DIVISION IV

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

CA06-25

November 29, 2006

BEN WILLIAMS
APPELLANT

v.

PEOPLES BANK OF PARAGOULD and CONSOLIDATED GRAIN AND BARGE CO.
APPELLEES

AN APPEAL FROM CLAY COUNTY CIRCUIT COURT
[No. CV-2003-28]

HONORABLE JOHN FOGLEMAN, CIRCUIT JUDGE

REVERSED and REMANDED

This interlocutory appeal from the granting of a summary judgment involves a dispute between appellant Ben Williams, who rented farmland to Jim Mathis, and appellee Peoples Bank of Paragould, Mathis's creditor, over the proceeds from the sale of two crops planted by Mathis. The circuit judge found that the bank's security interest in the crops has priority over that of any landlord or ownership rights of appellant. Because genuine issues of material fact remain, we reverse and remand this case for trial.

Mathis operated several farming corporations on land leased from appellant in Clay County. On September 19, 2002, Mathis and appellant entered into a lease requiring Mathis to pay rent on or before December 30, 2002, and giving Mathis the right to renew the lease conditioned upon his payment of rent for the prior year. While appellant had filed a

financing statement to secure Mathis's debt on April 17, 2002, he released the lien on September 19, 2002, under circumstances that are in dispute. According to appellant and Mathis, appellant did so at the bank's request. Appellant asserts that the bank's loan officer assured Mathis that, if appellant released his lien, the bank would give Mathis crop loans in 2002 and 2003 and would authorize Mathis's payments of rent to appellant. The bank denies this allegation. After the fall 2002 harvest and the bank's acquisition of the 2002 crop proceeds, Mathis planted wheat that was harvested in June 2003. Because Mathis's rental checks drawn on the bank bounced, appellant and Mathis treated the lease as terminated. Appellant harvested the wheat in June 2003 and delivered it to appellee Consolidated Grain and Barge Company (CGB). Before CGB paid for the wheat, it learned of the bank's claim to the proceeds of the 2003 wheat crop and did not pay appellant the crop proceeds.

The bank filed this suit on July 7, 2003, against Mathis's farms for payment of the amounts due on fourteen promissory notes, asserting that it had a security interest in Mathis's crops and in the proceeds of the sale of the crops. The bank amended its complaint to add CGB, appellant, and others involved in the 2003 wheat harvest as defendants. On November 17, 2003, appellant filed a counterclaim against the bank and two of its officers and a cross-complaint against CGB. Appellant alleged that Mathis had not paid rent on his farms for one-half of 2001 or for all of 2002; that CGB had breached its contract with him; that the bank had intentionally interfered with his contract with CGB; that CGB and the bank had conspired to avoid paying him for the crops, resulting in the conversion of his property; and that the bank and CGB had committed abuse of process in obtaining an ex

parte temporary restraining order preventing CGB from paying appellant. In response, the bank raised several affirmative defenses, including the statute of limitations. CGB responded that appellant had failed to state a claim for relief.

The bank filed a motion to dismiss on December 2, 2003. On March 22, 2004, CGB moved for summary judgment. Appellant amended his counterclaim on April 29, 2004, adding a claim for fraud. The bank raised several affirmative defenses, renewed its motion to dismiss, and moved for partial summary judgment against the Mathis farming corporations. There was a hearing on July 1, 2004, at which the circuit judge asked the parties to brief the issue of lien priority in the crop proceeds and to address whether the description of the collateral on the security agreements and financing statements signed by Mathis were sufficient. Appellant argued that Mathis had no power to transfer rights in the 2003 crop, because the lease had ended on December 31, 2002, when the rent was not paid.

The circuit court granted CGB summary judgment on appellant's conspiracy and abuse-of-process claims on August 9, 2004. On September 16, 2004, the court granted partial summary judgment to the bank on appellant's claims for tortious interference with contract, conversion, conspiracy, and abuse of process and denied summary judgment as to his fraud claim. The court further granted judgment to the bank on the loans to Mathis's farming corporations.

The court entered a second order for partial summary judgment on November 1, 2004. The court stated that the parties had settled their dispute as to $8,566.18 of the proceeds totaling $37,267.09 from the June 2003 sale of wheat to CGB. The circuit court

held that the bank had a valid perfected security interest in the wheat crop sold to CGB in June 2003; that the bank's security interest was properly described, and that it attached to the wheat when it was planted; that the bank's security interest was superior to the lien asserted by appellant; and that the bank was entitled to the remaining $28,700.91 from CGB. The court gave appellant thirty days within which to file an amended counterclaim. Appellant filed an amended counterclaim on November 29, 2004, alleging that Mathis was a holdover tenant, paying no rent, until June 2003. He requested unlawful detainer and quantum meruit damages. The bank renewed its motion for summary judgment on appellant's fraud claim on January 7, 2005.

