



IN THE COURT OF APPEALS OF IOWA

POLK CITY SAVINGS BANK,)

Plaintiff-Appellee,)

Filed November 30, 1983

vs.)

PAUL V. KORDICK and)

ALMA B. KORDICK,)

Defendants-Appellants,)

3-293

2-69507

and)

ELDON D. AMANDUS,)

Defendant.)

Appeal from Polk District Court - James P. Denato, Judge.

Defendants Kordick appeal from the trial court's judgment for plaintiff bank in this replevin action to recover two ceiling furnaces and a chain-link fence in which the bank held a security interest. AFFIRMED.

Earl W. Sutton of Sutton & Nielsen, P.C., Des Moines, for defendants-appellants Kordick.

Gregory E. Biehler of Smith, Schneider & Stiles, P.C., Des Moines, for plaintiff-appellee Bank.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Sackett, JJ. Hayden, J., takes no part.

DONIELSON, J.

Defendants Kordick appeal from the trial court's judgment for plaintiff bank in this replevin action to recover two ceiling furnaces and a chain-link fence in which the bank held a security interest. Defendants claim that: (1) the only evidence admitted at trial showed that the underlying debt owed to plaintiff bank had been paid in full, so there was no basis for plaintiff to proceed against the collateral; (2) because of a mistake in the financing statement, the fence which the bank claimed was the intended collateral was not properly described, so the court should not have given the bank possession of the fence; (3) an inadequate foundation was established for expert testimony as to the value of the fence; (4) because this was an action at law, the court should have ruled upon objections when they were made; and (5) there was not substantial evidence to support the court's finding that the fence and furnaces were not fixtures. We affirm.

Plaintiff bank brought a replevin action to recover 848 feet of chain-link fence and two furnaces, asserting a purchase money security interest in them. The security interest was created to secure a loan made to Del Busick, who at the time was buying the real estate upon which the collateral was to be installed on contract from defendants Kordick. Busick was using the property as a boat store. After Busick's business failed he defaulted on the contract payments to the Kordicks. The Kordicks retook possession of the property by forfeiture and subsequently resold it on contract to defendant Amandus, who was later dismissed from this suit. The Kordicks refused to allow the bank to remove the chain-link fence and the two furnaces, which are evidently of the sort which hang from the roof of a large building.

The case was tried to the court. Although asked to rule upon various evidentiary objections, the court declined to do so on the grounds that new issues had been injected into the case that morning and that as a result it was unable to make rulings. The court held that the fence and furnaces were "readily removable

equipment," as defined in Iowa Code section 554.9313(4)(c), and that the security interest had been properly perfected for such equipment. The court also held that the items were not fixtures, as a second basis for holding for plaintiffs. A writ of replevin for the items was issued, and the Kordicks appealed.

I.

Defendants' appellate brief, far from being a model of clarity, lists eight separate issues but then discusses some in conjunction with others while still others are discussed separately. In any event, it appears to us that this appeal depends primarily on two issues: (1) did plaintiff still have a security interest in the fence and furnaces as against defendants, and (2) are the fence and furnaces to be considered as fixtures and, if so, is plaintiff's security interest affected thereby? We believe the trial court correctly decided these issues in granting judgment for plaintiff.

Defendants first claim that any security interest that plaintiff may have had in the fence and furnaces was extinguished by virtue of the fact that the note executed by Busick, under which the security interest arose, was paid off in full. Defendants thus argue that they were entitled to a directed verdict in their favor. This claim arose out of an agreement reached between plaintiff and one John Brightwell. When Busick was going out of business, plaintiff contacted Brightwell to see if he would be interested in buying any of the goods listed in the financing statement including the fence and furnaces. Brightwell expressed an interest and an agreement was reached by which plaintiff agreed to sell the collateral to Brightwell if plaintiff was able to obtain possession of those goods. As already stated, defendants refused to allow plaintiff to take the fence and furnaces. The Brightwell agreement superseded and made null and void a prior bill of sale for the collateral executed by plaintiff in which the latter made a loan of \$10,000 to Brightwell who in turn wrote a check for that amount to plaintiff; in effect, paying off the Busick note.

Under these circumstances, we do not believe plaintiff's security interest in the fence and furnaces was extinguished. First, there is no question that plaintiff perfected and therefore had a valid security interest under the Iowa Uniform Commercial Code. It is also clear that plaintiff did not intend its agreement and prior transaction with Brightwell to have the effect of paying off the note owing to it. In determining the effect of such agreements and transactions on the continuing existence of a security interest, the primary question is one of intention. See Persinger Garage Co. v. Caminsky, 188 Iowa 901, 178 N.W. 794 (1920). Although this case predates the enactment of the Iowa Uniform Commercial Code, defendants do not assert that the principle cited is no longer applicable; in any event, we believe the principle is still valid. The Brightwell agreement itself shows plaintiff's intent to maintain its interest in the fence and furnaces; it continued to assert its possessory rights to that collateral in order to fulfill the terms of the agreement. It was in order to obtain actual possession of those goods that plaintiff brought this replevin action. The trial court correctly overruled defendant's motion for a directed verdict.

II.

Defendants also claim that the trial court erred in holding that the fence and furnaces were not fixtures and thus did not become property of the holders of title to the realty; i.e. defendants. This is really a nonissue in this case because plaintiff concedes the fixture status of the fence and furnaces and the trial court reached the same conclusion by assuming that they were in fact fixtures. We will also assume they were fixtures; however, plaintiff's security interest therein still has priority over defendant's asserted interest because of Iowa Code § 554.9313(4). That statute provides in part as follows: "A perfected security interest in fixtures has priority over the conflicting interest of an encumbrance or owner of the real estate where * * * c. the fixtures are readily removable equipment" In this case, the furnaces were separate ceiling units and the fence appeared to be one

that could easily be pulled from the ground. Defendants do not contest plaintiff's assertion that these fixtures are "readily removable equipment," nor can we find any reason to do so. Plaintiff's interest in the fence and furnaces has priority over defendants' ownership claim by operation of Iowa Code § 554.9313(4)(c).

III.

Defendants' remaining issues need not long detain us. Although the financing statement embodying plaintiff's security interest mistakenly referred to the fence as "6 inch chain link" instead of "6 foot," defendants do not contend that they were misled by the mistake. Iowa Code § 554.9402(3) provides as follows: "A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading." The statement in this case substantially complies with the statutory requirements. Defendants' relevancy and foundation objections to testimony regarding the value of the fence are without merit. Finally, defendants failed to show any prejudice in their contention that the trial court should have ruled on all their evidentiary objections.

Finding no reason to disturb the findings, conclusions, and judgment of the trial court, we affirm.

AFFIRMED.