IN THE COURT OF APPEALS OF IOWA

No. 0-668 / 90-644

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AGRI FINANCIAL SERVICES, INC.,

Plaintiff,

vs.

STEVEN GUSTAFSON and C & J LEASING II LIMITED PARTNERSHIP,

Defendants.

C & J LEASING II LIMITED PARTNERSHIP,

Cross-Petitioner-Appellant,

vs.

AGRI FINANCIAL SERVICES, INC., STEVEN GUSTAFSON,

Cross-Defendants,

and

DEUTZ-ALLIS CREDIT CORPORATION,

Cross-Defendant-Appellee.

STEVEN GUSTAFSON,

Cross-Claimant,

vs.

DEUTZ-ALLIS CREDIT CORPORATION,

Cross-Defendant.

Appeal from the Iowa District Court for Boone County, Carl Peterson, Judge.

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C & J Leasing appeals a district court order dismissing its cross-claim against Deutz-Allis Credit Corporation. **AFFIRMED.**

Ronald A. Baybayan, Des Moines for appellant.

Diane M. Stahle and Mark D. Walz of Davis, Hockenberg, Wine, Brown, Koehn & Shors, P.C., for appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

This case comes before us on the summary judgment motion by third-party defendant Deutz-Allis Credit Corporation (Deutz-Allis) on a cross-claim by third-party plaintiff C & J Leasing Ltd. (C & J Leasing). Our review of this summary judgment is on errors of law. Iowa R. App. P. 4.

This case involves the most recent, and hopefully the last, of a long saga of cases to reach the courts concerning the dealings and schemes of Dan Geneser, formerly a farm implement dealer in Granger, Iowa. Geneser concocted and executed several fraudulent schemes involving double and triple sales of the same piece of farm machinery off the implement lot, leasing the piece back, and selling it again before the first owner had taken it off the lot. See C & J Leasing II Ltd. v Swanson, 439 N.W.2d 210 (Iowa 1989).

Besides various criminal actions, Geneser was indicted and apparently pled guilty to several criminal accounts based on his fraudulent practices. The final disposition of those cases is not an issue here.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Miline, 242 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Miline, 242 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party, Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Id.; Sherwood v. Nissan, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Gott, 387 N.W.2d at 343; Miline, 242 N.W.2d at 423. We now turn to the facts, all of which appear to be undisputed.

Geneser sold an Allis-Chalmers tractor to Agri Financial Services in February 1984. Agri then leased the tractor to a party but the tractor remained on the lot of Geneser. In December 1984 Geneser again sold the tractor to C & J Leasing with C & J intending to lease the tractor back to Dan Geneser. Following this sale, C & J Leasing sent a notice by certified mail to Deutz-Allis it had entered into an equipment lease with Dan Geneser. C & J Leasing apparently also filed a financing statement perfecting their security interest.

Geneser again sold the tractor in December 1985 to Steven Gustafson. Gustafson financed a portion of the purchase price with Deutz-Allis. In March 1986 C & J Leasing notified Gustafson that it claimed ownership of the tractor. Gustafson continued using the tractor and satisfied his obligation with Deutz-Allis in 1987. Dan Geneser was eventually convicted on various theft charges.

Litigation ensued between the various parties involved. Eventually it was determined as between Agri Financial, C & J Leasing and Gustafson, Gustafson was entitled to the tractor. This issue has not been appealed.

C & J Leasing then brought this suit against Deutz-Allis alleging negligence in several respects. C & J Leasing focused on the fact Deutz-Allis financed the sale of the tractor to Gustafson, despite allegedly being aware of C & J Leasing's interest. Following a motion for summary judgment filed by Deutz-Allis, the district court dismissed C & J Leasing's cross-claim. C & J Leasing has filed this appeal.

C & J Leasing argues the trial court erred in granting the motion for summary judgment. C & J Leasing alleges Deutz-Allis had a duty to protect C & J Leasing's interest in the tractor. The duty arose upon the receipt of the letter informing Deutz-Allis of C & J Leasing's interest in the tractor. The letter was sent one year before Gustafson purchased the tractor. The issue of the applicability of the Iowa Uniform Commercial Code (UCC) is not raised by C & J Leasing on this appeal. See Iowa Code chap. 554.

