

IN THE COURT OF APPEALS OF IOWA

AUG 27 1986
CLERK SUPREME COURT

JOHN HANCOCK MUTUAL LIFE
INSURANCE COMPANY,

Plaintiff-Appellee,

vs

HARROLD J. PETERSEN, MARY
IRIS PETERSEN, BRADLEY J.
PETERSEN, PATRICK PETERSEN,

Defendants-Appellants,

FIRST TRUST AND SAVINGS BANK,
Anthon, Iowa; UNITED STATES OF
AMERICA, acting by and through
the Commodity Credit Corporation,

Defendants.

Filed August 27, 1986

143

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85-1075

Appeal from the Iowa District Court for Woodbury County (No. 92262C)

- Phillip S. Dandos, Judge.

Defendants appeal from trial court's order in a mortgage foreclosure action.

AFFIRMED.

Sam S. Killinger of Kindig, Beebe, Rawlings, Nieland, Probasco & Killinger,
Sioux City, for defendants-appellants.

Janet J. Brown of Klass, Whicher & Mishne, Sioux City, for
plaintiff-appellee.

Asher Schroeder, Assistant United States Attorney, for defendant United
States of America.

Heard by Snell, P.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

Defendants Harold J. Petersen and Mary I. Petersen appeal from an order in a mortgage foreclosure action denying their application for an order regarding cash rental and crops planted. The Petersens assert that there was insufficient evidence to support Plaintiff John Hancock Mutual Life Insurance Company's entitlement to rents and profits from the real estate in question. *We affirm.*

In 1983, the Petersens executed and delivered a note and mortgage assigning certain Woodbury County real estate to John Hancock. The mortgage contained the following language:

... and also all the rents (including rentals...) issues, uses and profits of the aforesaid real estate and all crops raised thereon

The mortgage also provided upon commencement of foreclosure proceedings John Hancock would be entitled to have a receiver appointed.

John Hancock filed a petition to foreclose the mortgage on March 8, 1985. The petition prayed for the appointment of a receiver. Subsequent to the filing of the foreclosure action the Petersens leased the premises to a third party. The lease in question ran from April 25, 1985 to February 1, 1986. It is not clear when the rent under the lease was payable.

On May 21, 1985, the Petersens filed a pleading captioned "Application for Order Regarding Cash Rental and Crops Planted." In the application the Petersens contended that they had leased the property for cash rent to a third person and that now John Hancock had requested the rent. The Petersens argued since no receiver had been appointed, John Hancock did not have a claim to the cash rent and, therefore, the cash rent should be paid to the Petersens. John Hancock resisted the application and asked a receiver be appointed as prayed for in its foreclosure petition.

The trial court entered an order appointing a receiver. The trial court also determined the receiver was entitled to collect the rents and profits from the date of the commencement of the foreclosure proceedings. Because there was some confusion between the parties and this court about whether the trial court had determined if either John Hancock or the Petersens was entitled to the rents and profits during the foreclosure period, we remanded to the trial court to answer the following question:

- (1) Did the order of June 25, 1985, determine if either plaintiff or defendants was entitled to the rents and profits from the land during the foreclosure period?

Answer: No.

The Petersens' sole issue on appeal is whether the trial court erred in determining that John Hancock rather than the Petersens was entitled to the rents and profits from the land. Since the trial court clarified on remand that it did not make a determination whether John Hancock or the Petersens were entitled to the rents and profits during the foreclosure proceedings, the only issue remaining is whether the trial court should have determined the Petersens were entitled to the rents from the third-party lease.

Under the record made herein we determine the trial court did not err in determining the Petersens were not as a matter of law and on the application made entitled to the cash rents from the lease to the third-party. Where a petition for foreclosure of a mortgage, which contains a pledge of rents and profits and a provision for the appointment of receiver, is filed and the appointment of a receiver is requested, all questions of priority between the mortgagee and other persons claiming a right to the rents and profits, or a lien thereon, are fixed as of the date of the filing of such petition and request for appointment of a receiver, provided the appointment of a receiver is actually made by the

court. First Trust Joint Stock Land Bank of Chicago v. Blount, 223 Iowa 1339, 1341-42, 275 N.W. 64, 66 (1939). In the instant case the mortgage assigned the rents as opposed to pledging them in another part of the mortgage, as it had in First Trust. However, we determine First Trust is controlling and the trial court was correct in not determining entitlement to the rents and profits, because having done so when the Petersens requested would have been premature. The issue of entitlement to rents cannot properly be made until such time as the land has been sold and it has been determined whether it will be necessary to resort to rents and profits. First Trust, 223 Iowa at 1342, 275 N.W. at 66.

Therefore, we affirm the trial court's denial of the Petersens' application requesting the trial court direct payment to them at this time of cash rents and profits derived from the lease to third parties of the farmland in question. In so doing we make no final determination whether the relief requested by the Petersens concerning the cash rents and profits should be granted.

AFFIRMED.