On March 10, 2005, the circuit court certified all prior orders granting summary judgment under Ark. R. Civ. P. 54(b), leaving appellant's breach-of-contract, fraud, and quantum meruit claims to be addressed later. Appellant filed a notice of appeal from that order. On March 29, 2005, the court granted summary judgment to CGB on appellant's conversion claim. On June 2, 2005, the circuit court entered an order amending the March 10 order, stating:

> [T]he claims on which summary judgment was granted and denied raise substantial issues on appeal and are the primary claims of Ben Williams.
>
> The ownership of the grain in question and the priorities of any liens on this grain are the central issues which tie all of the claims of Ben Williams, Peoples Bank and Consolidated Grain together.
>
> The findings of the Court which are being appealed eliminate much, if not all, of Ben Williams' damages in the remaining issue for trial.
>
> If this case proceeds to trial on the remaining fraud claim, and then an appeal is taken, a reversal on almost any point will require a re-trial of the fraud claim.

The court executed a certificate pursuant to Rule 54(b), and appellant filed another notice of appeal.

Summary judgment should be granted only when it is clear that there are no disputed issues of material fact. *Holliman v. Liles*, 72 Ark. App. 169, 35 S.W.3d 369 (2000). All evidence must be viewed in the light most favorable to the party resisting the motion with all doubts and inferences resolved in his favor. *Id*. Summary judgment is inappropriate when facts remain in dispute or when undisputed facts may lead to differing conclusions as to whether the moving party is entitled to judgment as a matter of law. *Id*. When the evidence leaves room for a reasonable difference of opinion, summary judgment is not appropriate. *Id*. The object of summary judgment proceedings is not to try the issues but to determine if there are any issues to be tried, and if there is any doubt whatsoever, the motion should be denied. *Id*.

Appellant challenges the circuit court's determination that the bank had a valid and perfected security interest in the 2002 and 2003 crop proceeds. He argues that the bank's security agreements and financing statements contained defective descriptions of the land on which the crops were grown and, therefore, he had a superior claim to the crop proceeds. Appellant states that the only land that the bank attempted to describe by section, township, and range was referred to as Farm No. 5322, containing 1900 acres; however, appellant argues, the only land he owns in those sections, townships, or ranges is a farm comprised of only 80 acres. He also emphasizes that the only other financing statements that mention him as the owner contain no legal description of any kind, identify the farm only by number, and are inconsistent as to the acreage of each crop being grown. Appellant further argues that Mathis had no interest in the 2003 wheat crop, and could not, therefore, convey a security interest in that crop, because the lease had terminated for nonpayment of rent on

December 31, 2002. Because we conclude that a question of fact remains as to the adequacy of the legal descriptions in the security documents, we reverse and remand all matters raised on appeal.

The version of Ark. Code Ann. § 4-9-203 (Repl. 2001) in effect in April 2002, when the bank's financing statements were filed, provided:

> (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.
>
> (b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
>
> > (1) value has been given;
> >
> > (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
> >
> > (3) one (1) of the following conditions is met:
> >
> > > (A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned . . . .

Arkansas Code Annotated section 4-9-108 (Repl. 2001) stated:

> (a) Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.
>
> (B) Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:
>
> > (1) specific listing;
> >
> > (2) category;

> (3) except as otherwise provided in subsection (e), a type of collateral defined in the Uniform Commercial Code;
>
> (4) quantity;
>
> (5) computational or allocational formula or procedure;
>
> (6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

In *First National Bank of Lewisville v. Bradley*, 80 Ark. App. 368, 96 S.W.3d 773 (2003), we addressed the sufficiency of the description of the collateral (not crops) in a security agreement and a financing statement. Applying Ark. Code Ann. § 4-9-108 (Repl. 2001), we stated that the test of sufficiency of a description is whether the description does the job assigned to it — that it makes possible the identification of the thing described; that, although the better practice is to describe the collateral by types or items when a security is taken on inventory, the description need not be such as would enable a stranger to select the property but is sufficient if it will enable third parties, aided by inquiries that the instrument itself suggests, to identify the property; and that the adequacy of the description should be considered in the light of the subsequent creditor's actual knowledge. We explained that, if a financing statement gives notice that a third person may have a security interest in the collateral, and the source from which additional information may be obtained, the statement is sufficient. In that case, we began our scrutiny of the documents in question by pointing out that the determination of whether a description in a financing statement is adequate is a question of fact. *Accord Security Tire & Rubber Co. v. Hlass*, 246 Ark. 1113, 441 S.W.2d 91 (1969). Given the ambiguities alleged by appellant, there is a question of fact as to the

adequacy of the description of the collateral pledged by Mathis, and consequently, a question of fact remains regarding whether the bank's security interest attached or was perfected. Thus, summary judgment was improper in this case.

Reversed and remanded.

VAUGHT and BAKER, JJ., agree.