executed more than 1 year prior to bankruptcy, presented an assignment of trust income executed in conformity with 25 CFR 109.4 to BIA officials responsible for administration of appellant's IIM account. The security interest thus obtained in appellant's trust lands by the tribe is a perfected security interest which attaches to the fund and entitles the tribe to the payments made by the agency officials despite appellant's intervening adjudication of bankruptcy.

APPEARANCES: Clarence Runs After, appellant, pro se; Wallace G. Dunker, Esq., Aberdeen Field Solicitor, for appellee area director.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On July 6, 1960, appellant executed a note for \$13,500 secured by a mortgage of 268 acres of appellant's trust lands in Dewey County, South Dakota, to the Cheyenne River Sioux Tribe (tribe) under tribal loan agreement No. 326. Earlier, on April 12, 1960, he had executed an assignment to the tribe under agreement No. 326 authorizing

payments to the tribe from income received from his trust lands into his Individual Indian Money account (IIM account), to be applied towards satisfaction of the loan in the event of his default of payments on the loan. 1/ Both the mortgage and income assignment were approved by the agency superintendent concerned. Quarterly payments

1/ In pertinent part, the assignment provides:

"In consideration of the granting of a loan to the undersigned under the terms of loan agreement No. 326 the undersigned hereby assigns to the lender as security for repayment of such loan, the following: (a) All property, except land, which is now or may in the future be held in trust for the undersigned by the United States; (b) all income from trust land in which the undersigned now has or may in the future acquire an interest; (c) any income from any source and any funds from any source accruing to the individual Indian account of the undersigned.

"Any income received from the lands held in trust by the United States Government or any income received from the sales of personal property.

"The undersigned hereby grants to the superintendent of the agency under which the lender is operating, full right, power and authority to demand, collect, sue, or receipt for any property and income of the undersigned, and to apply such income on the indebtedness of the undersigned to the lender. If payment is not made as set forth in the loan agreement of the undersigned, said superintendent or his authorized agency may take possession of any trust property or income of the undersigned, and dispose of the same in accordance with instructions of the Commissioner of Indian Affairs, and apply the proceeds on said indebtedness.

"The undersigned does hereby appoint said superintendent as the undersigned's attorney to execute such leases on any trust land in which the undersigned now has, or may in the future acquire an interest, as the attorney may find necessary to facilitate repayment of the loan. The undersigned hereby gives the attorney power to do everything necessary in the making of such leases as fully as the undersigned could do, and hereby ratifies all that the attorney shall lawfully do or cause to be done under this authority.

"It is understood that in the case of death of the undersigned, this assignment and power to lease shall constitute a claim against trust funds, income, or trust property superior to that of the heirs of the undersigned."

on the loan began on January 15, 1961, and continued until October 15, 1970. Meantime, appellant was adjudged a bankrupt on October 9, 1963 (No. BK 63-94-C, U.S.D.C., D.S.D). Following adjudication, appellant protested the involuntary application of trust income from his IIM account towards payment of the tribal loan by the agency. In 1976 he made a formal written demand that the payments stop and that he be reimbursed for payments taken over his objection. Both the Bureau of Indian Affairs (BIA) superintendent and the area director concerned opined that agency transfer of the IIM funds was permissible as an exception to the rule that the bankruptcy law bars collection of discharged debts, on the theory that the transaction involved was an informal collection procedure outside the contemplation of the Bankruptcy Act, the Act of July 1, 1898, Ch. 541, 30 Stat. 544, as amended, 11 U.S.C. §§ 1 through 1103 (1976). The matter is now before this Board pursuant to 25 CFR 2.19(b), upon direct referral by the Commissioner of Indian Affairs.

Appellant seeks to obtain reimbursement of all amounts paid since his discharge in bankruptcy under the 1960 assignment together with an order preventing future diversions of his trust monies to the tribe through the use of the assignment. Relying upon Aubertin v. Colville Confederated Tribes, 446 F. Supp. 430 (E.D. Wash. 1978), appellant contends that collection of the debt through presentation of an assignment to the agency is barred by section 17 of the Bankruptcy Act, 11 U.S.C. § 35 (1976). He contends also that the taking of his

IIM account monies was in violation of due process requirements of the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302 (1976).

