In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

JAMES CURTIS HUGG and MARY JO HUGG Debtors.	Bankruptcy No. X88-00951S Chapter 7
DONALD H. MOLSTAD, Trustee Plaintiff vs. DONALD L. BARTLETT and VERL G. BARTLETT Defendants.	Adversary No. X89-0044S

ORDER RE: MOTION FOR SUMMARY JUDGMENT

The matter before the court is a motion for summary judgment filed by the plaintiff against defendants Donald and Verl Bartlett. A telephonic hearing was held on May 24, 1989.

The court, having considered the arguments of the parties, now issues its ruling. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (F).

I.

The debtors entered into a crop share lease with defendant Donald L. Bartlett (LANDLORD) on March 31, 1989. Landlord leased to the debtor-tenant the following described real estate located in Crawford County, Iowa:

> The North Half of the Southeast Quarter (N½ SE¼) of Section Twenty-three (23), Township Eighty-three North (T83N), Range Thirty-nine (R39), West of the Fifth Principal Meridian, Crawford County, Iowa.

The lease commenced on March 1, 1988 and was to terminate on February 28, 1989. The terms of the rental agreement include: "Tenant agrees to pay to Landlord as rent for the Real Estate (the "Rent"): 50% of corn and soybeans grown and produced ond (sic) this real estate."

Pursuant to the terms of the lease, the expenses for fertilizer and chemicals were to be paid 50% by the landlord and 50% by the tenant. The tenant was to pay all the expenses of combining and shelling the corn. Additionally, the tenant was required to furnish all the necessary machinery and equipment. Cleaned seed was to be furnished 50% by the landlord and 50% by the tenant.

The landlord was to determine whether the leased farm participated in any government farm programs. Any payments from participation in these programs was to be divided 50% to the landlord and 50% to the tenant.

The lease was acknowledged on March 31, 1988 and was recorded with the Crawford County Recorder on May 2, 1988. The lease provided for a landlord's lien and security interest. The terms of the lease state:

> Tenant agrees as an element of this Lease to waive and relinquish any rights of exemption to any of Tenant's personal property located on the Real Estate from sale or seizure under distress or execution on property that he holds at the time of the execution of this Lease or thereafter acquires as his exemption applies to any claim of Landlord against Tenant resulting from any violation of any term of this Lease. Tenant grants to Landlord, in addition to any statutory liens, a security interest as provided in the Iowa Uniform Commercial Code and a contractual lien on all Tenant's exempt and non-exempt personal property kept or used on the Real Estate including, but not limited to, all crops growing or grown on the Real Estate, as security for all sums due or which will become due from Tenant to Landlord. At Landlord's request, Tenant shall provide Landlord with a list of potential buyers of the crops grown on the Real Estate and shall sign financing statements prepared by Landlord to perfect Landlord's liens and security interests. If a list of potential buyers is requested by Landlord, Tenant shall not sell any crops grown on the Real Estate to a buyer who does not appear on the list.

A financing statement covering crops to be grown or presently grown and harvested crops was filed with the Iowa Secretary of State on May 2, 1988. The debtors, James and Mary Hugg, filed a joint voluntary chapter 7 petition on June 16, 1988.

There were 1150.89 bushels of corn produced on the leased real estate. The corn was sold on November 1, 1988 for $2,670.04. The debtors received $1,105.00 from the crop proceeds. This amount was for one-half of the crop produced less $228.58 which was deducted from the proceeds for farming expenses paid by the landlord. The trustee also received $287.00 which represented disaster payments for the 1988 crop year. The landlord apparently received the balance of the crop proceeds.

II.

"Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided on purely legal grounds." Agristor Leasing v. Farrow, 826 F.2d 732, 734 (8th Cir. 1987), citing Holloway v. Lockhart, 813 F.2d 874, 878 (8th Cir. 1987). "Where the moving party establishes the absence of any genuine issue of material and the opposing party submits no evidence for rebuttal, summary judgment is justified." Stovall v. City of St. Louis, 614 F.2d 619, 621 (8th Cir. 1980).

III.

The plaintiff-trustee argues that defendants should be required to turn over to the trustee the landlord's 50% share of the 1988 crop. The plaintiff argues that the landlord's lien should be avoided under 11 U.S.C. § 545. The plaintiff also argues that a financing statement was not filed until May 2, 1988 and therefore perfection of the defendants' lien occurred within 90 days of the filing of the petition resulting in a preference under 11 U.S.C. § 547.

The crop share lease entered into between the debtor and defendant created a landlord-tenant relationship. Circumstances surrounding the making of the crop share lease indicates that the parties intended to create a landlord-tenant relationship. See Dopheide v. Schoeppner, 163 N.W.2d 360 (Iowa 1968).

