

DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

CA05-763

October 11, 2006

GEORGE M. STOKES
APPELLANT

AN APPEAL FROM DESHA COUNTY
CIRCUIT COURT
[No. E97-181-2]

v.

FARMERS GRAIN TERMINAL, INC., CIRCUIT JUDGE
SOUTHERN STATES COOPERATIVE,
INC., P&K FARMS, and
MERCHANTS & FARMERS BANK
APPELLEES

HONORABLE ROBERT C. VITTITOW,
REVERSED and REMANDED ON DIRECT
APPEAL; REVERSED and REMANDED ON
CROSS-APPEAL

This is the second time this case, the consolidation of five cases, has been before this court.¹ In *Stokes v. Farmers Grain Terminal, Inc.*, No. CA04-142 (Ark. App. Sept. 29, 2004), this court dismissed the appeal for lack of a final order. After remand, the trial court disposed of the remaining claims by entering orders granting renewed motions for summary judgment and other orders voluntarily dismissing other claims. We hold that there are material issues

¹The issues in this appeal arise from two cases: *George Stokes v. Farmers Grain Terminal, Inc., et al.*, No CV 2002-28-4 (the proceeds case) and *Southern States Cooperative, Inc. v. Stokes*, Desha Circuit No. CV2000-76-3 (the guaranty case). Other cases consolidated with the present case include *Merchants & Farmers Bank v. P&K Farms, et al.*, Desha Circuit No. E 97-181-2; *George Stokes, et al. v. David P. Roberts, et al.*, Desha Circuit No. CV 2000-42-2; *George Stokes v. P&K Farms*, Desha Circuit No. CV 2000-51-3.

of fact to be determined and, therefore, reverse and remand on both direct appeal and on cross-appeal.

In March 1999, appellant George Stokes entered into an agricultural agreement with David Patton Roberts and P&K Farms (collectively, Roberts). Under the terms of the agreement, Roberts leased farmland from Stokes and agreed to plant crops in accordance with an attached, handwritten planting plan. As rent, Roberts agreed to pay Stokes a share of the crops he produced. Roberts applied for and received crop financing from two related entities, Statesman Financial Corporation (Statesman) and appellee Southern States Cooperative, Inc. (Southern). In making their loans, Statesman and Southern each obtained security interests in Roberts's soybean, cotton, and rice crops and farm equipment. Southern also obtained a guaranty of the crop loan from Stokes.

In the fall of 1999, Roberts planted wheat on a portion of Stokes's land. The agricultural agreement called for the planting of wheat, but the handwritten planting plan did not. The agreement excepted the wheat crop from a provision that any crop not harvested became Stokes's property on December 31, 1999, the termination date of the agreement.

In April 2000, Roberts granted Southern a security interest in the wheat crop. Three weeks later, in May 2000, Southern notified Roberts that his loan was delinquent and threatened to sue if the unpaid balance was not paid within fifteen days. In the month following this notice, the wheat crop matured and Stokes harvested and delivered it to appellee Farmers Grain Terminal, Inc. (Farmers Grain).

Upon learning of the harvest and delivery of the wheat crop, Southern asserted entitlement to the wheat proceeds and made demand upon Stokes pursuant to the guaranty, asserting that Roberts's loan was in default. Stokes did not make payment on the guaranty. In June 2000, Southern filed the guaranty action, seeking to recover from Stokes on his guaranty and alleging that Roberts's loan was unpaid in the amount of \$249,854.03. Stokes admitted executing a guaranty but denied liability under it.

Farmers Grain issued a check for a portion of the wheat made payable to Stokes, Roberts, and Southern, along with another claimant, Merchants & Farmers Bank (the bank). Stokes protested the refusal to make payment to him alone, but Farmers Grain maintained its position. It did not issue a check for the remaining portion of the wheat.

In March 2002, Stokes filed the proceeds action against Farmers Grain, asserting that Farmers Grain had breached its contract with him; that it had been unjustly enriched; and that it had converted the wheat he delivered to it. He also named Southern, Roberts, and the bank as defendants so that the priority issues with them could be determined. Roberts counterclaimed for conversion of the wheat. Southern counterclaimed for amounts due on the guaranty and cross-claimed against other defendants, asserting priority in the proceeds of the check.

