

SUPREME COURT OF MONTANA

Lewistown Propane Co. v. Ford

308 Mont. 243 (Mont. 2002) · No. No. 01-037 · Decided February 25, 2002

SUMMARY

The Supreme Court of Montana held that a judgment creditor could levy on an aircraft that the judgment debtor had previously conveyed to a third party but whose transfer was not recorded with the Federal Aviation Administration. Applying Montana precedent concerning unrecorded transfers of personal property, the court concluded that the creditor was entitled to rely on FAA ownership records and that the third party's later-recorded interest could not defeat the levy.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Jim Regnier; Karla M. Gray; Terry N. Triewelier; Jim Rice; W. William Leaphart
JURISDICTION	Montana
DECIDED	February 25, 2002
DOCKET	No. 01-037
DISPOSITION	reversed
PROCEDURAL POSTURE	Lewistown Propane appealed an order of the Tenth Judicial District Court permanently restraining execution on an aircraft seized to satisfy a judgment against Tom Ford. Raymond Becky intervened and claimed ownership based on an earlier, unrecorded transfer from Ford.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Lewistown Propane Company v. Tom H. Ford, Vicki Ehlert, Robert Ehlert, Raymond Becky

TOPICS

- commercial litigation
- asset protection
- remedies
- civil procedure

PRACTICE AREAS

- civil procedure
- commercial litigation
- judgment enforcement
- secured transactions

QUESTIONS PRESENTED

1. Whether a judgment creditor may levy on an aircraft when the judgment debtor conveyed it to a third party before entry of judgment but the conveyance was not recorded with the Federal Aviation Administration.

HOLDINGS

1. A judgment creditor is entitled to rely on FAA ownership records, and an aircraft purchaser's unrecorded ownership interest is invalid against the judgment creditor when the creditor levies before the transfer is recorded.
2. A later recording of the aircraft transfer does not defeat the judgment creditor's previously executed levy when the transferors knew of the levy at the time of recording.

KEY QUOTATIONS

“Creditors and subsequent purchasers must be protected from failure of a secured party to file proof of a security interest. Likewise, judgment creditors are entitled to rely on ownership as reflected in the division's records.” (§ 14)

“Because Becky's ownership interest was unrecorded at the time of Lewistown Propane's execution of the levy, Becky's interest is thus invalid as to Lewistown Propane and could not cut off its right to levy on the aircraft.” (§ 15)

FACTUAL BACKGROUND

Ford owed Lewistown Propane \$28,503.62 plus interest under a promissory note and related account obligations. Before judgment and before the levy, Ford sold a Piper aircraft to Raymond Becky, but neither party recorded the transfer with the Federal Aviation Administration, and Ford retained possession of the aircraft. When Lewistown Propane investigated ownership, FAA records still identified Ford as owner with no recorded liens or encumbrances, so the company obtained a writ of execution and seized the aircraft.

PROCEDURAL HISTORY

Lewistown Propane sued Ford to collect an unpaid account. Ford filed a confession of judgment, after which Lewistown Propane obtained a writ of execution and levied on an aircraft still recorded in Ford's name. Becky intervened, asserting that Ford had transferred the aircraft to him before the levy. The District Court stayed execution and ordered Lewistown Propane to return the aircraft; the Montana Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Philko Aviation, Inc. v. Shackel, 462 U.S. 406 (1983)
- Bank of Honolulu v. Davids, 6 Haw. App. 25, 709 P.2d 613 (1985)

- Compass Insurance Co. v. Moore, 806 F.2d 796 (8th Cir. 1986)
- General Dynamics Corp. v. Zantop International Airlines, 147 Ariz. 92, 708 P.2d 773 (Ct. App. 1985)
- Hannah v. Martinson, 232 Mont. 469, 758 P.2d 276 (1988)
- Vaughn v. Schmalsle, 10 Mont. 186, 25 P. 102 (1890)
- Kovacich v. Norgaard, 221 Mont. 26, 716 P.2d 633 (1986)

OPINION

REGNIER, J.

42 P.3d 229 (2002) 2002 MT 27 LEWISTOWN PROPANE COMPANY, a Montana Corporation, Plaintiff/Appellant, v. Tom H. FORD, individually and d/b/a Ford Cattle Company; Vicki Ehlert and Robert Ehlert, husband and wife, Defendants/Respondents/Cross-Appellants. Raymond Becky, Intervenor/Respondent. No. 01-037. Supreme Court of Montana. Submitted on Briefs December 6, 2001.

Decided February 25, 2002. *230 For Appellant: Jon A. Oldenburg, Attorney at Law, Lewistown, MT. For Respondent Ford: Allen Beck, Attorney at Law, Billings, MT. For Intervenor: Lori A. Armstrong, Attorney at Law, Butte, MT. Justice JIM REGNIER delivered the Opinion of the Court. ¶ 1 Lewistown Propane Company ("Lewistown Propane") brought an action against Tom Ford to collect on an unpaid account.

