

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Ohio Department of Agriculture

Court of Appeals No. E-12-020

Appellee

Trial Court No. 2010-CV-0780

v.

Central Erie Supply & Elevator
Association, et al.

Defendants

DECISION AND JUDGMENT

[Citizens Banking Company—Appellant]

Decided: July 12, 2013

* * * * *

Mike DeWine, Ohio Attorney General, and James R. Patterson,
Assistant Attorney General, for appellee.

David C. Barrett, Jr., Troy A. Calliccoat and Kristi Kress Wilhelmy,
for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common
Pleas, which granted summary judgment in favor of the Ohio Department of Agriculture

(“ODA”) in connection to the disposition of assets stemming from the failure of an agricultural commodity handler. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, the Citizens Banking Company (“Citizens”), sets forth the following two assignments of error:

I. The trial court erred in concluding that Appellee Ohio Department of Agriculture’s lien under R.C. 926.01 has priority over Appellant The Citizens Banking Company’s perfected security interest.

II. The trial court erred in determining the amount of Appellee Ohio Department of Agriculture’s priority lien and Appellant The Citizens Banking Company’s liability therefore.

{¶ 3} The following undisputed facts are relevant to this appeal. Central Erie Supply and Elevator Association (“Central Erie”) formerly operated a grain elevator and farm commodity related business in Sandusky, Ohio. Accordingly, Central Erie was in the business of being an agricultural commodity handler. Such businesses are governed by R.C. 926.

{¶ 4} In the course of its normal business operations, Central Erie took possession of certain farm commodities, such as grain, from area farmers. Central Erie would then handle the subsequent sale of the commodity to a third party. Regardless of whether the farmers directed Central Erie to have the commodity sold immediately or at some indeterminate point in the future, a statutory lien in favor of the farmer of origin of the

agricultural commodity attached and became effective at the time the commodity was delivered to Central Erie. These statutorily preferred liens do not terminate until the monies owed to the farmer of origin who furnished the agricultural commodity to an agricultural commodity handler, such as Central Erie, are paid. R.C. 926.021(C).

{¶ 5} In conjunction with the above, it is statutorily established that should the business of an agricultural commodity handler, such as Central Erie, fail, the director of the Ohio Department of Agriculture is vested with exclusive statutory authority to enforce lien claims and allocate proceeds in connection to the business failure. R.C. 926.021(D).

{¶ 6} Most significantly to the instant case, it is further statutorily established that in the event of a conflict between directives of R.C. 926 and contrary results directed by R.C. 1307 and 1309, the R.C. 926 provisions “take precedence.” R.C. 926.33. Thus, by the plain meaning of R.C. 926.33, R.C. 926 eliminates any conflict with R.C. 1307 and 1309 when a given scenario would lead to contrary results with respect to those statutory provisions. R.C. 926.33(A) definitively establishes, “Any provisions of this chapter that conflict with Chapters 1307 and 1309 of the Revised Code shall take precedence over those chapters.”

{¶ 7} As applied to the instant case, the failure of an agricultural commodity handler, which as referenced above is explicitly governed by R.C. 926, lies at the heart of the matter. In the summer of 2010, Central Erie defaulted on various loans issued to it by Citizens. In September 2010, the ODA determined that Central Erie, an agricultural

commodity handler, had failed. Accordingly, the ODA exercised its express and exclusive R.C. 926.021(D) statutory authority. The ODA filed a complaint against Central Erie and Citizens seeking to enjoin the disposition or transfer of commodities or proceeds from commodities entrusted to Central Erie by various farmers and to likewise bar Citizens from physically seizing the commodities or proceeds from the commodities.

{¶ 8} Based upon the express statutory power granted to the ODA, delegating to the ODA the exclusive authority over lien enforcement and the priority of allocation of proceeds in the event of the failure of an agricultural commodity handler such as Central Erie, ODA filed for summary judgment requesting a priority secured claim in the amount of \$425,691.40. The claimed amount correlated to the proceeds connected to the sale of agricultural commodities handled by Central Erie from July 31, 2010, the date of the business failure, to the time of filing the complaint. On March 27, 2012, the trial court granted summary judgment in favor of the ODA. The trial court determined that the ODA has an R.C. 926 statutory lien in a position of priority over the competing security interest of Citizens Bank in the amount of \$425,691.40. This appeal ensued.

{¶ 9} Both assignments of error are rooted in the common underlying legal premise that the trial court erred in granting summary judgment to the ODA. As such, they will be addressed simultaneously. In determinative support of this appeal, Citizens maintains that this case is governed by R.C. 1309. Were this a case not involving the failure of an agricultural commodity handler, pursuant to R.C. 1309, Citizens would have priority over competing interests. By contrast, the ODA maintains that the trial court

correctly granted summary judgment in their favor in conformity with the express statutory preference mandated by R.C. 926.33.

