

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

IN RE: )  
 )  
 PARKS PLANTING COMPANY ) Civ. No. 01-1298  
 )  
 Debtor. )

---

SOUTH DELTA PROPERTIES, LLC, )  
 A Tennessee Limited Liability Company, ) Bankr. No. 00-12467-GHB  
 ) Adv. Proc. No. 01-5048  
 Appellant, )  
 )  
 VS. )  
 )  
 FIRST STATE BANK, )  
 )  
 Appellee. )

---

ORDER AFFIRMING DECISION OF BANKRUPTCY COURT

---

On July 14, 2000, the debtor, Parks Planting Company, filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Western District of Tennessee. The case was later converted by the debtor to a Chapter 7 proceeding. On February 1, 2001, South Delta Properties, LLC, filed an adversary proceeding against First State Bank (the “Bank”), Stephen Parks, and the debtor. Subsequently, South Delta and the Bank filed cross-

motions for summary judgment. Following a hearing in July 2001,<sup>1</sup> the Bankruptcy Court issued an order on September 6, 2001, granting the Bank's motion and denying South Delta's motion. South Delta then filed a notice of appeal, and elected to have the appeal heard in this Court, pursuant to 28 U.S.C. § 158(c).

A district court reviews the factual findings of a bankruptcy court for clear error, and the conclusions of law *de novo*. Bankr. Rule 8013; Keeney v. Smith (*In re Keeney*), 227 F.3d 679, 683 (6th Cir. 2000); Wesbanco Bank Barnesville v. Rafoth (*In re Baker & Getty Fin. Serv., Inc.*), 106 F.3d 1255, 1259 (6th Cir. 1997). A bankruptcy court's factual findings should not be disturbed "unless there is the most cogent evidence of mistake of justice." *In re Baker & Getty*, 106 F.3d at 1259 (citations and internal quotations omitted).

The appeal concerns the priority of competing claims by the Bank and South Delta in the remaining proceeds from the sale of certain crops harvested by the debtor. The Bankruptcy Court made the following factual findings. The debtor is in the business of farming, and leased land in Louisiana for the purpose of growing primarily corn, rice and soybeans. On December 15, 1997, the debtor executed a lease agreement with South Delta for approximately 1,401 acres of land in Madison Parish, Louisiana. The lease term was from December 15, 1997, "until terminated by the landlord." Two and a half years later, on July 5, 2000, South Delta filed a standard UCC-1F financing statement on the debtor's

---

<sup>1</sup> Although the Bankruptcy Court's order of September 6, 2001, refers to "testimony from the hearing," the parties' briefs refer only to oral argument. The Court surmises that no evidence was taken at the hearing, as no transcript has been included in the record on appeal.

Louisiana corn, rice and soybean crops for the year 2000, reflecting an indebtedness to South Delta in the amount of \$1,300,000.00. South Delta did not execute a separate security agreement with the debtor covering any of the debtor's crops or proceeds. South Delta claimed unpaid rent under the lease with the debtor in the amount of \$134,763.00 for 1999, and \$173,000.00 for 2000.

The Bank financed the debtor's farming operations for the years 1998, 1999 and 2000. Four promissory notes were executed, for a total indebtedness to the Bank in the amount of \$1,600,000.00. This indebtedness is expressly secured by the crops and farm products from the acreage leased in Louisiana. The Bank also filed UCC-1F financing statements on the crops and proceeds on February 25, 1998, July 30, 1999, and July 6, 2000.

Pursuant to the Bankruptcy Court's order of October 6, 2000, the Bank paid South Delta the debtor's unpaid rent for 2000, in the amount of \$173,000.00. Therefore, the only issue before the Bankruptcy Court, and before this Court, is whether South Delta has a prior claim in the debtor's 2000 crop proceeds for the unpaid 1999 rent. The Bankruptcy Court concluded that the UCC-1F financing statement filed by South Delta on July 5, 2000, cannot, by itself, be considered a valid security agreement, and found that there were no other documents evidencing a security agreement. Therefore, the Bankruptcy Court granted summary judgment in favor of the Bank.

South Delta first argues that it has a priority claim by virtue of a lessor's privilege granted under Louisiana law that is superior even to mortgages and other perfected security

interests. Louisiana law provides that “[p]rivilege is a right, which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors, even those who have mortgages.” La. Civ. Code art. 3186.

