2-20-2013

Farmers Nat. Bank v. Green River Dairy, LLC Appellant's Reply Brief Dckt. 40101

IN THE SUPREME COURT OF THE STATE OF IDAHO

FARMERS NATIONAL BANK,

Plaintiff-Counterdefendant-Appellant,

vs.

GREEN RIVER DAIRY, LLC; HERCULANO J. ALVES and FRANCES M. ALVES, husband and wife, dba GREEN RIVER DAIRY,

Defendants-Cross Defendants-Respondents,

and

ERNEST DANIEL CARTER dba CARTER HAY AND LIVESTOCK; LEWIS BECKER; JACK MC CALL,

Defendants-Counterclaimants-Cross Claimants-Respondents,

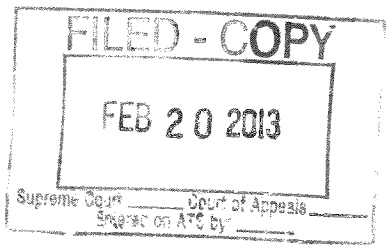
and

HULL FARMS, INC.; TIM THORNTON,

Defendants-Respondents.

APPELLANT'S REPLY BRIEF

Supreme Court Docket No. 40101-2012
Twin Falls County Docket No. 2011-5226



Appeal from the District Court of the Fifth Judicial District for Twin Falls County. The Honorable Richard G. Bevan, District Judge, presiding.

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

ARGUMENT IN REBUTTAL

A.

Legislative history of the 1989 amendment does not support respondents' case

Respondents Ernest Daniel Carter and Jack McCall ("Carter and McCall") argue that if the second sentence of Idaho Code §45-1802 added by the 1989 amendment is deemed ambiguous, the legislative history of the amendment indicates that (1) the legislature enacted the amendment on the assumption that Idaho Code §45-1802 as originally enacted provided that agricultural commodity dealer liens in feed extended to livestock which consumed the feed and (2) that the purpose of the amendment was to make clear that the lien extended to livestock regardless whether by consuming the feed the livestock increased or simply maintained their value. This speculative hypothesis, even if true, does not lend support to the Agricultural Commodity Dealer's case. Rather, it only shows that the legislature in 1989 did not intend to change the statute by extending the lien to livestock because it assumed that the statute as originally enacted in 1983 already did this. However, this assumption could not have had the effect of changing the meaning of the original statute after the amendment based upon that assumption was passed. What the legislature assumed in amending the law in 1989 does not establish what the legislature intended to do in 1983. In *O'Gilvie v. U.S.*, 519 U.S. 79, 90, 117 S. Ct. 452, 458, 136 L. Ed. 2d 454 (1996) the United States Supreme Court ruled that "in any event the view of a later Congress [about the meaning of an earlier statute it amends] cannot control the interpretation of an earlier enacted statute." See also *United States v. Price*, 361 U.S. 304,

313, 80 S.Ct. 326, 332 (1960) in which the Court states "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one," and *Schrader v. Idaho Department of Health and Welfare*, 768 F.2d 1107, 1114 (9th Cir., 1985):

> "It is well settled that views of a later Congress regarding the legislative intent of a previous Congress do not deserve much weight [citations omitted]."

This principle also applies to state legislatures:

> "Generally, and perhaps without exception, legislative intent in statutory interpretation is helpful only if it is the meaning attributed by the enacting body, not the opinion of an amending body. If defendant's legislative intent argument had merit, then any legislative session could alter the meaning of laws predating their power to act, simply by declaring a legislative intent when enacting laws that alter or change the meaning of existing law. No authority supports such a proposition and to adopt it would be an invitation to all sorts of legislative chicanery."

Lehmann v. Washington National Insurance Co., 979 F. Supp. 1290, 1292 (D. Mont. 1997).

