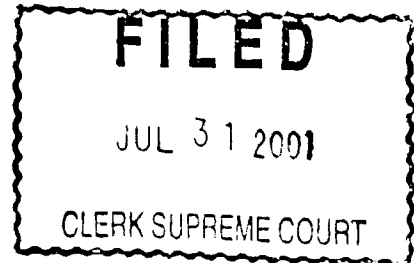


IN THE COURT OF APPEALS OF IOWA

No. 1-358 / 00-1283

Filed July 31, 2001



IN THE MATTER OF THE ESTATE OF PHILIP
G. TREMEL, a/k/a PHILLIP G. TREMEL, Deceased,

COMMERCIAL FEDERAL BANK, f/k/a LIBERTY
BANK & TRUST OF WOODBINE,
Plaintiff-Appellee,

vs.

LYNNE M. TREMEL, Individually, LYNNE M. TREMEL,
as Administrator of the Estate of PHILLIP G. TREMEL,
Deceased, FARMPRO, INC., WARD'S KITCHENS & BATHS,
KELLY'S CARPET, and DAN CONNELL, as the Duly
Authorized Guardian Ad Litem for the Minor Children
of PHILLIP G. TREMEL, Deceased,
Defendants,

AGRILAND FS, INC.,
Defendant-Appellant.

Appeal from the Iowa District Court for Harrison County, Keith E. Burgett,
Judge.

The defendant, Agriland FS, Inc., challenges a district court order on
plaintiff bank's motion to adjudicate law points in a foreclosure action and
defendant's motion requesting payment of indebtedness incurred during
administration of decedent's estate. **AFFIRMED.**

Steven H. Krohn of Smith Peterson Law Firm, Council Bluffs, for appellant.

Thomas H. Burke of Whitfield & Eddy, P.L.C., Des Moines, for appellee.

Considered by Streit, P.J., and Mahan and Zimmer, JJ.

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MAHAN, J.

The defendant, Agriland FS, Inc., challenges a district court order on plaintiff Commercial Federal Bank's motion to adjudicate law points in a foreclosure action and defendant's motion requesting payment of indebtedness incurred during administration of decedent's estate. The defendant contends the district court erred in ruling crops grown in 1999 by the administrator of decedent's estate were subject to a security interest in plaintiff Bank's favor. We affirm.

Background Facts and Proceedings. Philip Tremel died intestate on September 22, 1998. He was survived by his wife, Lynne, and two children. Estate proceedings were opened on November 2, 1998. Lynne was appointed administrator of the estate on November 24, 1998.

Prior to his death, in May 1994, Philip and Lynne each executed separate personal guaranties of repayment of their indebtedness to Commercial Federal Bank (Bank). Between November 1997 and April 1999, Philip and Lynne executed fourteen separate promissory notes in favor of the Bank.¹ The notes were secured by a security agreement in favor of the Bank, executed by Philip and Lynne on February 13, 1997.² The security agreement was properly

¹ Two of the fourteen promissory notes were signed by both Philip and Lynne. The remaining twelve promissory notes were signed only by Lynne. The total amount due on the notes as of June, 1999, was approximately one million dollars.

² One of the notes signed by both Philip and Lynne was also secured by a real estate mortgage. The second note signed by both Philip and Lynne was secured by a real estate mortgage and an assignment of real estate contract.

perfected prior to Philip's death by financing statements signed by Philip and Lynne.³

On April 21, 1997, Philip and Lynne executed an open-end real estate mortgage and an assignment of a buyer's interest in a real estate contract in

³ The security agreement provided, in pertinent part, as follows:

SECURED DEBTS. I agree that this security agreement will secure payment and performance of debts, liabilities or obligations described below that I owe(s) to you now or in the future.

All Debt(s). Except in those cases listed in the "limitations" paragraph on page 2, each and every debt, liability and obligation of every type and description (whether such debt, liability or obligation now exists or is incurred or created in the future and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several).

Security Interest. To secure payment and performance of the above described Secured Debts, liabilities and obligations, I give you a security interest in all of the property described below that I now own and that I may own in the future (including, but not limited to, all parts, accessories, repairs, improvements, and accessions to the property), wherever the property is or may be located, and all proceeds and products from the property.

Inventory: All inventory which I hold for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

.....
Farm Products: All farm products including, but not limited to . . . (b) all crops, annual or perennial, and all products of the crops; . . .

.....
Government Payments and Programs: All payments, accounts, general intangibles or other benefits (including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts storage payments, emergency assistance payments, diversion payment, and conservation reserve payments) in which I now have and in the future may have any rights or interest and which arise under or as a result of any preexisting current or future federal or state governmental program (including, but not limited to, all programs administered by the commodity credit corporation and the ASCS).

favor of the Bank.⁴ The lien created by the mortgage attached to agricultural property owned by Philip in Harrison County, Iowa. The assignment contract pertained to the same agricultural property. The mortgage and the assignment contract were recorded in the office of the Harrison County Recorder on April 24, 1997.

Philip's estate includes the parcel subject to the Bank's mortgage and parcels identified in the security agreement and financing statement (referred to collectively as "farm real estate"). Lynne disclaimed any right to inherit certain property of Philip's estate, including but not limited to the farm real estate.

During the 1999 crop year, Lynne, as the administrator of Philip's estate, operated the farm real estate. Agriland provided approximately \$30,000 of product to produce the 1999 crop. The 1999 crops were harvested and stored in bins on the farm real estate.

