IN THE COURT OF APPEALS OF IOWA

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THE FEDERAL LAND BANK OF OMAHA,

Plaintiff-Appellee,

vs.

AUDREY O. FAUGHT and DOROTHY E. FAUGHT, husband and wife; and ROGER D. FAUGHT and DONNA FAUGHT, husband and wife,

Defendants-Appellants.

8-585
88-481

Appeal from the Iowa District Court for Worth County (9764), Jon S. Scoles, Judge.

Defendants appeal from a district court order providing the receiver appointed over their farm was entitled to fair market rental value during the 1987 crop year and a lien against the crops harvested in 1987 for the rent. **AFFIRMED.**

John S. Mackey, Mason City, for defendants-appellants.

Richard A. Moeller, Mason City, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Hayden, JJ.

HAYDEN, J.

The defendants appeal from a district court order providing the receiver appointed over their farm was entitled to fair market rental value during the 1987 crop year and a lien against the crops harvested in 1987 for the rent. We affirm.

In 1982, the Faughts, signed a note for over $400,000. The note was secured by a mortgage over Faughts' 290-acre farm in Worth County. Faughts defaulted and the bank filed a petition in 1985 seeking a personal judgment against the Faughts, foreclosure of the mortgage, and appointment of a receiver. Faughts subsequently filed bankruptcy petitions staying further action in this case. The Federal Land Bank obtained relief from the automatic stay allowing the bank to proceed with foreclosure of its mortgage and for enforcement of its rights under those instruments. On June 28, 1987, a default decree was entered. The court entered a judgment in rem against the real estate, foreclosed the mortgage,and appointed a receiver. In October 1987, this action was instituted by the receiver attempting to establish the rent Faughts are required to pay the receiver for use of the land during the 1987 crop year and to receive a lien over the 1987 crops for this rent. Following the district court's order establishing the rent and creating a lien over the crops, Faughts have appealed.

In this appeal, Faughts contend the bank's in rem judgment against the farm precludes the bank, as receiver, from recovery for rents and profits on the farm. Also, the receiver was not entitled to a lien against the harvested crops due to the bankruptcy of the Faughts.

Our review of equity proceedings is de novo. Iowa R. App. P. 4.

I.

Initially, Faughts argue the district court by erred determining the receiver was entitled to recover fair rent on the property during the 1987 crop year. To support this contention, Faughts put forth a number of theories, none of which we find compelling.

To support their contention an in rem judgment effectively denies plaintiff's further relief beyond foreclosure of the mortgage, Faughts rely upon the supreme court case of Brenton State Bank of Jefferson v. Tiffany, 400 N.W.2d 576 (Iowa 1987). In Tiffany the plaintiff, after already securing a judgment in rem against the mortgaged property for the full amount of defendant's indebtedness, initiated a subsequent replevin action, attempting to recover additional collateral or money damages. Id. at 577. Reversing the district court, the supreme court stated the defendant's merger defense was meritorious, since the underlying indebtedness to the bank was fully merged in the real estate foreclosure judgment, the bank was precluded from obtaining a second judgment on the same indebtedness on the replevin action. Id.

Tiffany can be distinguished from the instant case. Here the Federal Land Bank is not attempting to obtain an additional judgment against the Faughts on the same underlying indebtedness, nor is it attempting to pursue any separate action. Rather, the receiver is attempting to collect rents on the property which were placed in its charge as part of the mortgagee's remedy for satisfaction of its claim.

Therefore, we hold the in rem nature of the judgment does not prevent the receiver from attempting to collect rent on the land placed in its possession.

We also determine the Federal Land Bank was free to resort to collection of the rents and profits from the real estate. Faughts contend the rents in issue are "secondary security to the real estate." Contrary to this assertion, the clause in Federal Land Bank's mortgage creates a valid security interest in the "rents, issues, crops, and profits" arising from the real estate stand as a primary security for the indebtedness.

Thus, we hold, the rents at issue here are primary security for the indebtedness.

II.

The Faughts object to the district court's establishment of a lien against the crops because said lien was imposed during the pendency of their bankruptcy actions. The only information contained in the record presented to the district court regarding the Faughts' bankruptcy was the United States Bankruptcy Court's order modifying automatic stay. This order provided the automatic stay of 11 U.S.C. subsection 362 was "modified to allow the Federal Land Bank of Omaha to proceed with foreclosure of its mortgage and for enforcement in such foreclosure proceedings of all its rights under those instruments.

The clear language of the bankruptcy court's order makes it apparent the court did not intend to limit the Federal Land Bank to foreclosing its mortgage only. As pointed out in division I of this opinion, the rights of the Federal Land Bank under its mortgage is the right to rents, issues, crops, and profits arising from the real estate and for the appointment of a receiver to take possession of the real estate and collect those rents. Thus, we determine the Faughts' bankruptcies did not effect or preclude the receiver's actions in this case and we affirm the trial court on this issue.

Faughts also contend for the first time on appeal the district court was precluded from imposing a lien on the crops by the operation of various provisions of the United State Bankruptcy Code. "Contentions not raised before the trial court cannot be raised for the first time on appeal." State v. Nelson, 294 N.W.2d 346, 349 (Iowa 1986). Therefore, we do not address this issue here.

AFFIRMED.