Likewise, the view of the Idaho legislature in 1989 discussing the meaning of the 1983 statute it set out to amend cannot control the interpretation of the earlier enacted statute. Moreover, prior to the amendment in 1989, there is no ambiguity whatsoever in the statute about the sort of things to which the lien may attach. The only possible grounds for ambiguity on this point arises with the addition of the second sentence to Idaho Code §45-1802 by the 1989 amendment. If the 1989 amendment made sense to the legislators who enacted it only because they erroneously assumed that the 1983 law extended the lien to livestock, that erroneous assumption cannot have the effect of enlarging the scope of the 1989 amendment by implication to include that which the legislature wrongly assumed was already in the 1983 law. There is a strong presumption against the amendment of statutes by implication. *Idaho v. Harrington*, 133

Idaho 563, 567, 990 P.2d 144 (Ct. App. 1999). If the legislature had intended to extend the scope of the lien to livestock by the 1989 amendment, it would have "squarely addressed" the issue. See *Sunshine Mining Company, v. Allendale Mutual Insurance Company*, 107 Idaho 25, 27, 684 P. 2d 1002 (1984). Plainly, the legislature did not squarely address this issue, possibly because it assumed that is what the statute already provided. Such an erroneous assumption, however, does not result in an amendment to the law to make it what the legislature assumed it already was.

Therefore, the legislative history which the respondents Carter and McCall outline simply demonstrates that the 1989 legislature did not intend to amend the 1983 statute to extend the lien to livestock, because the legislature thought that is what the 1983 statute already provided. This also explains why the meaning of the second sentence added to Idaho Code §45-1802 by the 1989 amendment is clear and plain standing by itself, but the reason for the addition of the sentence is not immediately clear.

Respondents Tim Thornton ("Thornton") and Lewis Becker ("Becker") each assert that the second sentence of Idaho Code §45-1802 in effect makes no sense, is superfluous, meaningless or useless unless the sentence is read as extending the lien to livestock. This assertion is unconvincing because the words of the second sentence obviously do not say that the lien extends to livestock. Any argument that the second sentence nonetheless implies that the legislature by the 1989 amendment intended by the addition of that sentence to extend the lien to livestock is undercut by the legislative history which suggests that the legislature mistakenly assumed that the statute as it stood before the amendment already extended the lien to livestock. Therefore, the legislature thought it had no reason to amend the statute to that effect by the

addition of the second sentence *and did not intend to do so*. If the 1989 legislature did not intend to amend the statute to extend the scope of the lien to livestock, then the amendment it enacted clearly did not do so.

B.

Livestock which consume agricultural products are not proceeds of those products

Respondent Hull Farms asserts that Judge Bevan correctly interpreted the statute's language and use of the word "proceeds" to include livestock. This is not what Judge Bevan said. What he did say was that an interpretation of the second sentence of Idaho Code §45-1802 to the effect that it extends the lien on an agricultural product to the livestock that consume the product "has conceptual traces of collateral and proceeds as described in I.C. §28-9-102, or commingled goods as described in I.C. §28-9-336." (Memorandum Decision and Order, p. 10). Judge Bevan did not say that the word "proceeds" as it occurs in Idaho Code §45-1802 had these "conceptual traces." The word "proceeds" only occurs in Chapter 18 of Title 20, Idaho Code, in the phrase "proceeds of sale." The meaning of proceeds in connection with a sale is defined in the UCC Article Nine definition at Idaho Code §28-9-102(a)(64)(A): "whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral." Thus, there is nothing in the use of the word "proceeds" in the Agricultural Commodity Dealer Liens statute which has anything to do with whether the lien on an agricultural product extends to livestock which consume the product.

Judge Bevan's allusion to Idaho Code §28-9-336 is more relevant. That section deals with the subject of security interests in commingled goods. Agricultural liens, however, are not security interests and, unlike Idaho Code §28-9-322, Idaho Code §28-9-336 does not

cover any interplay between security interests and agricultural liens. Therefore, there is no basis for importing the UCC concept of commingled goods into the analysis of Idaho Code §45-1802.

