In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-22-00025-CV

AGRIFUND, LLC, APPELLANT

V.

FIRST STATE BANK OF SHALLOWATER, A TEXAS STATE FINANCIAL INSTITUTION, APPELLEE

On Appeal from the 72nd District Court
Lubbock County, Texas
Trial Court No. 2019-537,679, Honorable Ann-Marie Carruth, Presiding

December 9, 2022

OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Agrifund, LLC, appeals from the trial court's order on cross-motions for summary judgment. The order arises from a dispute between Agrifund and the First State Bank of Shallowater concerning the priority of their security interests in crop proceeds. We reverse and render in part, affirm in part, and remand.

BACKGROUND

In 2017, farmers Leslie and Jennifer Gary borrowed money from Agrifund to finance their farming operations. The Garys received extensions of credit under a series of promissory notes, with the final note executed in December of 2017. Payment of the final note, which included the unpaid balances owed under prior notes, was secured under a security agreement by collateral that included the Garys' rights, title, and interest in and to their crops. Agrifund perfected its security interest by recording UCC-1 financing statements with the Texas Secretary of State. The Garys defaulted by failing to pay upon the note's maturity on March 15, 2018.

The Garys then obtained financing from the First State Bank of Shallowater ("the Bank"), which began lending money to them in May of 2018. The Garys used the money from the Bank to purchase cotton seed and chemical for their 2018 crop. They executed a series of promissory notes and a security agreement granting the Bank an interest in all crops grown or to be grown for the 2018 crop year, among other things. The Bank perfected its security interest by recording a UCC-1 financing statement with the Texas Secretary of State on June 4, 2018.

Following the sale of the Garys' 2018 cotton crop, Plains Cotton Cooperative Association issued eight checks made payable to combinations of payees including the Garys, Agrifund, and the Bank. Agrifund is a payee on all eight checks, while the Bank is a payee on four. The Bank notified Agrifund of its belief that its security interest was superior, then filed suit for declaratory relief when Agrifund did not release the funds.

Agrifund filed a counterclaim requesting injunctive relief and seeking declaratory judgment that its security interest in the Garys' 2018 crop has priority over the Bank's.

Both parties filed motions for summary judgment. Concluding that the Bank held a superior security interest, the trial court granted the Bank's motion for summary judgment and denied Agrifund's motion. The trial court did not award attorney's fees to either party.

Standard of Review

When a trial court resolves a declaratory judgment action on competing motions for summary judgment, "we review the propriety of the declaratory judgment under the same standards that we apply in reviewing a summary judgment." *City of Galveston v. Tex. Gen. Land Office*, 196 S.W.3d 218, 221 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). We review a trial court's decision to grant or deny a motion for summary judgment de novo. *Tex. Mun. Power Agency v. Pub. Util. Comm'n of Tex.*, 253 S.W.3d 184, 192 (Tex. 2007). Although the denial of summary judgment is ordinarily not appealable, we may review such a denial when both parties moved for summary judgment and the trial court granted one and denied the other. *Id.* In such cases, we review the summary judgment evidence presented by each party, determine all questions presented, and render the judgment that the trial court should have rendered. *Id.*

Analysis of Issue 1: Propriety of Summary Judgment

In Agrifund's first issue on appeal, it asserts that the trial court erred in denying its motion for summary judgment and in granting the Bank's, because the Bank did not acquire a purchase money security interest in the Garys' yet-to-be-grown 2018 crop.

Priority of Liens

In Texas, secured transactions are governed by Chapter 9 of the Texas Business and Commerce Code, also known as the Uniform Commercial Code—Secured Transactions ("UCC"). *Franklin Nat'l Bank v. Boser*, 972 S.W.2d 98, 101 (Tex. App.—Texarkana 1998, pet. denied). The long-standing general rule of priority of payment between competing security interests in the same collateral, where both interests are perfected by filing, is that the secured party who first properly filed a financing statement prevails. TEX. BUS. & COM. CODE ANN. § 9.322(a); *Borg-Warner Acceptance Corp. v. Tascosa Nat'l Bank*, 784 S.W.2d 129, 133 (Tex. App.—Amarillo 1990, writ denied) (citing previous codification at TEX. BUS. & COM. CODE ANN. § 9.312(e)(1)). An exception to the "first in time, first in right" general rule is a purchase money security interest ("PMSI"). *Boser*, 972 S.W.2d at 102. Purchase money liens arise in transactions in which a person who loans money to another to acquire property obtains a lien on the property purchased. *In re Christodolou*, 383 S.W.3d 718, 721 (Tex. App.—Amarillo 2012, no pet.).

