FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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THE FEDERAL LAND BANK OF OMAHA, A Corporation,

Plaintiff-Appellee,

vs.

JOHN V. LOWER, DIANA K. LOWER,

Defendants-Appellants,

FARMERS TRUST & SAVINGS BANK, Williamsburg, Iowa, STUART BLYTHE and UNKNOWN CLAIMANTS,

Defendants.

Filed October 28, 1987

7-236
86-1393

Appeal from the Iowa District Court for Iowa County (19660), William R. Eads, Judge.

Defendants appeal the trial court's ruling in a foreclosure action ordering them to account to the plaintiff for the rent received by them from defendant.

AFFIRMED.

Scott H. Hughes and Robert N. Calbi, Council Bluffs, for defendants-appellants.

John C. Monroe of Lynch, Dallas, Smith & Harman, Cedar Rapids, for plaintiff-appellee.

Clint P. Van Zee of Claypool, Claypool & Van Zee, Williamsburg, for defendant bank.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ. Snell, J., takes no part.

HAYDEN, J.

Defendants, John and Diana Lower, appeal the trial court's ruling in a foreclosure action ordering them to account to the plaintiff, Federal Land Bank of Omaha (Land Bank), for the rent received by them from defendant, Stuart Blythe. The Lowers assert the Land Bank has no right to rent paid to them prior to the Land Bank's request for the appointment of a receiver. We affirm.

On June 27, 1978, a real estate mortgage was executed by the Lowers that mortgaged and conveyed to the Land Bank 212 acres of land in Iowa County "together with all of the . . . rents, issues, crops, and profits arising from said lands." On August 30, 1985, the Land Bank filed its petition to foreclose this mortgage. Stuart Blythe was named as a defendant claiming an interest in the mortgaged real estate. The trial court then entered a decree of foreclosure on January 20, 1986. The decree provided that the lien of Land Bank's mortgage was "superior and paramount to the liens, claims, rights, titles and interests of all Defendants, and of anyone claiming by, through or under said Defendants." On approximately January 25, 1986, the Lowers nonetheless leased all of the foreclosed real estate, except their homestead, to Stuart Blythe for $12,610 paid upon the signing of the lease. This lease was recorded with the Iowa County Recorder on February 4, 1986.

On March 4, 1986, a sheriff's sale was held which resulted in a deficiency judgment in the amount of $12,102.56. Thereafter, on March 7th the Land Bank requested the appointment of a receiver. The Lowers did not resist this request and a receiver was appointed on March 27th. Upon the discovery of the lease by the receiver, the Land Bank filed an Application for Orders Re: Receivership, which requested the trial court to declare the lease null and void or, alternatively, to order an accounting from the Lowers for the rent they received. The court ordered the Lowers to account to the Land Bank for the rent received by them

and rendered judgment against them in the amount of $12,102.56. The court further ordered "the net proceeds from the sale of the crops and other issue of the mortgaged land grown by or on behalf of the lessee Blythe shall be applied towards the judgment," if the Lowers could not pay it. Mr. Blythe has not appealed this ruling.

The Lowers contend the trial court erred in concluding the lien on rents and profits was a present lien. They assert the language regarding rents and profits in the mortgage merely created a pledge for the security of the debt and that this pledge did not become a present lien on the property until the foreclosure action was commenced and the appointment of the receiver was requested. Since the Land Bank did not request a receiver be appointed until after the lease in issue was executed and recorded, the Lowers conclude they should not have to account for the rent they received. In the alternative, if a present lien was created, the Lowers assert it was not perfected and therefore may not be enforced.

There are two lines of Iowa Supreme Court decisions construing mortgage language creating a lien on rents and profits. The first line of cases addresses mortgage language which creates such a lien specifically in the event of the debtor's default. See Andrew v. Haag, 215 Iowa 282, 245 N.W. 436 (1932); Kooistra v. Gibford, 201 Iowa 275, 207 N.W. 399 (1926). In these cases, the lien provisions in the mortgage were only operative after the foreclosure action was commenced and the request for the appointment of a receiver had been made. Andrew, at 287, 245 N.W. at 439; Kooistra, at 277, 207 N.W. at 399-400.

The second line of cases addresses mortgage language which grants and conveys the rents and profits, as well as the land, to the mortgagee. See Equitable Life Ins. Co. v. Brown, 220 Iowa 585, 262 N.W. 124 (1935); Soehren v. Hein, 214 Iowa 1060, 243 N.W. 330 (1932); Farmers Trust & Sav. Bank v. Miller,

203 Iowa 1380, 214 N.W. 546 (1927). In these cases, the mortgage language was, as an initial matter, held sufficient to constitute a valid security interest. Brown, at 591, 262 N.W. at 127; Soehren, at 1064, 243 N.W. at 332; Miller, at 1382-83, 214 N.W. at 547. The court thereupon resolved questions of priority between mortgagees, or questions of enforceability against subsequent purchasers or lessees. These questions were resolved by determining whether the pertinent parties had actual notice of the security interest, or constructive notice by virtue of the relevant recording (or indexing) statutes. Brown, at 592-93, 262 N.W. at 128; Soehren, at 1065, 243 N.W. at 332-33; Miller, at 1383, 214 N.W. at 547-48.

We conclude the second line of cases is controlling in this case. The mortgage at issue here specifically mortgaged and conveyed the rents and profits in its granting clause; default of the Lowers was not made a condition of this grant. We therefore conclude a valid security interest on the rents and profits was created upon the execution of the mortgage.

The Lowers contend the lien cannot be enforced, even if it does constitute a valid security interest, since it was never perfected by recording or indexing. The Land Bank asserts the recordation of the real estate mortgage itself satisfied any recording requirements regarding the lien. We need not, however, decide this issue. Although recording may be determinative concerning the validity of the lien with respect to third parties or as to its priority if there existed conflicting claims to the property involved, recording is not a part of the execution of the lien and an unrecorded lien is valid as between the parties to it. Cf. State v. Eagle Petroleum Co., 153 N.W.2d 115, 121 (Iowa 1967) (lease establishing contractual landlord's lien not recorded); In re Estate of Lewis, 230 Iowa 694, 700, 298 N.W. 842, 845 (1941) (purchase-money mortgage on automobiles not recorded until after the death of the mortgagor).

We therefore conclude the lien was enforceable against the Lowers. As Stuart Blythe has not appealed, we do not address the validity of the lien as to him

AFFIRMED