The general notion of commingling is touched upon in Idaho Code §45-1801(1) where the term "agricultural product" is defined to include an agricultural product which is "cleaned, processed, treated, reconditioned or whether mixed, rolled or combined." Notably absent from the definition, however, is any reference to end use consumption by livestock. Thus any "conceptual traces" of proceeds or commingled goods as defined in the UCC which might be discerned in the second sentence of Idaho Code §45-1802 should have no bearing on the interpretation of that sentence.

C.

Consumption by livestock is irrelevant to lien attachment

Respondents Carter and McCall assert that Farmers National Bank proposes that the second sentence of Idaho Code §45-1802 "is meant to predicate the attachment of the lien to the use to which the goods are put." (Carter and McCall Respondents' Brief, p. 11) Farmers National Bank only asserts that the second sentence provides that the lien attaches to the agricultural product regardless of the purchaser's intended use of the product. Carter and McCall further assert "It is unclear exactly how Appellant proposes that a lien can attach and be destroyed at the same moment." (Carter and McCall Respondents' Brief, p.12). Judge Bevan similarly asserts that Farmers National Bank's interpretation of the second sentence implies that the lien attaches to and is stripped from the product "at the same moment." (Memorandum Decision and Order, p.9) Farmers National Bank does not propose this, nor does its position imply this. Idaho Code §45-1803 clearly states that the lien attaches "on the date the agricultural

product is physically delivered to the purchaser or on the date any final payment is due, and unpaid...." Time of attachment has nothing to do with when the agricultural product is consumed. In general the lien attaches well before the product is ultimately consumed.

Carter and McCall also assert that unless the lien extends to livestock which consume the agricultural product, the lien will be destroyed when the product is consumed. (Carter and McCall Respondents' Brief, pp. 12-13). Consumption of the product without doubt renders the lien worthless to the extent of the amount of the liened product consumed, but this is not the same as "destroying" the lien.

D.

Agricultural commodity dealer liens are not worthless

The Respondents all argue that unless an Agricultural Commodity Dealer Lien on an agricultural product extends to livestock which consume the product, the lien is worthless, the lien statute is a nullity and absurd, and the purpose of the statute is completely defeated. Such hyperbole is unfounded. The plain truth of the matter is that in general there is a significant and meaningful amount of time between when the lien attaches and when the value of the lien begins to decrease as the liened product is eventually put to use. Without question the overall value and benefit of the lien to commodity dealers would be greater if the lien did in fact extend to livestock. But the statute, even as amended in 1989, does not provide for this. If it is better public policy and a better balancing of the competing interests of commodity dealers and lenders to create a lien which has such an extended scope, then it is the proper role of the legislature to do this, not the courts.

E.

The agricultural commodity dealers did not perfect their liens

The Amicus Curiae's Brief submitted by the Idaho Dairymen's Association, Inc., ("IDA") puts forth the argument that, even if the liens of the Agricultural Commodity Dealers in farm products delivered to Green River extended to the cattle which consumed those products, the liens on the delivered farm products always remained junior to the prior perfected security interest of Farmers National Bank because the liens in the farm products were never "perfected" within the meaning of Article 9 of the Uniform Commercial Code. Farmers National Bank concurs with the IDA's conclusion that the Uniform Commercial Code directly controls the threshold issue of lien priority as between security interests and agricultural commodity dealer liens in and on the same collateral.

Idaho Code §28-9-322 sets forth in detail the rules which govern priority as between security interests and agricultural liens in the same collateral. "Agricultural lien" is defined at Idaho Code §28-9-102(a)(5). Under that definition the agricultural commodity dealer liens created under Idaho Code §45-802 and held by the Agricultural Commodity Dealers in this case are "agricultural liens." Idaho Code §28-9-322(a)(2) states as follows:

> "(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien."