After Ford executed a Confession of Judgment, Lewistown Propane obtained a writ of execution and levied execution on an aircraft. Raymond Becky sought to intervene, claiming that Ford had transferred the plane to him before Lewistown Propane levied on the aircraft.

The Tenth Judicial District Court, Fergus County, issued an order permanently restraining Lewistown Propane from executing on the aircraft. Lewistown Propane appeals and we reverse. ¶ 2 The following issue is dispositive of this appeal: ¶ 3 Did the District Court err in ruling that no lienable interest remains with a judgment creditor when a judgment debtor conveys an airplane to a third party prior to an entry of judgment without registering the conveyance with the Federal Aviation Administration?

PROCEDURAL AND FACTUAL BACKGROUND ¶ 4 The facts surrounding this matter are largely undisputed. Lewistown Propane is a Montana corporation that sells and provides propane, fertilizer and other similar products to the public. Ford, or his family members, purchased products from Lewistown Propane for which they have never paid.

On September 8, 1999, Ford, as an individual and on behalf of the Ford Cattle Company, executed a Promissory Note and Agreement (the "Promissory Note"). Under the terms of the Promissory Note, Ford agreed to pay Lewistown Propane \$28,503.62 within six months of the date of the note, along with interest of 10% per annum. ¶ 5 On December 14, 1999, Lewistown Propane filed a

complaint against Ford and his family members for collection of the Promissory Note and payment of its account receivable.

Ford subsequently filed a Confession of Judgment (the "Confession") with the District Court. The Confession was dated March 7, 2000, one day before the due date of the Promissory Note, and was for \$28,503.62 plus interest. ¶ 6 During this time, Raymond Becky had allegedly been helping Ford to refinance his debt.

On February 11, 2000, Ford sold three pieces of farm machinery and a 1974 Super Piper Cub Aircraft PA18-150 (the "Piper aircraft") to Becky. Neither Ford nor Raymond Becky notified the State of Montana or the Federal Aviation Administration (the "FAA") that Ford had transferred the airplane to Becky. ¶ 7 As consideration for the transfer of assets, Ford was to receive an interest in a business venture in British Columbia, Canada, known as the Gold River Power Corporation. *231 To this end, Becky pledged the assets from the sale as collateral for a loan from Western Security Bank of Butte, Montana.

The funds from the sale were then wired to Canada for use in purchasing the Gold River pulp facility. During this time, Ford retained possession of the aircraft and farm machinery in Fergus County. ¶ 8 In an attempt to collect on its judgment, Lewistown Propane inquired about the ownership of the Piper aircraft with the Montana Department of Transportation Aeronautics Division and the FAA.

Through these records, Lewistown Propane determined that the Piper aircraft was registered in Ford's name, no liens or encumbrances existed against the plane and Ford had paid the annual registration fees to the FAA.

On July 7, 2000, Lewistown Propane obtained a Writ of Execution and, about a week later, seized the Piper aircraft. Lewistown Propane has had the plane in its possession since that time. On July 17, 2000, Lewistown Propane filed a Notice of Execution Levy addressed to Ford, advising him that it had executed on the Piper aircraft and intended to sell the plane in order to satisfy its judgment against Ford.

Upon learning of Lewistown Propane's seizure of the aircraft, Becky moved for permission to intervene in the case, which the District Court granted on July 24, 2000. As part of the same motion, Becky sought a stay of execution of judgment, which the District Court also granted. ¶ 9 The District Court entered an Order Permanently Granting Ex Parte Motion to Stay Execution of Judgment as it Relates to a 1974 Super Piper Cub Aircraft PA18-150 on October 23, 2000.

In that order, the District Court directed Lewistown Propane to return the aircraft to Becky. Lewistown Propane now appeals. DISCUSSION ¶ 10 Did the District Court err in ruling that no lienable interest remains with a judgment creditor when a judgment debtor conveys an airplane to a third party prior to an entry of judgment without registering the conveyance with the Federal

Aviation Administration? ¶ 11 Section 503(c) of the Federal Aviation Act of 1958 requires that "every aircraft transfer must be evidenced by an instrument, and every such instrument must be recorded, before the rights of innocent third parties can be affected."

Philko Aviation, Inc. v. Shacket (1983), 462 U.S. 406, 409-10, 103 S.Ct. 2476, 2478, 76 L.Ed.2d 678, 682. Congress' purpose in creating this registration scheme was to establish a central clearing house of recorded titles so that a person can readily find any legal interest against an aircraft. See *Philko*, 462 U.S. at 411, 103 S.Ct. at 2479, 76 L.Ed.2d at 683 (citing Hearings on HR 9738 Before the House Comm. on Interstate and Foreign Commerce, 75th Cong., 3d Sess., p. 407 (1938)) (testimony of F. Fagg, Director of Air Commerce, Dept. of Commerce).