The area director, represented on appeal by the field solicitor, denies that any effective objection to the continued involuntary collection by BIA of the debt for the tribe was voiced by appellant following his discharge in bankruptcy. He also contends that, even if the debt was not revived by involuntary payments made subsequent to discharge, the collection process used by the BIA on behalf of the tribe was so informal as to constitute a payment obtained without official process of any kind, taking it outside the operation of the bankruptcy statute. An added argument is made that property of an Indian bankrupt is exempt property within the meaning of the Bankruptcy Act provisions codified at 11 U.S.C. § 24 (1976), and that, since the secured trust property could not pass to the trustee in bankruptcy (as it would otherwise have done), the debt which the mortgage and assignment of income secured remained unaffected by the discharge in bankruptcy. To support this proposition, reliance is placed upon a line of Federal cases including In Re Penn, 41 F.2d 257 (D. Okla. 1929); In Re Denison, 38 F.2d 662 (W.D. Okla. 1930); and In Re Russie, 96 F. 609 (D. Or. 1899).

Appellant's analysis of the issue presented concludes that the continued use of appellant's trust account by agency officials to pay

the tribal loan following the discharge of the debt in bankruptcy violates 25 CFR 104.9 2/ by permitting payments from his IIM account which are prohibited by an Act of Congress, the Bankruptcy Act. The appellee's analysis of the matter focuses upon the remedy sought rather than the agency conduct complained of, and concludes that, for various reasons, neither of the remedies sought--refund of monies taken nor prevention of future takings of tribal money--is available to appellant as a matter of law.

2/ The Departmental regulation is interpreted by the Bureau of Indian Affairs in its Indian Affairs Manual at 42 IAM 6.3.3E(21) (h), which provides:

"(h) Assignments of Trust Income. Future income may not be obligated to third parties but may be assigned to secure loans. Form 5-845 (Revised), Assignment of Income From Trust Property, when approved by the Superintendent under authority delegated by Section 2.134 of Aberdeen Redelegation Order No. 2 Amdt. 5 (14 IAM 4), is recognition of a lender's right to demand and receive income from the trust land described thereon from the Superintendent, upon default of an Indian borrower, and to apply such upon the indebtedness in accordance with the terms of the note or other evidence of indebtedness. This assignment form, however, is effective only if the payments relating to the loan are not made by the Indian borrower, to the lender as agreed upon. The Superintendent should not honor demand requests until he has first ascertained (1) that the Indian borrower has defaulted, and (2) that the lender has exhausted all other means of effecting collection from the borrower in accordance with the terms of the agreement before resorting to demand against the assignment. Credit extended to Indians on open account, installment contracts, or conditional sales contracts does not qualify as a loan and Forms 5-845 shall not be approved therefor. A point to be borne in mind in connection with this form is that the three parties involved are: (1) The Indian borrower (2) the Superintendent, and (3) the lender. Form 5-845 does not make provisions for reflection of a specified amount. This is determined by the Superintendent after receipt of demand correspondence from the lender. Any checks drawn by the ISSDA in payment therefor, shall be pursuant only to specific Forms 5-139b signed by the Superintendent or his designated representative. The Form 5-139b should contain the statement "Funds obligated under contractual arrangements approved in advance." "25 CFR 104.9" should be cited as the authority for the disbursement."

Although the parties seemingly disagree concerning whether there was a reaffirmation of the debt in loan No. 326, the administrative record indicates their disagreement concerns the effect of known facts rather than the facts themselves. ^{3/} The issue is not whether there was a reaffirmation, but whether the agency must give effect to the 1963 bankruptcy decree. Finally, the question is raised, if the Bankruptcy Act does regulate agency administration of this matter, what action should be taken to properly apply the law to the circumstances described.

[1] Suggestion is made that the collection effort on behalf of the tribe by the BIA is not reviewable because it is not an agency action concerning which review is possible under 25 CFR 2.3. Because the subject of this matter is the transfer of IIM account funds claimed to be in violation of agency regulation establishing the method for handling such funds, the decision to continue to make the disbursements objected to by appellant is within the class of administrative action described by 25 CFR 2.3(a), since it involves a decision of an official under the supervision of an area director of the BIA not previously approved by the Secretary. Accordingly, it is

^{3/} Appellant's brief at page 1 recites that collections from the trust account were made over his protest and that "[r]ecently, the tribe attempted to get him to sign * * * [a reaffirmation of the debt] but he refused." The Bureau response to this assertion is that "[t]he appellant falsely asserts that he made no such arrangement [referring to the assignment of income], with the tribe and also falsely asserts that there now exists no agreement." Answer Brief at 4.