The Bank does not dispute that Agrifund was first to file a financing statement which included a description of crops as collateral for its loans to the Garys. However, the Bank claims that its security interest in the Garys' 2018 crop takes priority over Agrifund's because the Bank's interest is a perfected PMSI. *See* TEX. BUS. & COM. CODE ANN. § 9.324(a)[1] (providing for priority of PMSIs over conflicting security interest in the

[1] Further references to provisions of the Texas Business and Commerce Code will be by reference to "section __" or "§ __."

same goods). Thus, if the Bank's security interest qualifies as a PMSI under Chapter 9, summary judgment in the Bank's favor was properly granted.

The Bank's Security Interest

A security interest in goods is a PMSI "to the extent that the goods are purchase-money collateral with respect to that security interest." TEX. BUS. & COM. CODE ANN. § 9.103(b)(1). "'Purchase-money collateral' means goods or software that secures a purchase-money obligation incurred with respect to that collateral." § 9.103(a)(1). A "purchase-money obligation" is "an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." § 9.103(a)(2). In transactions other than consumer-goods transactions, the secured party claiming a PMSI has the burden of establishing the extent to which its security interest is a PMSI. § 9.103(g).

Section 9.324 directs that "a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and . . . a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter." § 9.324(a). The definition of "goods" in the Business and Commerce Code is "all things that are movable when a security interest attaches" and includes "crops grown, growing, or to be grown . . . ." § 9.102(a)(44). The security agreement at issue provides that the property subject to the security interest includes "supplies used or produced in a farming operation" and "crops grown or to be grown for the 2018 crop year."

Thus, the Bank argues, its interest is a PMSI because (1) the Garys pledged as security supplies to be used in their farming operation and their crops to be grown and (2) the Bank's loans to the Garys enabled them to acquire the seed, which it characterizes as a "crop to be grown," and chemical purchased in August of 2018. According to the Bank, it met its burden of establishing it had a PMSI because it "simply had to show it had a perfected security interest in 'goods' and that 'goods' included crops to be grown."

While we concede the Bank's point that the statute's definition of "goods" includes "crops to be grown," we disagree that this acknowledgement inevitably leads to the conclusion that the Bank has a PMSI in the Garys' cotton crop. The very term "*purchase money* security interest" denotes that the security interest must be taken in the items actually purchased. The Bank's loan to the Garys did not enable them to purchase a crop; it enabled them to produce one.

A creditor may obtain a PMSI in goods when the creditor makes a loan enabling a debtor to acquire an interest in the goods. *First Nat'l Bank v. Lubbock Feeders, L.P.*, 183 S.W.3d 875, 882 (Tex. App.—Eastland 2006, pet. denied). "To create a PMSI, the value must be given in a manner that enables the debtor to acquire interest in the collateral. This is accomplished when a debtor uses an extension of credit or loan money to purchase a specific item." *MBank Alamo Nat'l Ass'n v. Raytheon Co.*, 886 F.2d 1449, 1452 (5th Cir. 1989) (citing *Ingram v. Ozark Prod. Credit Ass'n*, 468 F.2d 564, 565 (5th Cir. 1972) (per curiam) (security interest in progeny of leased cattle was not a PMSI because creditor only enabled debtor to acquire rights in and use of leased cattle, not their progeny), and *In re Dillon*, 18 B.R. 252, 254 (Bankr. E.D. Cal. 1982) (PMSI lien

attaches to item actually purchased)). Here, the items actually purchased by the Garys were the seed and the chemical, not the crop.

Moreover, we are unpersuaded by the Bank's contention that the seed purchased is the equivalent of a "crop to be grown." Seed is just one of several inputs necessary for the production of a crop, others being chemicals, fertilizer, and water, not to mention the soil itself and the farmer's labor upon it. The seed purchased by the Garys would not mature into a crop unless it was planted and cultivated, as it required additional inputs and efforts.[2] The resulting crop is clearly distinguishable from the individual components—including the seed and chemical funded by the Bank—that were combined over time to produce it.

Finally, to the extent that the Bank argues that the crop is the "proceeds" of the seed, we disagree.[3] "Proceeds" are defined as "whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral . . . ." § 9.102(a)(65)(A). The crop was not the result of the sale, lease, license, exchange, or disposition of the seed. The seed was planted and cultivated, not transferred or disposed of, and the crop is the resulting product. *See, e.g., Searcy Farm Supply, LLC v. Merchants & Planters Bank*, 256 S.W.3d 496, 502–03 (Ark. 2007) (declining to define crops as the identifiable proceeds of seeds under Arkansas Uniform Commercial Code). Therefore, we conclude that the Bank does not have a PMSI in the Garys' crop.