Under this scheme, state law determines the priorities between competing claims, but "all interests must be federally recorded before they can obtain whatever priority to which they are entitled under state law." *Philko*, 462 U.S. at 413, 103 S.Ct. at 2480, 76 L.Ed.2d at 684. This case thus requires us to determine the priority between a judgment creditor and a third party purchaser under Montana law where the parties to the sale did not federally register the conveyance. ¶ 12 While we have not yet addressed this question, several other jurisdictions have decided this issue.

A Hawaii Court of Appeals, for instance, determined that a third party purchaser's ownership interest in an aircraft derived through an unrecorded conveyance did not cut off a judgment creditor's right to levy on the aircraft. See *Bank of Honolulu v. Davids* (1985), 6 Haw.App. 25, 709 P.2d 613, 619. Other courts, however, have come to an opposite conclusion on the grounds that a judgment creditor does not have the same claim as would an innocent purchaser for value because a judgment creditor derives his rights from the debtor.

In these cases, the courts have reasoned that because a debtor does not have a claim for the aircraft against the party to whom he sold it, the creditor, in turn, no longer has a claim for the aircraft. See, e.g., *Compass Ins. Co. v. Moore* (8th Cir.1986), 806 F.2d 796; *General Dynamics Corp. v. Zantop Int'l Airlines* (Ct. App.1985), 147 Ariz. 92, 708 P.2d 773. *232 ¶ 13 Turning to Montana law, Ford and Becky urge us to follow our decisions involving the conveyance of real property.

Under this line of cases, judgment liens on real property only attach to the actual interest of the judgment debtor. See, e.g., *Hannah v. Martinson* (1988), 232 Mont. 469, 472, 758 P.2d 276, 278-79 (holding that a sale of real property cut off a judgment creditor's lien because a judgment lien can only attach to the actual interest of the judgment debtor); *Vaughn v. Schmalsle* (1890), 10 Mont.

186, 195, 25 P. 102, 103 (noting that an unrecorded mortgage supersedes a subsequently acquired judgment lien because a judgment creditor does not acquire superior rights to the debtor's assets than the debtor had when the judgment was rendered).

Therefore, Ford and Becky argue that because the sale was valid between them, Lewistown Propane no longer has an interest in the Piper aircraft. ¶ 14 The Piper aircraft, however, is personal property. We thus conclude that a more analogous precedent is a previous decision of ours regarding the conveyance of personal property.

In *Kovacich v. Norgaard* (1986), 221 Mont. 26, 716 P.2d 633, a judgment creditor attempted to levy on a truck owned by a judgment debtor. Before the creditor could levy on the truck, the debtor conveyed the truck to a third party.

As with the case now before us, the parties to the conveyance failed to properly register the change in ownership. The creditor eventually levied on the truck, but the debtor obtained a writ of prohibition to stop the sale.

The district court set aside the writ of prohibition and we affirmed the court's ruling. In reaching our conclusion, we noted that the parties' failure to follow the proper procedure for transferring title in relation to third parties was particularly significant. See *Kovacich*, 221 Mont. at 28, 716 P.2d at 634.

We reasoned that "[c]reditors and subsequent purchasers must be protected from failure of a secured party to file proof of a security interest. Likewise, judgment creditors are entitled to rely on ownership as reflected in the division's records." *Kovacich*, 221 Mont. at 28, 716 P.2d at 635. ¶ 15 Here, it is uncontested that Becky and Ford failed to follow the proper procedure under Federal law for conveying an aircraft.

Therefore, applying *Kovacich* by analogy, we conclude that Lewistown Propane, as a judgment creditor, was entitled to rely on the records of the FAA. Because Becky's ownership interest was unrecorded at the time of Lewistown Propane's execution of the levy, Becky's interest is thus invalid as to Lewistown Propane and could not cut off its right to levy on the aircraft. ¶ 16 Ford and Becky argue that, because they have since recorded the transfer with the FAA and Lewistown Propane has not yet recorded its interest in the Piper aircraft, their interest in the plane is now superior.

This argument is without merit because a failure to record affects the rights of innocent third parties. See *Philko*, 462 U.S. at 409-10, 103 S.Ct. at 2478, 76 L.Ed.2d at 682. Ford and Becky, however, were both clearly aware that Lewistown Propane had levied on the aircraft when they registered the transfer with the FAA.

Therefore, they are not innocent third parties and may not rely on the federal recording statute to defeat Lewistown Propane's claim. ¶ 17 Reversed. We Concur: KARLA M. GRAY, C.J., and TERRY N. TRIEWELER, JIM RICE and W. WILLIAM LEAPHART, JJ.