⁴ The mortgage provided, in pertinent part, as follows:

Mortgage. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor [Philip and Lynne] grants, bargains, warrants, conveys and mortgages to Lender [Bank] the following described property: SE ¼ of Section 27, T 80 N, R 41 W of the 5th P.M. in Harrison County, Iowa.

.....
 Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

.....
 NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF \$250,000.00. LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS.

In September 1999, Agriland filed a motion to require payment of indebtedness incurred during administration in the estate proceedings. The Bank resisted the motion, claiming it held a prior perfected security interest in the 1999 crops as security for indebtedness owed to the Bank.

In December 1999, the Bank filed a petition in district court, seeking to foreclose its real estate mortgage and security agreements. In February 2000, the Bank filed a motion for adjudication of law points in the foreclosure proceedings, seeking a determination the Bank held a prior perfected security interest in the 1999 crop pursuant to its mortgage and security agreement and was therefore entitled to all of the proceeds of the 1999 crop.

The court heard the Bank's motion to adjudicate law points and Agriland's motion to require payment of indebtedness incurred during administration at the same time. The parties submitted the issues on a written stipulation of facts filed in the estate proceedings and the foreclosure proceedings. On May 6, 2000, the district court ruled the Bank had a security interest in the 1999 crop.

Upon motions and cross-motions to enlarge and amend findings and conclusions, the court partially modified its May 6, 2000 order. It determined the Bank held a security interest in *all* of the 1999 crop grown by the administrator of Philip's estate, not just the crop grown on the property encumbered by the real estate mortgage. It ordered the proceeds from the same should be paid over to the Bank by the administrator, and determined Agriland had an administrative claim against the estate for the indebtedness owed to it. Agriland appeals.

Scope of Review. We review an adjudication of law points for correction of errors at law. Iowa R. App. P. 4; *State v. Maher*, 618 N.W.2d 303, 305 (Iowa 2000). “An adjudication of law points is confined to a determination of legal matters on uncontroverted pleadings.” *Mortensen v. Heritage Mut. Ins. Co.*, 590 N.W.2d 35, 38 (Iowa 1999).

Validity and Enforceability of Security Agreement. “[A] security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.” Iowa Code § 554.9201 (1999). A security interest “attaches” and is enforceable against a debtor and third parties when (a) the debtor has signed a security agreement which contains a description of the collateral and a description of the land concerned (when the security interest covers crops growing or to be grown); (b) value has been given; and (c) the debtor has rights in the collateral. Iowa Code § 554.9203(1) A security agreement “may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral, including after-acquired collateral which also constitutes identifiable noncash proceeds.” Iowa Code § 554.9204(1).

Philip and Lynne signed a written agreement in favor of the Bank that described the collateral and the land on which secured crops would be grown. They received approximately one million dollars in financing from the Bank. They had rights in the crops serving as collateral for their debt to the Bank. Therefore, the Bank’s security interest attached to the collateral described in the Bank’s security agreement. See Iowa Code § 554.9203(1). The clear and unambiguous

language of the security agreement indicates the Bank's properly perfected security interest was intended to extend to crops grown in future years on the real estate identified in the Bank's security agreement and mortgage. Therefore, the Bank's lien on the 1999 crop and related government payments is valid and enforceable.

Agriland argues the 1999 crops are after-acquired property that is part of the estate. Because the estate never granted a security interest to the Bank, Agriland maintains, the crops grown after the farm real estate became property of the estate are not subject to the Bank's security interest. The Bank contends title to the property is immaterial to the resolution of whether the security agreement between the Bank and the Tremels created a security interest in the crops. See Iowa Code § 554.9202 ("Each provision of this Article with regard to rights, obligations, and remedies applies whether title to the collateral is in the secured party or the debtor."). We agree with the Bank.

Iowa Code section 633.425 classifies debts and charges against an estate in probate.⁵ Payment of debts and charges of the estate are to be made in the

⁵ Section 633.425 provides as follows:

Classification of debts and charges. In any estate in which the assets are, or appear to be, insufficient to pay in full all debts and charges of the estate, the personal representative shall classify the debts and charges as follows:

1. Court costs.
2. Other costs of administration.
3. Reasonable funeral and burial expenses.
4. All debts and taxes having preference under the laws of the United States.
5. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending at the decedent's last illness.
6. All taxes having preferences under the laws of this state.

order provided in section 633.425. Iowa Code § 633.426. A claimant's enforcement of the liens against the secured property, however, is not affected by the preference provisions of section 633.425. Iowa Code § 633.414; *In re Estate of Lau*, 442 N.W.2d 109, 111 (Iowa 1989). Therefore, any classification of the debt owed to Agriland has no effect upon the Bank's entitlement to enforce its properly perfected liens against the underlying secured property.⁶

The Bank's claim far exceeds the value of the 1999 crop and related government payments at issue. Therefore, the Bank is entitled to all of the proceeds from the 1999 crop and related government payments. Agriland must file its claim and await distribution of funds from Philip's estate.

AFFIRMED.

7. Any debt for medical assistance paid pursuant to section 249A.5, subsection 2.

8. All debts owing to employees for labor performed during the ninety days next preceding the death of the decedent.

9. All unpaid support payments as defined in section 598.1, subsection 6, and all additional unpaid awards and judgments against the decedent in any dissolution, separate maintenance, uniform support, or paternity action to the extent that the support, awards, and judgments have accrued at the time of death of the decedent.

10. All other claims allowed.

⁶ Agriland could have assured the debt arising from its advances for the 1999 crop had priority over the Bank's lien by obtaining a security agreement from the estate and filing a financing statement in accordance with Iowa Code section 554.9312(2).