The specific lessor’s privilege granted under Louisiana law provides, in relevant part, that “[t]he lessor has, for the payment of his rent, and other obligations of the lease, a right of pledge on the movable effects of the lessee, which are found on the property leased.” La. Civ. Code art. 2705. See also La. Civ. Code 3218 (providing that the lessor’s privilege is “of a higher nature than mere privilege” because it also allows the lessor to seize movables from the property and retain them until payment is made). In addition, the Code provides the method for enforcement of the privilege:

A. In the exercise of this right, the lessor may seize the objects subject to his privilege before the lessee removes them from the leased premises, or within fifteen days after they have been removed by the lessee without the consent of the lessor, if they continue to be the property of the lessee, and can be identified.

La. Civ. Code art. 2709(A). Crops grown by the lessee are considered movable effects, and are subject to the privilege held by the lessor of the land on which they are grown. See La. Civ. Code art. 3217(3).

The Code provisions cited above, as well as Louisiana case law, confirm that the lessor’s privilege granted in the Louisiana Civil Code has the characteristics of a right of pledge. See O’Kelley v. Ferguson, 22 So. 783 (La. 1897); Bayou Pierre Farms v. Bat Farms Partners, III, 676 So. 2d 643 (La. Ct. App. 1996); Burton v. Jardell, 589 So. 2d 610 (La. Ct.

App. 1991); Boylston v. Jones, 153 So. 53 (La. Ct. App. 1934); A. Adler Realty Co. v. Bloch Bros., 9 Teiss 47 (La. Ct. App. Orleans 1911). However, the parties disagree as to whether this means that there exists a right of privilege separate and apart from the right of pledge, or whether the lessor must exercise the right of pledge in a timely fashion in order to validly claim the privilege.

The Bank contends that South Delta lost its codal privilege in the debtor's crops for the year 2000 when it failed to seize those crops within fifteen days after harvest, as required by art. 2709(A). South Delta, however, relying upon the decision in O'Kelley, argues that it has both a right of pledge and a right of privilege.

While the decision in O'Kelley does contain a statement supporting South Delta's position that there is a right of privilege separate and distinct from the right of pledge, see 22 So. at 789, that particular statement has not been accepted by later Louisiana courts, and has been specifically recognized as *dicta*. See Bayou Pierre Farms, 676 So. 2d at 647-48; Boylston, 153 So. at 55; A. Adler Realty Co., 9 Teiss at 47.<sup>2</sup> This Court concludes that the

---

<sup>2</sup> In its entirety, the opinion in A. Adler Realty Co., reads as follows:

The sole question herein presented is whether or not the privilege of the lessor upon the crop raised on the leased premises, or the proceeds thereof, continues beyond the period of fifteen days after the removal of said crop from the leased premises.

Under the Civil Code it undoubtedly does not, but expires at the same time as the right of pledge, leaving the lessor thereafter but an ordinary creditor. Farnet vs Creditors, 8 An. 372; Conrad vs. Patzelt, 29 An. 471. So that it only remains to be seen whether this has been changed by special legislation.

Appellant urges that Act 89 of 1886 affects such a change, but an examination of that act shows that it creates no new privilege in favor of the lessor upon the crop raised on the leased premises, but on the contrary simply fixes the rank of the different privileges "granted by existing laws."

Hence the lessor's privilege on the crop comes exclusively from the Civil Code, and under the authorities above cited, that privilege is lost when the lessor has allowed more than fifteen days to elapse, after the removal of the crop, without taking steps to enforce his right of

weight of Louisiana authority compels the holding that a lessor loses its right of privilege by failing to exercise the right of pledge in accordance with art. 2709(A). Thus, South Delta cannot claim the lessor's right of privilege granted in the Louisiana Civil Code.

Even if the Court were to follow O'Kelley, and find that a separate right of privilege exists, the result would be the same. In this case, South Delta attempts to claim a lessor's privilege in the 2000 crops for the 1999 rent. However, South Delta has cited to no authority clearly supporting its position, arguing only that the various relevant Code provisions do not expressly state that the lessor's privilege existing in crops for a particular year cannot also cover unpaid rent for a prior crop year.

Article 3217 of the Civil Code provides, in relevant part:

The debts which are privileged on certain movables, are the following:

....

3. The rents of immovables . . . on the crops of the year, and on the furniture, which is found in the house let, or on the farm, and on every thing which serves to the working of the farm.

South Delta finds it significant that this section refers only to "rents of immovables" instead of using language such as "rents of immovables for the current year." This particular phrase could, perhaps, be considered somewhat ambiguous. However, South Delta's interpretation

---

pledge.

We find nothing in Carroll vs. Bancker, 43 An., 1194. (on rehearing) in conflict with, or to be distinguished from these views; on the contrary, that case seems to be in entire accord with what is here held. As to expressions in O'Kelly [sic] vs. Ferguson, 49 An., 1231, relied upon by appellant, they are clearly obiter dicta and hence not to be followed in the face of prior adjudications clearly holding different views.