The trial court found there was no duty owed by Deutz-Allis to C & J Leasing. Its findings state in pertinent part:

> The mere fact that a letter may have been sent from C & J in December 1984 informing Allis Chalmers Credit Corporation (predecessor to Deutz-Allis of a lease of the tractor with Daniel Geneser is not sufficient to impose a duty of Deutz-Allis to protect C & J from a fraud of Daniel Geneser, the lessee of C & J.
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> Ordinarily, one does not have a duty to control the conduct of another. 57 Am. Jur. 2d, Negligence, Section 100, at page 154. There are special relationships which can exist between an actor and a third-party which would give the third-party a right to protection and cause a duty to arise, as reflected in Anthony v. State of Iowa, 374 N.W.2d 662, 668 (Iowa 1985). There is no supporting evidence to establish such a special relationship between Deutz-Allis and C & J in these proceedings.

Our review of the record convinces us the trial court is correct. The mere fact C & J Leasing sent a letter to Deutz-Allis a year before the purchase by Gustafson is not enough to make Deutz-Allis liable for C & J Leasing's entrustment of the tractor to a fraudulent merchant. C & J Leasing essentially is urging us to create a new cause of action, premised on lender liability. We decline the invitation.

C & J Leasing could have protected itself by taking possession of the tractor. The UCC provides:

> 2. Any entrusting of possession of goods to merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in the ordinary course of business.
>
> 3. "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the

> parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such to have been larcenous under the criminal law.

Iowa Code § 554.2403.

It was this section the trial court relied on in granting priority to Gustafson over C & J Leasing. C & J Leasing left its tractor on the implement dealer's lot. In doing so, it took under the obvious risk set out in the above section. Now they are demanding Deutz-Allis absorb the loss for its mistake.

We find the Iowa Supreme Court's holding in C & J Leasing v. Swanson to be instructive. 439 N.W.2d 210 (Iowa 1989). The supreme court relied upon subsection 554.9307(1) in finding for the buyer in that case. Id. at 213-14. That statute provides in pertinent part:

> 1. Except as provided in subsection 4 [not applicable here], a buyer in the ordinary course of business as defined in section 554.1201, subsection 9, takes free of a security interest created by that person's seller even though the security interest is perfected and even though the buyer knows of its existence.

Iowa Code § 554.9307(1).

The trial court relied on Swanson in its holding in this case. In that case Geneser also sold and resold the same pieces of farm machinery to different buyers. The present case is similar to Swanson. The incidents are in fact interrelated. Here the security interest had been created by C & J Leasing, acting in conjunction with the seller, Geneser. Thus the parties are essentially aligned the same in this case as in Swanson. See id. at 213.

We now turn to the main question: Does a finance company, which financed the buyer's purchase, owe a duty to a prior buyer to safeguard its interests, simply because of a letter informing of that interest sent a year before the purchase? A comment from Anderson's treatise on the Uniform Commercial Code provides guidance:

> If the buyer is protected from the security interest created by his seller by virtue of UCC § 9-307, creditors of the buyer are likewise protected. That is, the protection of UCC § 9-307 is not a personal immunity given to the particular buyer but is a clearing of the "title" to the collateral, so that regardless of who owns the collateral or acquires the collateral thereafter, such person will hold the collateral free of the security interest.
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> In such a case, as the buyer holds the collateral free of the security interest, it is unnecessary to consider whether the creditor of the protected buyer would otherwise prevail or have superiority over the creditor of the buyer's seller.
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> In consequence of the destruction of the security interest of the creditor of the seller, that creditor is not entitled to share in the proceeds of an execution sale thereafter obtained of the collateral by a judgment creditor of the buyer. Similarly, a claim for a security interest in after-acquired property of the buyer will not be subordinated to the security interest that was discharged by UCC § 9-307.

9 R. Anderson, Uniform Commercial Code § 9-307:17 (3rd ed. 1985)(emphasis added).

C & J Leasing was on notice of the risk of loss if it chose to entrust the tractor to the implement dealer. See Iowa Code § 554.2403. It now seeks to shift the burden of that loss to another finance company on the basis of a letter written a year earlier. No statute or legal authority has been cited showing C & J Leasing is entitled to such a benefit. Nor are we aware of any such theory which would allow C & J Leasing to recover. It is for the legislature, and not for this court, to change the statutory provisions of Iowa's UCC.

Judgment of the trial court is affirmed.

Costs on appeal are taxed to C & J Leasing.

AFFIRMED.