SUPREME COURT OF SOUTH DAKOTA

Fin-Ag, Inc. v. Pipestone Livestock Auction Market, Inc.

754 N.W.2d 29 (S.D. 2008) · No. Nos. 23982, 23984 · Decided June 18, 2008

SUMMARY

The Supreme Court of South Dakota considered consolidated conversion actions involving an agricultural lender's security interest in cattle sold through two livestock auction barns. The court addressed compliance with South Dakota's requirement to offer to file a criminal complaint, protection under the federal Food Security Act, the effect of applying sale proceeds to antecedent debts, and the evidentiary requirements for proving conversion. The judgments were affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Meierhenry, Justice; Sabers, Justice
JURISDICTION	South Dakota
DECIDED	June 18, 2008
DOCKET	Nos. 23982, 23984
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from summary judgments in related conversion actions involving livestock auction barns and a secured agricultural lender.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the moving party showed no genuine issue of material fact and entitlement to judgment as a matter of law, viewing the evidence favorably to the nonmoving party. Legal issues are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Pipestone Livestock Auction Market, Inc., South Dakota Livestock Sales of Watertown, Inc. v. Fin-Ag, Inc.

TOPICS

secured transactions · uniform commercial code · conversion · statutory interpretation · appellate procedure

PRACTICE AREAS

secured transactions · uniform commercial code · commercial litigation · conversion · appellate procedure

QUESTIONS PRESENTED

1. Whether Fin-Ag's offer to file a criminal complaint complied with SDCL 57A-9-609.1.
2. Whether the Food Security Act protected the auction barns from state-law conversion liability for cattle sold under the name C & M Dairy.
3. Whether Pipestone forfeited Food Security Act protection by retaining sale proceeds to satisfy antecedent debts.
4. Whether Fin-Ag established a prima facie case of conversion, including ownership or a security interest in the cattle, unauthorized sales, and damages.
5. Whether the effective financing statement's description of the collateral as dairy cattle was seriously misleading.

HOLDINGS

1. A secured creditor complies with SDCL 57A-9-609.1 by offering to file a criminal complaint against the debtor; the statute does not additionally require the creditor to inform a state's attorney, the attorney general, or a law-enforcement agency of the offer.
2. The auction barns took cattle sold under the name C & M Dairy free of Fin-Ag's security interest under the Food Security Act because C & M Dairy was the seller, was not listed on the effective financing statement, and was treated as the Berwalds' alter ego that created the security interest.
3. Pipestone was not protected by the Food Security Act to the extent it retained sale proceeds to satisfy C & M Dairy's preexisting debt for cattle previously purchased on account.
4. Fin-Ag made a prima facie showing that the cattle were Berwalds' collateral subject to its security interest and that the sales were unauthorized.
5. The circuit courts did not adequately address the disputed damages, mitigation, bankruptcy-recovery, and related conversion issues; those issues required remand rather than summary judgment for the auction barns.

KEY QUOTATIONS

> *"Although a buyer in the ordinary course is generally protected by the FSA, it loses that protection when it acts as a lender by retaining sale proceeds to satisfy an antecedent debt."* (41)

> *"Conversion is the unauthorized exercise of control or dominion over personal property in a way that repudiates an owner's right in the property or in a manner inconsistent with such right."* (44)

> *"Although these conflicting facts relating to Fin-Ag's knowledge and conduct might, in other legal contexts, create an issue of fact relating to implied authorization, implied authorization through course of dealing is not recognized as a matter of law in this UCC context."* (46)

FACTUAL BACKGROUND

Fin-Ag held a perfected security interest in the Berwalds' farm products, including cattle, and filed an effective financing statement listing the Berwalds but not the d.b.a. C & M Dairy. The Berwalds sold cattle through Pipestone and South Dakota Livestock under the name C & M Dairy, and the auction barns either paid proceeds to C & M Dairy or applied them to C & M Dairy's antecedent purchase debts. After the Berwalds defaulted and filed Chapter 11 bankruptcy, Fin-Ag pursued conversion claims against the auction barns for failing to remit the proceeds.

