APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

Anna National Bank v. Prater, 154 Ill. App. 3d 6

506 N.E.2d 769 (Ill. App. Ct. 1987) · No. No. 5-85-0814 · Decided April 9, 1987

SUMMARY

The Illinois Appellate Court, Fifth District, reversed and remanded a summary judgment awarding a mortgagee proceeds from a soybean crop grown on foreclosed farmland. The court held that the tenant and crop lender were not bound by determinations in the foreclosure and temporary restraining order proceedings because they had not been joined in the main foreclosure action. It further held that the mortgagee's interest in crops under a rents-and-profits clause was an incident of the real estate mortgage, not a personal-property security interest subject to UCC section 9-312(2).

CASE DETAILS

COURT	Appellate Court of Illinois, Fifth District
WRITING FOR THE COURT	Justice Jones; Presiding Justice Karns; Justice Kasserman
JURISDICTION	Illinois
DECIDED	April 9, 1987
DOCKET	No. 5-85-0814
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order granting summary judgment to Anna National Bank in a supplemental foreclosure proceeding concerning competing claims to soybean-crop proceeds.
STANDARD OF REVIEW	De novo review of summary judgment; summary judgment is proper only when the pleadings, admissions, and affidavits show no genuine issue of material fact and the movant is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Illinois Appellate Court opinion; precedential.
PARTIES	Goreville State Bank, Noble White v. Anna National Bank

TOPICS

foreclosure · secured transactions · uniform commercial code · summary judgment · real estate

PRACTICE AREAS

real estate | secured transactions | commercial litigation | foreclosure | civil procedure

QUESTIONS PRESENTED

1. Whether Noble White and Goreville State Bank were bound by findings made in the foreclosure and temporary-restraining-order proceedings when they were not joined as parties to the proceeding in which the possession order was entered.
2. Whether a real-estate mortgage clause granting the mortgagee rents, issues, and profits creates an Article 9 security interest in growing crops subject to the UCC's current-year crop-lender priority rule under section 9-312(2).
3. Whether summary judgment was proper when a genuine issue existed concerning the validity and performance of the alleged cash-rent farm lease and the resulting rights to the soybean crop.

HOLDINGS

1. Noble White and Goreville State Bank were not bound by any determination in the main foreclosure proceeding concerning their rights to the soybean crop because they were not joined as defendants and did not have an opportunity to litigate that issue.
2. Under Illinois law, a rents-and-profits clause in a real-estate mortgage creates an equitable lien incident to the mortgage and does not create a personal-property security interest governed by Article 9 of the UCC.
3. If no valid tenant interest alters the parties' rights, Anna National Bank's mortgage-based right to unsevered crops became superior to Goreville State Bank's Article 9 security interest when Anna National Bank took possession of the property before the crops were severed.
4. Summary judgment for Anna National Bank was improper because the record presented a genuine issue of material fact concerning whether a valid, arm's-length lease existed and whether its terms were performed so as to give Noble White an interest in the soybean crop.

KEY QUOTATIONS

> *"It is settled that estoppel by verdict or collateral estoppel does not depend on technicalities but on broad principles of justice, and it can apply only when a party has had his day in court and an opportunity to establish his claim."* (154 Ill. App. 3d at 14)

> *"A consideration of the nature of a mortgagee's right to crops as rents and profits of mortgaged property under Illinois law leads us to conclude that this right constitutes, not a personal property interest subject to the UCC, but an interest that derives from and is incident to the mortgagee's right to the real estate and that is thus governed by non-UCC law."* (154 Ill. App. 3d at 17)

> *"We hold, therefore, that section 9-312(2) was neither designed nor intended to give a current year crop lender priority over a real estate mortgagee's right to the rents and profits of mortgaged property upon taking possession during foreclosure, and we reject GSB's contention to that effect."* (154 Ill. App. 3d at 19)

> *"Summary judgment should be entered only when the pleadings and admissions, together with any affidavits, show that there is no genuine issue as to a material fact, and the mere filing of cross-motions for summary*

> *judgment as occurred here does not relieve the trial court of the obligation to make an independent determination as to the existence of such genuine issue of fact.”* (154 Ill. App. 3d at 22)

FACTUAL BACKGROUND

Anna National Bank held mortgages on four tracts of farm property owned by Gilbert and Nancy Prater, and the mortgages pledged the rents, issues, proceeds, and profits of the property. Noble White, allegedly a tenant under a cash-rent farm lease with the Praters, planted soybeans on the property and obtained production financing from Goreville State Bank, granting the bank a perfected security interest in the crops. After Anna National Bank obtained possession during foreclosure, portions of the soybean crop were harvested and the proceeds were held by a grain elevator. The trial court awarded the proceeds to Anna National Bank without resolving whether the alleged lease was valid and complied with its terms.

PROCEDURAL HISTORY

Anna National Bank foreclosed its mortgages on farm property and obtained an order placing it in possession before the soybean crop was harvested. The trial court later granted summary judgment to the bank in the supplemental proceeding, holding that its mortgage-based claim to rents, issues, and profits was superior to the claims of the tenant and the crop lender. The Illinois Appellate Court reversed and remanded because the validity and effect of the asserted farm lease presented a genuine issue of material fact.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Determine whether a valid, arm's-length lease existed between the Praters and Noble White and whether its terms were complied with so as to establish White's right to the soybean crop; then determine the parties' respective rights to the crop proceeds.

CASES CITED

- Smith v. Bishop, 26 Ill. 2d 434, 187 N.E.2d 217 (1962)
- Lady v. Montgomery Ward & Co., 80 Ill. App. 3d 69, 399 N.E.2d 346 (1980)
- In re Bunting, 60 F.2d 605 (E.D. Ill. 1932)
- Stevens v. Blue, 388 Ill. 92, 57 N.E.2d 451 (1944)
- Liss v. Harris, 304 Ill. App. 173, 26 N.E.2d 133 (1940)
- John Hancock Mutual Life Insurance Co. v. Watson, 200 Ill. App. 315 (1916)
- Dillon v. Dyer, 258 Ill. App. 144 (1930)
- Taylor v. Osman, 239 Ill. App. 569 (1926)
- Rohrer v. Deatherage, 336 Ill. 450, 168 N.E. 266 (1929)
- Rankin-Whitham State Bank v. Mulcahey, 344 Ill. 99, 176 N.E. 366 (1931)
- Beverly Bank v. Alsip Bank, 106 Ill. App. 3d 1012, 436 N.E.2d 598 (1982)

- In re Application of Northwestern Mutual Life Insurance Co., 703 P.2d 1314 (Colo. Ct. App. 1985)
- In re Royer's Bakery, Inc., Bankrupt, 55 Berks County L.J. 164 (E.D. Pa. 1963)
- McGahey v. Fuller, 131 Ill. App. 3d 663, 476 N.E.2d 438 (1985)
- Dwyer v. Cooksville Grain Co., 117 Ill. App. 3d 1001, 454 N.E.2d 357 (1983)