concluded the Commissioner of Indian Affairs correctly referred the matter to this Board for review pursuant to 25 CFR 2.19(b). ^{4/}

[2] Since the decision in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), it appears that review of complaints claiming deprivations of rights under the Indian Civil Rights Act of 1968, the Act of April 11, 1968, 82 Stat. 77, 25 U.S.C. §§ 1301-1341 (1976), is outside the authority of this agency. The sole issue on appeal therefore concerns the application of the Bankruptcy Act to the conduct of agency business under 25 CFR 104.9 in making transfers from appellant's trust account.

[3] The Bankruptcy statute is an Act of universal application, which applies to all individuals and Government agencies equally as it does to all other segments of American society. In Re Stineman, 155 F.2d 755 (3d Cir. 1946), reversed on other grounds sub nom. United States National Bank v. Chase National Bank, 331 U.S. 28 (1947); In Re Minot Auto Co., 298 F. 853 (8th Cir. 1924). Nothing in the Bankruptcy Act nor in the character of the tribe as a sovereign entity is inconsistent with a finding that the Act's provisions are

^{4/} It should be noted, however, that the area director's action in dispute was appealed to the Commissioner in May 1977. While the appeal to the Commissioner could have been referred to the Board 30 days later absent agency action (25 CFR 2.19), the matter was not referred to this Board until January 14, 1980.

binding upon all the parties to this matter. ^{5/} (Cf. Morongo Band of Mission Indians v. Bureau of Indian Affairs, 7 IBIA 299; 86 I.D. 680 (1979), declaring the Highway Beautification Act of 1965 inapplicable to Indian reservations.)

Contrary to appellee's contentions, the conduct of formal action by the BIA, an official Governmental agency, to enforce a security instrument previously approved pursuant to statute and agency regulation is not an informal collection device. It is official action, similar to court process. See Girardier v. Webster College, 563 F.2d 1267 (8th Cir. 1977). ^{6/} In this case, agency action resulted in

^{5/} The Aubertin decision, cited above, although now overruled by Martinez in its holding that the plaintiff could maintain an action under the Indian Civil Rights Act, observed that tribal sovereignty and powers of self-government are not infringed by a finding that the Bankruptcy Act applies to Indian tribes:

"I find that allowing a bankruptcy discharge to operate against the Tribes in this case will not undermine tribal institutions. Defendant is engaged in the business of lending money, following loan practices similar to those of any non-Indian lender operating in the commercial money market. Its claims that its loan program would be hurt if a discharge in bankruptcy is effective against it may be true. But it does not necessarily follow that its business activities should therefore constitute internal tribal affairs free from the reach of applicable federal laws. The Tribes' loan transactions are commercial activities properly subject to the Bankruptcy Act. Section 17c(3) of the Bankruptcy Act, 11 U.S.C. 35(c)(3), provides that the bankruptcy court shall determine the dischargeability of any debt not excepted under Section 17a. For the reasons stated above, I conclude that the Bankruptcy Act is an implied waiver of tribal immunity and that the bankruptcy court has the authority to discharge plaintiff's debt to the Colville Confederated Tribes." 446 F. Supp. 430, 435 (1978).

^{6/} The court summarizes the rule thus: "The usual usage of 'process' denotes activation of the formal legal machinery of a government but not refusals by a nonpublic person to act." 563 F.2d at 1273 (1977).

foreclosure of the assignment given by appellant to secure his debt to the tribe. In Re Penn, above, and related decisions cited by appellee merely hold that trust assets which are not subject to legal process in a direct action against the bankrupt beneficiary of the trust cannot be taken for the benefit of creditors by the bankruptcy trustee. The cited cases were decided before passage of the Act of March 29, 1956, 70 Stat. 62 (25 U.S.C. § 483a (1976)), permitting mortgage of Indian trust lands under certain circumstances and authorizing foreclosure or sale of the land in the event of default. The provisions of this statute, as implemented by 25 CFR 121.34, apply to the trust lands of appellant whose mortgage and assignment were approved by the agency acting within its statutory mandate. As those rules are here applied, the execution of the security agreements in full conformity to the regulatory scheme established a perfected security interest in favor of the tribe within the purview of the Bankruptcy Act. Cf. In Re Babcock Box Co., 200 F. Supp. 80 (D. Mass. 1961).