Ultimately, Farmers Grain interpleaded the wheat proceeds and moved for summary judgment on all claims against it. Southern also moved for summary judgment, claiming entitlement to the proceeds in their entirety. On August 29, 2003, the trial court issued an extensive letter ruling in which it made the following pertinent rulings: (1) granted a motion

for summary judgment by Case Credit Corp. (originating from case E 97-181-2) and declared it to have priority in the proceeds from the sale of certain machinery; (2) declared that Southern had a valid interest in the crops grown by Roberts on Stokes's land and, therefore, awarded Southern the proceeds from Farmers Grain's wheat sale; (3) declared that its ruling that Southern was entitled to the wheat proceeds rendered moot Stokes's claim against Farmers Grain; (4) dismissed Roberts's cross-claim against Stokes for conversion and his cross-claim for damage to and accounting for equipment; (5) awarded Stokes judgment against Roberts for grain bin, rental shed, and irrigation electric power agreements and for the amount of any judgment obtained against Stokes by Southern; and (6) declared that an IRS lien was inferior to Stokes's lien. The trial court then entered orders granting Farmers Grain's and Southern's motions for summary judgment, both of which incorporated the rulings in the August 29 letter. Stokes attempted to appeal from those orders, but this court dismissed the appeal.

After the dismissal of the appeal, Southern filed a renewed and restated motion for summary judgment, asserting that there was no factual dispute as to the execution, liability, and amount of the guaranty executed by Stokes. Stokes also filed a renewed and restated motion for summary judgment, asserting that he had not guaranteed Roberts's debt to Statesman and that Southern took payments addressed to it and applied them to the debt owed to Statesman. On February 11, 2005, the trial court issued a letter opinion finding that the guaranty signed by Stokes was valid and, therefore, granted Southern's renewed and restated motion for summary judgment. However, the trial court also found that, because

Southern applied payments intended for it to debts owed to Statesman, the guaranty had been satisfied. Orders were entered granting the respective motions. Stokes filed a notice of appeal from the 2003 orders granting summary judgment to Farmers Grain and Southern concerning the application of the wheat-sale proceeds. After entry of orders finally disposing of the remaining claims, Stokes filed another notice of appeal, dated June 1, 2005, identical to the April 15 notice.

Asserting that he prevailed in Southern's guaranty action, Stokes timely filed a motion for attorney's fees, later amended, seeking a total of \$80,000 in fees. Southern also filed a motion for attorney's fees, arguing that it had prevailed in the guaranty case. Southern sought \$70,000 in fees. Neither motion contained detailed time records, stating that such information would be provided at the trial court's request. The circuit court denied both motions, holding that, in light of all the consolidated cases, neither party prevailed. Stokes amended his notice of appeal to include the denial of his motion for fees. Southern cross-appeals from the denial of its motions for attorney's fees.

Stokes raises four points on appeal: (1) that the trial court erred in finding that he did not prevail in the guaranty action and in refusing to award him his attorney's fees; (2) that the trial court erred in finding that there were no issues of fact on his claim against Farmers Grain and in awarding summary judgment to Farmers Grain; (3) that the trial court erred in finding that there were no issues of fact on Southern's claim of a valid security interest in the wheat-sale proceeds held by Farmers Grain; and (4) that the trial court erred in finding that his statutory landlord's lien was subordinate to Southern's lien and in refusing to award

Stokes the costs incurred in harvesting the wheat. On cross-appeal, Southern argues that the trial court erred in denying its motion for attorney's fees.

The standard of review utilized in determining whether a motion for summary judgment was properly granted was set forth by this court in *Little Rock Electrical Contractors, Inc. v. Entergy Corp.*, 79 Ark. App. 337, 87 S.W.3d 842 (2002):

We no longer refer to summary judgment as a drastic remedy and now regard it as one of the tools in a trial court's efficiency arsenal. We will only approve the granting of summary judgment when the state of the evidence as portrayed by the pleadings, affidavits, discovery responses, and admissions on file is such that the nonmoving party is not entitled to its day in court because there are not any genuine issues of material facts remaining. All proof submitted must be viewed in the light most favorable to the nonmoving party, and any doubts must be resolved against the moving party. However, it is well settled that once the moving party has established a prima facie entitlement to summary judgment, the burden shifts to the nonmoving party to meet proof with proof and demonstrate the existence of material fact. If there is evidence from which an inconsistent hypothesis might be drawn and reasonable minds might differ, then summary judgment is not proper.