9 Teiss at 47. The court in Boylston discussed these "prior adjudications clearly holding different views." 153 So. at 55-56.

is contradicted by the decision in O'Kelley itself, in which it is stated: "We agree with plaintiffs' counsel that the lessor's privilege as a substantive right does not extend beyond the crop of the year for which the rent was due." 22 So. at 789. This is a broad statement, and precludes South Delta's position.

A lessor's right of privilege is also referred to in the Louisiana Revised Statutes, specifically in La. Rev. Stat. 9:4521:

As a specific exception to R.S. 9:4770 and R.S. 10:9-201, the following statutory privileges and perfected security interests as affecting unharvested crops shall be ranked in the following order of preference, provided that such privileges and security interests have been properly filed and maintained in accordance with the central registry provisions of R.S. 3:3651 et seq.:

- (1) Privilege of the laborer, the thresherman, combineman, grain drier, and the overseer.
- (2) Privilege of the lessor.
- (3) Perfected security interests under Chapter 9 of the Louisiana Commercial Laws in the order of filing, as provided by R.S. 3:3651 et seq.
- (4) Privilege of the furnisher of supplies and money, of the furnisher of water, and of the physician.

While South Delta filed a UCC-1F financing statement, it expressly covered only the 2000 crops. As discussed, *supra*, the lessor's privilege does not extend beyond the crop of the year for which the rent is due. Therefore, if South Delta's financing statement is construed as a filing of the lessor's privilege in compliance with La. Rev. Stat. § 9:4521, it secured only the payment of rent for the year 2000.

As South Delta does not have a valid lessor's privilege, it must be determined whether it has a properly perfected security interest in the year 2000 crop proceeds by virtue of the

UCC-1F filed on July 5, 2000, one day prior to the Bank's financing statement. In accordance with Louisiana law in effect during the relevant time period, a security interest attaches when:

- (1)(a) the collateral is in the possession of the secured party pursuant to agreement . . . or the debtor has signed a security agreement which contains a description of the collateral and, in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;
- (b) value has been given; and
- (c) the debtor has rights in the collateral.

La. Rev. Stat. § 10:9-203(1).<sup>3</sup> The security interest must then be perfected by filing a financing statement. La. Rev. Stat. § 10:9-302.

While a standard form UCC-1F financing statement generally cannot, by itself, be considered a valid security agreement, it may be read in conjunction with other documents in order to determine whether a security interest has been granted. See, e.g., *In re Bollinger Corp.*, 614 F.2d 924 (3d Cir. 1980); *In re Numeric Corp.*, 485 F.2d 1328 (1st Cir. 1973); *In re Nottingham*, 1969 WL 11098 (E.D. Tenn. Sept. 12, 1969); *In re North Reddington Beach Assoc., Ltd.*, 97 B.R. 90, 92 (Bankr. M.D. Fla. 1989); *American Card Co. v. H.M.H. Co.*, 196 A.2d 150 (R.I. 1963). In making that determination, the Court should first consider whether the language in the relevant documents “objectively indicates that the parties may have intended to create or provide for a security agreement.” *In re Owensboro Canning Co.*, 82

---

<sup>3</sup> Many provisions of Article 9 of the Uniform Commercial Code were amended, revised, reorganized, etc., effective July 1, 2001. The citations in this opinion to Louisiana's UCC provisions are to the statute as it existed prior to that revision.

B.R. 450, 453-54 (W.D. Ky. 1988). If so, the Court should then consider whether the parties actually intended to create a security interest. The first inquiry is a question of law; the second a question of fact. Id.

In this case, the relevant documents are the UCC-1F financing statement filed July 5, 2000, and the lease executed between the debtor and South Delta on December 15, 1997. An examination of these documents reveals no language indicating an intent to create a security agreement. The UCC-1F contains only the standard information called for on the form. There is no additional language indicating that a security interest in the crops is being granted. The 1997 lease agreement also contains no language purporting to grant a security interest in the debtor's crops, or in anything else; it is merely a lease, and that is all.

Whether considered alone or in combination, South Delta's UCC-1F financing statement and the 1997 lease do not contain language objectively indicating an intent to create a security interest in favor of South Delta. Therefore, South Delta does not have a valid, perfected security interest in the debtor's crops, and is not entitled to priority over the claim of the Bank in the year 2000 crop proceeds.

For the foregoing reasons, the Court concludes that the Bankruptcy Court's findings of fact were not clearly erroneous, and that the grant of summary judgment to First State Bank was not contrary to law. Therefore, the decision of the Bankruptcy Court is AFFIRMED. The Clerk of Court is directed to enter judgment accordingly.

IT IS SO ORDERED.

---

JAMES D. TODD  
UNITED STATES DISTRICT JUDGE

---

DATE