Thus, the mortgaging statute, 25 U.S.C. § 483a (1976), has the effect of placing a mortgagee of Indian trust lands in the same position as any secured creditor of land when confronted by a bankrupt mortgagor. It was proper under the law prior to 1978 for such a creditor to claim his secured interest by proceeding against the security in the appropriate forum. Usually the forum would be a state court. In this case, the appropriate forum was the BIA office charged with administration of assignments of IIM accounts. Since the assignment of income was a perfected security interest under applicable

agency regulations governing such transactions, the tribe was entitled to take its security interest by obtaining payments through BIA from appellant's IIM account. Under the circumstances, therefore, the tribe proceeded as it was entitled to do under the bankruptcy law since the perfected lien it held on the IIM account effectively placed the security in the possession of the tribe under agency regulations. 7/

Appellant does not suggest that the security interest held by the tribe was improperly obtained, or should have been included in his assets taken by the trustee. While, as he argues, the bankruptcy law applies to this case, that law merely requires that reference be had to the applicable law, state or Federal, which defines the rights of the parties to the security transaction.

Rosenberg v. Rudnick,

7/ The secured creditor under the Bankruptcy Act as it applied to this case prior to the Act's major revision by the Act of Nov. 6, 1978, 92 Stat. 2549, 11 U.S.C. § 101 (Supp. II 1978), had several courses of action open. It could seek to be included as general creditor (11 U.S.C. § 93(g) (1976)), or could pursue the security for satisfaction of the claim (11 U.S.C. § 93(h) (1976)). United States National Bank v. Chase National Bank, supra. The tribe chose to pursue the latter course. The alternative courses of action available are described in the Chase Bank opinion at 331 U.S. 33:

"Under these provisions, there are several avenues of action open to a secured creditor of a bankrupt. * * * (1) He may disregard the bankruptcy proceeding, decline to file a claim and rely solely upon his security if that security is properly and solely in his possession. * * * (2) He must file a secured claim, however, if the security is within the jurisdiction of the bankruptcy court and if he wishes to retain his secured status, inasmuch as that court has exclusive jurisdiction over the liquidation of the security. * * * (3) He may surrender or waive his security and prove his entire claim as an unsecured one. * * * (4) He may avail himself of his security and share in the general assets as to the unsecured balance." (Citations omitted.)

262 F. Supp. 635 (D. Mass 1967). The assignment given by appellant to the tribe was made more than a year before bankruptcy. Under the circumstances of this transaction it appears a perfected security agreement under Federal law was in effect against appellant's IIM account in 1963 and the payment of accruing amounts from the account was a proper administration of the security arrangement made. See Grain Merchants of Indiana, Inc. v. Union Bank and Savings Company, 408 F.2d 209 (7th Cir. 1969). (See also Anderson on the Uniform Commercial Code, 2d Ed. (1971) § 9-108:1 through 9-108:5; Uniform Commercial Code § 9-108.)

The reasoning in the Aubertin opinion, cited above, and principally relied upon by appellant, is directly applicable and controlling in this case. Here, as in Aubertin, money was withheld from an IIM account following default by a borrower soon to become a bankrupt; the tribe possessed a perfected security interest in the IIM account and foreclosed against the security so held; the intervening discharge was ineffective to prevent payment of the monies assigned from the bankrupt's IIM account. 8/

8/ The Aubertin opinion points out at n.5, 446 F. Supp. 432 (1978) and again at 446 F. Supp. 436 that the bankruptcy decree did not discharge specific debts, but merely ordered discharged those debts which were dischargeable. Under an amendment to the Act, not applicable here, the bankrupt Aubertin was able to litigate the question whether the tribe's debt was discharged. While in Aubertin the court was able to avoid a direct answer to the question, in this case the security interest is found to have survived discharge.

Since the regulatory requirements of 25 CFR 109.4 were met by the agency in administering the provisions of 25 U.S.C. § 483a (1976), and there was no regulatory conflict with any provision of the Bankruptcy Act then in force, appellee properly concluded that payments according to the terms of the previously approved assignment of income should be completed despite the intervening bankruptcy of appellant. The determination by the area director permitting continued application of appellant's IIM funds to loan account No. 326 until the debt is satisfied is affirmed.

This decision is final for the Department.

//original signed
Franklin Arness
Administrative Judge

I concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge