FILED
JUN 15 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

101

LISBON BANK & TRUST COMPANY, A Banking Corporation,

Plaintiff-Appellant,

vs.

DARWIN C. KOHL, MARDELL K. KOHL; DARWIN C. KOHL II, a/k/a Chip Kohl; CARSON GRAIN & IMPLEMENT CO., INC., a Corporation; MARION AG SERVICE, INC., a Corporation; CENTRAL IOWA PRODUCTION CREDIT ASSOCIATION, and FRED GUTWEIN & SONS, INC.,

Defendants-Appellees.

9-114
88-796

Appeal from the Iowa District Court for Linn County (10359), William L. Thomas, Judge.

Plaintiff appeals a district court ruling dismissing their petition for declaratory judgment by rejecting their claim over certain 1986 crops. **AFFIRMED.**

Steven K. Warbasse, Cedar Rapids, for plaintiff-appellant.

Peter C. Riley of the Tom Riley Law Firm, Cedar Rapids, for defendants-appellees Kohls.

Jon M. McCright of Fisher, Ehrhart, McCright & Turner, Cedar Rapids, for defendants-appellees Carson Grain & Implement Co., Inc., and Marion AG Service, Inc.

Phillip Seidl, Cedar Rapids, for defendant-appellee Central Iowa Production Credit Association.

H. Raymond Terpstra II of Terpstra, Terpstra & Epping, Cedar Rapids, for defendant-appellee Fred Gutwein & Sons.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

HAYDEN, J.

The Lisbon Bank (Bank) appeals from a district court ruling dismissing the Bank's petition for declaratory judgment by rejecting the Bank's claim over certain 1986 crops. The Bank contends the district court erred in ruling the Bank's security interest did not attach to the 1986 crops grown by the defendant's son and in failing to rule the defendant fraudulently conveyed his interest in the 1986 crops to his son. We affirm.

I.

In 1984, Darwin and Mardell Kohl began financing their farm operations through the Lisbon Bank. In 1984 and 1985, the Kohls entered into security agreements and financing statements pledging the crops from certain rental ground to the Bank in exchange for operating funds. The agreements specifically provided for a security interest over the Kohls' 1986 crops.

In late 1985, the Kohls' leases for two parcels of farm land were terminated because of Darwin and Mardell's financial problems. The Kohls attempts in early 1986 to secure financing for farming the two parcels that year proved unsuccessful. Eventually, the Kohls' son, Chip, entered into a written lease and an oral lease with the two owners of the parcels of land in May 1986.

As a way of farming the two parcels in 1986, the Kohls' son, Chip, entered into several financial arrangements for

purposes of acquiring seed, farm chemicals, and other necessary materials. The various companies who provided these materials, the other defendants in this matter, properly filed security interests in Chip's 1986 crops.

After the 1986 crops were harvested, a dispute arose as to who could claim priority over the proceeds from these crops. The Lisbon Bank filed a declaratory judgment action which was dismissed by the district court. The Bank then filed this appeal.

Our scope of review in equity actions is de novo. Iowa R. App. P. 4.

II.

The first of the Bank's two theories is it had a perfected security interest which attached to the 1986 crop. We agree with the defendants that no extensive citation to legal authority is necessary in analyzing this first claim because it is controlled by Iowa Code section 554.9203(1)(c), which states in pertinent part:

> Security interest is not enforceable against the debtor or a third-party with respect to collateral and does not attach unless:
>
> (c) the debtor has rights in the collateral.

Therefore, if the Bank can prove that Darwin and Mardell Kohl were in possession of the leases to the rental property, the Bank's security interest would attach. On the other hand, if the Kohls were not the lessees, the Bank's security interest cannot possibly attach.

Two nonparty witnesses testified in this case. Donella Watkinson, the executive director of the Linn County Agricultural Stabilization and Conservation Service (ASCS), and Dennis W. Wilcox, the county supervisor for the Farmers' Home Administration (FmHA). The testimony of these witnesses corroborated the testimony of the defendants that there was no secrecy or concealment in connection with the dealings by the Kohls which culminated in their son, Chip, renting the properties in issue. Testimony indicated prior to Chip taking over the leases that a public meeting was held where the ASCS county committee approved of Chip becoming the successor in interest to any rights under the government farm programs which Darwin had earlier signed on to. In addition, Wilcox testified his office notes reflected Darwin "has options to pick up all leases from 1985." Wilcox further testified his understanding was the leases had been terminated the year before but Darwin still had the option to pick up those leases in 1986. Wilcox stated he understood Darwin would pick up the leases only if he could obtain proper financing.

The record reflects a written lease was entered into between one landlord and Chip and further evidence shows an oral lease was entered into between Chip and another landlord. Chip entered into a security agreement with both Marion Ag Service and Carson Grain (other defendants in

this action). The inputs were supplied by Marion Ag Service and there is no dispute that Chip is indebted to Marion Ag Service. However, he has been unable to pay that obligation even to the present time because of the Bank's injunction on the crops and proceeds in question.

In addition, two Bank employees, Robert Steen and Kathy Neal, testified regarding their understanding of the Kohls' situation. Their testimony did not refute that they understood the Kohls' 1985 farm leases had been terminated. In addition, their testimony indicated the difficulty which the Kohls were having in obtaining financing for the 1986 crop year.

In making our determination this court gives weight to the fact findings of the trial court, but of course, is not bound by them. Iowa R. App. P. 14(f)(7). We determine, through our de novo review, the evidence here did not show an attempt by the Kohls to avoid the Bank's valid claims. Rather, the evidence shows an unsuccessful attempt by the Kohls to gain financing to continue to farm the rental properties in question. Therefore, we find the trial court was correct in determination of this issue.

III.

The Bank next asserts the trial court erred in failing to rule the defendants fraudulently conveyed his interest in the 1986 crops to his son.

To prevail, a party alleging fraudulent conveyance must produce proof which is clear, satisfactory, and convincing. Travelers Indemnity Co. v. Cormaney(?), 258 Iowa 241, 244, 138 N.W.2d 50, 53 (1965).

Here we do not find it necessary to address the elements of fraud separately because we find the Bank's theory fails because the defendants could not have fraudulently conveyed the rental property, or crops, or proceeds, unless they had an interest originally. We acknowledge that the Kohls had an option on the rental properties, however, we agree with the trial court the evidence established Chip's leases with the landlords were made between those owners and Chip himself and not between the owners and the defendants. For that reason there was no conveyance of any leasehold interest in the two parcels from the defendants to Chip and, therefore, no fraudulent conveyance could have taken place. The district court's order dismissing the Bank's declaratory judgment motion is affirmed.

AFFIRMED.