As noted in the IDA's Amicus Brief, the rule for when an agricultural lien is perfected is stated in Idaho Code §28-9-308(b). To become perfected, the lien must become effective and satisfy the requirements of Idaho Code §28-9-310. Those requirements clearly state that "a financing statement must be filed to perfect all security interests and agricultural liens." The record in this

case does not reflect that any of the Agricultural Commodity Dealers ever filed a UCC financing statement. They only filed the State of Idaho – Notice of Lien on Agricultural Products – Form C-1. The Agricultural Commodity Dealers in this case could have unilaterally perfected their agricultural liens by filing UCC financing statements because under Idaho Code §28-9-509(a)(2) the debtor's signature on the financing statement would not have been required:

> "**28-9-509. Persons entitled to file a record.** – 9(a) A person may file an initial financing statement...only if:
>
> > (1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or
> > (2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien."

Because the agricultural commodity dealer liens in this case were not perfected, the perfected security interest of Farmers National Bank in the collateral had priority. Idaho Code §28-9-322(g) does not change, but reinforces this result:

> "(g) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides."

While it is true that Idaho Code §45-1805 provides that an agricultural commodity dealer lien has priority over a security interest in favor of a creditor of the purchaser regardless of when the security interest attaches, Idaho Code §28-9-322(g) makes clear that this priority status is achieved only if the agricultural commodity dealer lien is perfected, which in this case it was not. Therefore, the rule of Idaho Code §28-9-322(a)(2) is the applicable rule governing priority in this case.

ATTORNEY'S FEES

Farmers National Bank's claim for attorneys fees on appeal pursuant to Idaho Code §10-1210 is predicated upon a commercial transaction being the gravamen of the suit, which fact is admitted by respondents Carter, McCall, Hull Farms, and Thornton in their briefs. Idaho Code §12-120(3). *Freiburger v. J-U-B Engineers, Inc.*, 141 Idaho 415, 423, 111 P.3d 100 (2005).

CONCLUSION

Before the addition of the second sentence to Idaho Code §45-1802 by the 1989 amendment of the statute, there was nothing in the Agricultural Commodity Dealer Liens statute to suggest or imply that such liens attached to anything other than agricultural products or proceeds of sale of those products. As such the lien created before the amendment is of significant value in many situations, but not all. All agricultural products are eventually consumed or destroyed, but at times well after the lien attaches. The addition of the second sentence to the statute in 1989 certainly does not leave commodity dealers worse off than they were before, but admittedly not better off either. All the absurdities the respondents claim will follow unless the second sentence is read to extend the lien to livestock would, on the respondents' logic, follow even without the addition of the second sentence. However, that logic is not persuasive. It is clear that the second sentence clearly does not say that the lien may attach to livestock which consume a product to which a lien has already attached. The second sentence can be read as indicating the 1989 legislature presupposed that to be the law already; it cannot be read as making that the law.

Declaratory Judgment should be entered in favor of Farmers National Bank, including costs and attorneys fees, declaring that Idaho Code §45-1802 does not provide that an agricultural commodity dealer lien on an agricultural commodity extends to the livestock which consume that commodity or to the proceeds of sale of the livestock, and that Farmers National Bank's security interest in the proceeds from the sale of cows belonging to Green River Dairy, is a first priority lien.

DATED this 19th day of February, 2013.

COLEMAN, RITCHIE & CLUFF

By _____
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Farmers National Bank

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have on this 19th day of February, 2013, caused a true and correct copy of the attached APPELLANT'S REPLY BRIEF postage prepaid, to the following parties:

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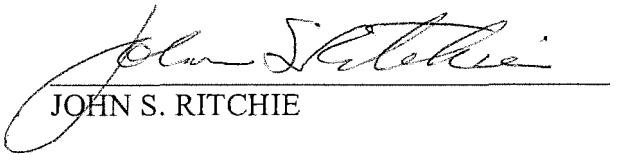

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