79 Ark. App. at 341-42, 87 S.W.3d at 845 (citations omitted).

We find Stokes's third and fourth points dispositive of this appeal. We discuss the remaining points to the extent necessary to give guidance to the trial court on remand.

Validity of Southern's Security Interest in the Wheat Proceeds

In his third point, Stokes argues that the trial court erred in determining that Southern had a valid security interest in the wheat crop. Under Ark. Code Ann. § 4-9-203 (Repl. 2001), a security interest will attach when all the stated requirements are met: a valid security agreement has been executed; value has been given; and the debtor has rights in the collateral. Stokes contends that the handwritten planting plan shows that wheat was not contemplated for the 1999 crop year. However, the typewritten agreement authorizes Roberts

to grow a wheat crop in accordance with the handwritten planting plan. That plan is silent on the issue of whether Roberts would plant a wheat crop that would not mature until the summer of 2000. We are unable to determine whether this silence is due, in part, to the fact that the wheat crop would not even be planted until after the other crops were harvested or whether the silence meant that Roberts could not plant wheat. If the agreement did not contemplate that Roberts would plant wheat, he would have no interest in the wheat crop and could not grant Southern a security interest in that crop. Therefore, this creates an issue of fact for trial. We reverse and remand on this point.

Validity of Stokes's Landlord Lien

In his fourth point, Stokes argues that the trial court erred in not giving priority to his statutory landlord's lien. The trial court did not specifically rule on the validity of any landlord's lien Stokes may have, other than rule that it was superior to any lien asserted by the Internal Revenue Service. Apparently, the trial court viewed its decision regarding the validity of Southern's security interest as dispositive of this point. We disagree. Even if the trial court determines that Southern has a valid security interest, Southern would not necessarily be entitled to all of the proceeds from the wheat crop.

Arkansas Code Annotated section 18-41-101(a) (Repl. 2003) provides that "[e]very landlord shall have a lien upon the crop grown upon the demised premises in any year for rent that shall accrue for the year." Section (b)(1) provides that the lien "shall have priority over a conflicting security interest in or agricultural lien on the crop regardless of when the conflicting security interest or agricultural lien is perfected." Further, the lien "shall continue

for six (6) months after the rent shall become due and payable, and no longer.” Ark. Code Ann. § 18-41-101(b)(2).

However, under the statute, a landlord’s lien is only for rent and advances for necessary money supplies *designated as rent*. *Von Berg v. Goodman*, 85 Ark. 605, 109 S.W. 1006 (1908); *Few v. Mitchell*, 80 Ark. 243, 96 S. W. 983 (1906). The lien does not apply to rents carried over from prior years. *Henry v. Irby*, 170 Ark. 928, 282 S.W. 3 (1926). Here, the agreement between Stokes and Roberts called for the rent to be one-fourth of any wheat crop, together with certain maintenance expenses. Stokes did not provide proof of these other expenses. Therefore, we reverse and remand for a determination of the amount to which Stokes is entitled to attach his lien in the event the court determines that Roberts had an interest in the wheat crop.

Stokes’s Claim Against Farmers Grain

In his second point, Stokes argues that the trial court erred in granting summary judgment to Farmers Grain on his claims for conversion of the wheat. The trial court concluded that the grant of summary judgment to Southern rendered moot Stokes’s claim against Farmers Grain. Because we have reversed the trial court’s decision to award Southern the proceeds of the wheat crop, we reverse and remand the trial court’s decision on Stokes’s conversion claim.

Attorney’s Fees

Both Stokes and Southern appeal from the trial court’s denial of their respective motions for attorney fees, contending that they are the “prevailing party” and are, therefore,

entitled to fees. As before, we have reversed the trial court's decisions on the merits of the underlying claims. Therefore, the determination of the "prevailing party" must await the determination of the underlying claims. Accordingly, we reverse and remand the trial court's decision on the attorney's fees.

We point out that the trial court may have improperly considered the several cases that were consolidated as one case when deciding the fee issue. Our supreme court has recognized that "[c]onsolidation of cases 'does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.'" *Knowlton v. Ward*, 318 Ark. 867, 879, 889 S.W.2d 721, 728 (1994) (quoting *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933)). Thus, the trial court should consider the holdings in *Knowlton* and *Johnson* when determining whether to award a fee to the prevailing party *in that particular case*. We reverse on this point.

Reversed and remanded on direct appeal; reversed and remanded on cross-appeal.

GLOVER and CRABTREE, JJ., agree.