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[2] I.e., the cotton crop is fructus industriales, not fructus naturales.

[3] In its response to Agrifund's motion for summary judgment, the Bank stated that it "has never been [the Bank's] position" that the crops are the proceeds of the seeds. In its brief on appeal, however, the Bank asserts that "[i]t can hardly be said that crops are not identifiable proceeds of seeds."

We note that when the Legislature enacted provisions of the revised Article 9 drafted by the National Conference of Commissioners on Uniform State Laws, it eliminated former section 9.312, which had specifically enabled creditors to obtain a super-priority interest in crops to be grown.[4] *See* Act of June 18, 1999, 76th Leg., R.S., ch. 414, § 1.01, 1999 Tex. Gen. Laws 2639–2736. We further note that, although the proposed changes to Article 9 included optional provisions that would have created a "production-money security interest" conferring super-priority status to lenders extending credit to enable debtors to produce crops, the Legislature declined to enact those provisions. *See* REVISION OF UNIFORM COMMERCIAL CODE ARTICLE 9 – SECURED TRANSACTIONS, Appendix II (NAT'L CONF. OF COMM'RS ON UNIF. STATE LAWS, Draft July 24–31, 1998); §§ 9.101–9.809.

Because the Bank's security interest is not a PMSI, it is not superior in priority to the security interest of Agrifund. We sustain this part of Agrifund's first issue.

<u>Agrifund's Request for Injunctive Relief</u>

In a sub-issue of its first issue, Agrifund challenges the trial court's denial of its request for an injunction (1) requiring the Bank to endorse and deliver to Agrifund checks in its possession derived from the sale of the Garys' 2018 crop and (2) enjoining the Bank from interfering with Agrifund's legal right to the proceeds derived from the sale of the Garys' 2018 crop. To be entitled to injunctive relief, a party must demonstrate the

[4] The former statute provided: "A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest." *Id.* at 2681.

existence of a wrongful act, imminent harm, irreparable injury, and the absence of an adequate remedy at law. *Jim Rutherford Invs., Inc. v. Terramar Beach Cmty. Ass'n*, 25 S.W.3d 845, 849 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). Without proof of all four elements, injunctive relief is improper. Agrifund's brief directs us to no authority or summary judgment evidence showing its alleged entitlement to such relief. Therefore, we must conclude that the trial court did not err in denying Agrifund's request for injunctive relief. We overrule this part of Agrifund's first issue.

ANALYSIS OF ISSUE 2: COSTS AND ATTORNEY'S FEES

In its second issue, Agrifund contends that the trial court improperly denied its request for costs and attorney's fees under the Uniform Declaratory Judgments Act ("UDJA"). Agrifund asks that the case be remanded to the trial court for reconsideration of attorney's fees.

The UDJA authorizes the award of attorney's fees to a party in a declaratory judgment action if the court determines the award to be equitable and just and the party presents evidence that the fees are reasonable and necessary. *See* TEX. CIV. PRAC. & REM. CODE § 37.009. The UDJA does not require an award of attorney's fees to the prevailing party, but rather entrusts the award of reasonable and necessary attorney's fees to the sound discretion of the trial court. *Bocquet v. Herring*, 972 S.W.2d 19, 20 (Tex. 1998). Thus, while the rendition of a declaratory judgment may allow the award of attorney's fees, the UDJA does not mandate such an award. *See Anderton v. City of Cedar Hills*, 583 S.W.3d 188, 195 (Tex. App.—Dallas 2018, no pet.). Here, because Agrifund is entitled to a declaratory judgment that it has priority to the proceeds of the

Garys' 2018 crop, we sustain Agrifund's second issue and remand this matter to the trial court for the purpose of determining whether an award of reasonable and necessary attorney's fees is equitable and just under the UDJA. *See Morath v. Tex. Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826, 885 (Tex. 2016) (stating that "[w]here the extent to which a party prevailed has changed on appeal, our practice has been to remand the issue of attorney fees to the trial court for reconsideration of what is equitable and just").

Conclusion

We reverse the trial court's grant of summary judgment on the Bank's claims. We reverse the trial court's denial of Agrifund's motion for summary judgment except as to the portion denying Agrifund's request for injunctive relief, which we affirm. We render judgment that Agrifund have and recover a declaratory judgment declaring that its perfected security interest in the Garys' 2018 crop is superior to any claim of the Bank. Finally, we remand this matter to the trial court for the sole purpose of determining whether an award of reasonable and necessary attorney's fees to Agrifund is equitable and just under the UDJA.

Judy C. Parker
Justice