

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

United Contractors, Inc. v. United Construction Corp.

187 So. 2d 695 (Fla. Dist. Ct. App. 1966) · No. No. 5605 · Decided June 10, 1966

SUMMARY

The Florida Second District Court of Appeal reviewed a foreclosure decree involving a consolidated promissory note and chattel mortgage covering road-building equipment, including a Northwest 95 dragline. The court held that the mortgage and foreclosure could not impair United Contractors' rights in the dragline because of its open possession, the recorded bill of sale, Industrial Credit Company's acceptance of Contractors' payments, and the lack of Contractors' assent to the refinancing arrangement. The decree was affirmed in part and reversed in part, with directions to reestablish the parties' rights and obligations concerning the dragline.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Pierce, J.; Allen, C.J.; Bruton, Jas. D., Jr., Associate Judge
JURISDICTION	Florida
DECIDED	June 10, 1966
DOCKET	No. 5605
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal by Contractors and Acme from a final decree in a declaratory and mortgage-foreclosure action. The appeal challenged only the portion of the decree applying Industrial's consolidated chattel mortgage to the NW #95 dragline.
STANDARD OF REVIEW	Review of the final decree and the chancellor's determination of the parties' rights under undisputed documentary evidence and contractual instruments.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion; precedential within the applicable Florida appellate system unless subsequently limited or overruled.
PARTIES	United Contractors, Inc., Acme General Contractors, Inc. v. United Construction Corporation, Industrial Credit Company

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QUESTIONS PRESENTED

1. Whether Industrial's consolidated promissory note and chattel mortgage could be enforced against the NW #95 dragline as against Contractors and Acme.
2. Whether Industrial's acceptance of Contractors' payments and its knowledge or constructive notice of Contractors' open possession and claimed interest prevented Industrial from asserting the consolidated mortgage against the dragline.
3. Whether Construction and Industrial could modify or impair Contractors' contractual and property rights in the dragline without Contractors' assent.

HOLDINGS

1. The chancellor erred by including the NW #95 dragline in Industrial's mortgage foreclosure as against Contractors' rights.
2. The consolidation of the dragline debt with Construction's unrelated debts constituted a modification that could not impair Contractors' rights without mutual assent.

KEY QUOTATIONS

“Industrial could not disclaim a contract upon which it was accepting payments.” (at 702)

“This constitutes a complete modification of the contract insofar as Contractors was concerned, and such modification, under the conditions then existing between Contractors and Industrial, could only be accomplished by mutual assent.” (at 702)

“In the case sub judice what Industrial and Construction attempted on December 31, 1963 constituted a complete impairment of Contractors' property right in the dragline, without any breach by Contractors, and this the Court cannot permit.” (at 702)

FACTUAL BACKGROUND

Construction originally acquired the NW #95 dragline under a lease-purchase arrangement and later entered a retail installment contract for its purchase. Construction then transferred the dragline to Contractors by a lease-purchase contract and bill of sale, while Contractors possessed the dragline openly and made monthly payments directly to Industrial under the assigned retail installment contract. Without Contractors' knowledge or consent, Construction and Industrial consolidated the dragline indebtedness with separate debts into a new note and chattel mortgage covering the dragline, although Contractors was not in default. Industrial subsequently sought to foreclose the mortgage against the dragline.

PROCEDURAL HISTORY

United Construction filed a complaint in the Polk County Circuit Court seeking a declaratory decree concerning disputes over road-building equipment and later added Acme as a defendant. Industrial intervened, seeking foreclosure of a consolidated promissory note and chattel mortgage covering multiple items, including the dragline. The chancellor entered a final decree awarding Industrial the amount due under the note and mortgage and authorizing foreclosure, including sale of the dragline. The appellate court affirmed the decree except as it affected the dragline and Contractors' rights, and remanded with directions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Re-establish the reciprocal rights and obligations of Contractors and Industrial concerning the dragline and the contracts existing before the December 31, 1963 documents, and permit amendments or recasting of the pleadings as necessary or expedient to accomplish that objective.

CASES CITED

- Tatum Bros. Real Estate & Investment Co. v. Watson, 92 Fla. 278, 109 So. 623 (1926)
- Fla. Stat. § 695.01
- Sapp v. Warner, 105 Fla. 245, 141 So. 124 (1932), reaffirmed on rehearing, 143 So. 648
- Tri-County Produce Distributors, Inc. v. Northeast Production Credit Ass'n, 160 So. 2d 46 (Fla. Dist. Ct. App. 1963)
- Tolar v. Myer, 96 So. 2d 554 (Fla. Dist. Ct. App. 1957)
- Daniel v. May, 143 So. 2d 536 (Fla. Dist. Ct. App. 1962)
- Davis v. Brewer, 135 Fla. 752, 186 So. 207 (1939)
- Maule Industries, Inc. v. Sheffield Steel Products, Inc., 105 So. 2d 798 (Fla. Dist. Ct. App. 1958)
- Hagan v. Sabal Palms, Inc., 186 So. 2d 302 (Fla. Dist. Ct. App. 1966)
- Rinehart v. Phelps, 150 Fla. 382, 7 So. 2d 783 (1942)
- Carolina Portland Cement Co. v. Roper, 68 Fla. 299, 67 So. 115 (1914)
- Blackburn v. Venice Inlet Co., 38 So. 2d 43 (Fla. 1949)
- Rosello v. Hayden, 79 So. 2d 682 (Fla. 1955)
- Fairlie v. Scott, 88 Fla. 229, 102 So. 247 (1924)
- Holly Hill Citrus Growers' Ass'n v. Holly Hill Fruit Products, 75 F.2d 13 (C.A. Fla. 1935)
- Steen v. Scott, 144 Fla. 702, 198 So. 489 (1940)
- Warren v. Tampa Mortgage Investors' Co., 112 Fla. 555, 150 So. 738 (1933)

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