PROCEDURAL HISTORY

Fin-Ag sued Pipestone and South Dakota Livestock for conversion of cattle proceeds allegedly subject to Fin-Ag's perfected security interest. The circuit court in the Pipestone action granted summary judgment for Fin-Ag on some sales and for Pipestone on others; the circuit court in the South Dakota Livestock action granted summary judgment for Fin-Ag. The South Dakota Supreme Court affirmed in part, reversed in part, and remanded after rehearing under SDCL 15-24-4.

DISPOSITION

```
reversed_and_remanded
```

REMAND INSTRUCTIONS

Affirm the conclusions that Fin-Ag's offers complied with SDCL 57A-9-609.1; affirm the Pipestone judgment insofar as Pipestone was protected for the February 5, 2004 C & M Dairy sale and insofar as it lacked Food Security Act protection for proceeds applied to antecedent debts; reverse the South Dakota Livestock judgment for C & M Dairy sales; reverse the judgment on the nine South Dakota Livestock sales occurring before March 10, 2003 as time-barred; and remand all non-Food-Security-Act-protected sales for further proceedings concerning conversion, damages, mitigation, authorization, waiver, and related issues.

CASES CITED

- Fin-Ag, Inc. v. Cimpl's, Inc., 2008 SD 47, 754 N.W.2d 1
- Consolidated Nutrition, L.C. v. IBP, Inc., 2003 SD 107, 669 N.W.2d 126
- In re Estate of Jetter, 1997 SD 125, 570 N.W.2d 26
- Huber v. Department of Public Safety, 2006 SD 96, 724 N.W.2d 175
- State v. $1,010.00 in American Currency, 2006 SD 84, 722 N.W.2d 92
- City of Sioux Falls v. Ewoldt, 1997 SD 106, 568 N.W.2d 764
- State v. Franz, 526 N.W.2d 718 (S.D. 1995)
- Martinmaas v. Engelmann, 2000 SD 85, 612 N.W.2d 600
- Hannon v. Weber, 2001 SD 146, 638 N.W.2d 48
- Hatchett v. Philander Smith College, 251 F.3d 670 (8th Cir. 2001)
- Bordeaux v. Shannon County Schools, 2005 SD 117, 707 N.W.2d 123

- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Mushitz v. First Bank of South Dakota, N.A., 457 N.W.2d 849 (S.D. 1990)
- Sandner v. Minnehaha County, 2002 SD 123, 652 N.W.2d 778
- Rosen's Inc. v. Juhnke, 513 N.W.2d 575 (S.D. 1994)
- Chem-Age Industries, Inc. v. Glover, 2002 SD 122, 652 N.W.2d 756
- Rushmore State Bank v. Kurylas, Inc., 424 N.W.2d 649 (S.D. 1988)
- Sanborn County Bank, Inc. v. Magness Livestock Exchange, Inc., 410 N.W.2d 565 (S.D. 1987)
- Aberdeen Production Credit Association v. Redfield Livestock Auction, Inc., 379 N.W.2d 829 (S.D. 1985)
- Wabasso State Bank v. Caldwell Packing Co., 308 Minn. 349, 251 N.W.2d 321 (1976)
- Kobbeman v. Oleson, 1998 SD 20, 574 N.W.2d 633
- Security State Bank v. Benning, 433 N.W.2d 232 (S.D. 1988)
- Kunkel v. United Security Insurance Co. of New Jersey, 84 S.D. 116, 168 N.W.2d 723 (1969)
- Weitzel v. Sioux Valley Heart Partners, 2006 SD 45, 714 N.W.2d 884
- State v. Olson-Lame, 2001 SD 51, 624 N.W.2d 833
- Beckel v. Gerber, 1998 SD 48, 578 N.W.2d 574
- Millard v. City of Sioux Falls, 1999 SD 18, 589 N.W.2d 217