Iowa law recognizes a statutory landlord's lien. Section 570.1 of the Iowa Code provides: "A landlord shall have a lien for his rent upon all crops grown upon the leased premises, and upon any other personal property of the tenant which has been used or kept thereon during the term and which is not exempt from execution." Iowa Code § 570.1. The lease entered into between the debtor and defendant invoked the statutory landlord's lien. However, as a statutory lien, it is subject to being avoided by operation of 11 U.S.C.§ 545. Section 545(3) provides that a trustee may avoid the fixing of a statutory lien on property of the debtor to the extent the lien is for rent. This section invalidates the statutory lien created by Iowa Code § 570.1. Baron **v.** Waldo (In re Waldo), 70 B.R. 16, 18 (Bankr. N.D. Iowa 1986).

IV.

The statutory landlord's lien is subject to avoidance under 11 U.S.C. § 545(3). However, in this case, the landlord also had a contractual lien with the debtor for any crops grown on the leased property. This lien is provided for in paragraph 19 of the lease agreement.

The plaintiff-trustee argues that the defendants perfected their security interest in the crops within 90 days of the filing of the bankruptcy petition and therefore it is a preferential transfer under 11 U.S.C. § 547(b). That section provides as follows:

> Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property--
>
> 1. to or for the benefit of a creditor;
> 2. for or on account of an antecedent debt owed by the debtor before such a transfer was made;
> 3. made while the debtor was insolvent;
> 4. made--
> A. on or within ninety days before the date of the filing of the petition; or
> B. between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
> 5. that enables such creditor to receive more than such creditor would receive if--
> A. the case were a case under chapter 7 of this title;
> B. the transfer had not been made; and
> C. such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b).

It appears that all elements of a preferential transfer exist in this case. The transfer in this case was the perfection of the security interest by filing the U.C.C. financing statement with the Secretary of State on May 2, 1988. There does not appear to be any dispute that the debtor was insolvent at the time of the transfer or that the transfer enabled the creditor to receive more than the creditor would have received in a liquidation case.

The defendant argues that the transfer was not on the account of an antecedent debt owed by the debtor since it was a crop share lease arrangement. This court believes that there was an antecedent debt. A debt is defined in the Bankruptcy Code as a "liability on a claim." 11 U.S.C. § 101(11). A claim is defined in the Bankruptcy Code as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(4)(A). The crop share lease executed between the debtor and defendant provided that the landlord-defendant has a right to payment of 50% of the crop. This right to payment created a "debt" at the time of the execution of the lease. Therefore, the perfection of the security interest on May 2, 1988 was a transfer on the account of an antecedent debt.

The debtors filed their bankruptcy petition on June 16, 1988 which was within ninety days of the perfection of the security interest in crops. Therefore, it appears that all elements of 11 U.S.C. § 547 (b) can be met by the trustee. It also appears that none of the exceptions in 11 U.S.C. § 547(c) would apply.

V.

This court believes that the trustee could avoid the statutory landlord's lien under 11 U.S.C. § 545(3). The court also believes that the perfection of the contractual security interest contained in the lease agreement is a preference under 11 U.S.C. § 547(b). However, this court will not grant the plaintiff's motion for summary Judgment. The court does not believe it has sufficient facts to determine whether the proposed use of the trustee's avoidance powers would be detrimentally affected by the trustee's rejection of the lease.

> If the trustee does not assume or reject an unexpired lease of non-residential real property under which the debtor is a lessee within sixty days after date of the order for relief, or within such additional time as the court, for cause, within such sixty-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such non-residential real property to the lessor.

11 U.S.C. § 365(d)(4). The trustee did not assume or reject the unexpired lease within sixty days from the date of the order for relief. Therefore, the lease between the debtor and defendant was deemed rejected on August 15, 1988.

The tenant is the owner of the crops produced on the leased premises and the landlord has no right or title to the crops, other than the lien. Munier v. Zachary, 138 Iowa 219, 114 N.W. 525, 527 (1908). In Iowa, unmatured crops are considered to be real estate. Once the crops have matured, the crops become personal property. See Weyrauch v. Johnson, 201 Iowa 1197, 208 N.W. 706, 708 (1926); Clark v. Strohbeen, 190 Iowa 989, 181 N.W. 430 (1921). The court does not have sufficient facts to determine the status of the crop on the date of the filing of the bankruptcy petition and the date of the legal rejection of the unexpired lease. The avoidability of the landlord's lien and perfected security

interest cannot be determined until the court determines the effect of the rejection of the lease, if any, upon the use of the trustee's avoidance powers against the defendants.

The court also believes that it is necessary to know who harvested the crops and at whose direction the crops were harvested in order to make a final determination in this case. Therefore, the motion for summary judgment is denied. A trial on this matter will be set by the clerk's office.

ORDER

IT IS ORDERED that the plaintiff Donald Molstad's motion for summary judgment is denied. A trial will be set by the clerk's office.

SO ORDERED THIS 8th DAY OF JUNE, 1989.

William L. Edmonds
Bankruptcy Judge