{¶ 10} We review summary judgment rulings de novo, applying the same standard as the trial court. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989); *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Under Civ.R. 56(C), summary judgment is appropriate where there is no genuine issue as to any material fact and reasonable minds viewing the evidence most strongly in favor of the nonmoving party can only conclude that the moving party is entitled to judgment as a matter of law. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

{¶ 11} We have carefully reviewed and considered the facts and circumstances of this case. We find that the record of evidence clearly reflects that this matter falls squarely within the plain statutory parameters explicitly designed to deal with such scenarios set forth in R.C. 926. The record demonstrates that Central Erie is a failed agricultural commodity handler. Such a situation is precisely why R.C. 926 was established. While it can be argued that R.C. 926 does not specifically address the relative priorities of a statutory lien triggered by R.C. 926.021 in specific comparison to a competing perfected security interest governed by R.C. 1309, and R.C. 926 is somehow speculatively rendered inapplicable, we do not concur. Such abstract approaches are ultimately quasi-legislative and are properly reserved for the legislative realm of establishing new laws or modifying existing ones.

{¶ 12} We find that although R.C. 926 does not address the competing interests scenario described above in situational specificity, it is also clearly not silent with respect to the possibility of conflicting priority outcome scenarios and the statutorily mandated handling of same. Again, R.C. 926.33 clearly and unambiguously directs that, “Any provisions of this chapter that conflict with Chapters 1307 and 1309 of the Revised Code shall take precedence over those chapters.” This is precisely the type of factual scenario underlying this case.

{¶ 13} Pursuant to R.C. 926.021, the ODA director possesses exclusive authority to enforce lien claims and allocate proceeds in connection to the failure of Central Erie. R.C. 926.021(D). The first priority of proceeds rests with “claimants.” A claimant is a person to whom an agricultural commodity handler, such as Central Erie, owes a financial obligation for agricultural commodities or proceeds from commodities that had been delivered to the handler. R.C. 926.021(A)(1).

{¶ 14} As applied to the instant case, the claimants would be the individual farmers of origin whose various agricultural commodities had been produced and delivered by them to Central Erie on or before the time of the Central Erie failure, but who have not been paid for those produced and delivered commodities. Accordingly, pursuant to R.C. 926, the farmers whose agricultural commodities had been delivered to Central Erie prior to its date of failure would be in the first priority position to be reimbursed via an allocation from the director of the ODA. R.C. 926.021(D).

{¶ 15} By contrast to the above, pursuant to R.C. 1309, Citizens, the commercial bank with which Central Erie maintained its business accounts and lines of credit, would enjoy first priority over competing interests. As such, there is a clear conflict between R.C. 926 and 1309. Pursuant to R.C. 926.33, this conflict must be resolved in favor of R.C. 926, thereby placing the claimants/farmers in a first priority position. That is exactly what the trial court did in granting summary judgment in favor of the ODA.

{¶ 16} It runs counter to the clear language and import of R.C. 926, read in its entirety, to suggest that R.C. 926 does not govern the relative priorities of competing claims stemming from the failure of an agricultural commodity handler. R.C. 926 explicitly addresses and applies to such scenarios and clearly directs for the resolution of any conflicts between R.C. 926 versus 1307 and 1309 in favor of 926.

{¶ 17} In a materially similar case, *Fifth Third Bank, Western Ohio v. Shepard Grain Co., Inc.*, Miami C.P. No. 03-136 (May 5, 2003), the trial court held in pertinent part, “The Court believes that the legislature intended that the ODA’s statutory lien would be given preference and priority to an antecedent security agreement giving rights to after-acquired property.” We concur with that conclusion and believe that the precise language of R.C. 926.33 evidences such a determination. Lastly, the record reflects no compelling or objective indicia of any impropriety in connection to the lower court’s determination of the amount of proceeds realized from the sale of agricultural commodities delivered by claimants to Central Erie prior to the failure and thereby subject to the mandatory ODA first priority statutory lien.

{¶ 18} Accordingly, based upon our own independent review of the case, we find that when viewing the matter most favorably to the non-moving party, reasonable minds can only conclude that the ODA was entitled to judgment as a matter of law. As such, we find that the trial court properly granted summary judgment in favor of ODA.

{¶ 19} Wherefore, we find appellant's assignments of error not well-taken. The judgment of the Erie Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Thomas J. Osowik, J.

CONCUR.

Stephen A. Yarbrough, J.
DISSENTS AND WRITES
SEPARATELY.

JUDGE

JUDGE

YARBROUGH, J., dissenting.

{¶ 20} Because the majority and I disagree on the interpretation of R.C.

926.021(D), I must respectfully dissent.

{¶ 21} This is a simple priority dispute over proceeds deposited into a bank account. In resolving that dispute, I agree with the majority’s determination that if the priority rules under R.C. Chapter 1309 are applied, Citizens’ security interest in the deposit account is clearly superior. Where I disagree with the majority is in its application of R.C. 926.021(D) and 926.33(A) to give first priority to “claimants,” i.e., the individual farmers of origin, as against all other competing security interests. The majority asserts that “[t]he first priority of proceeds rests with ‘claimants’” under R.C. 926.021(D), and thus it concludes that R.C. Chapter 926 is in conflict with the provisions of R.C. Chapter 1309. Having recognized a conflict, the majority applies R.C. 926.33(A) to resolve the priority dispute in favor of ODA. I believe the majority mischaracterizes R.C. 926.021(D).

{¶ 22} A plain reading of R.C. 926.021 reveals that it is conclusively limited to liens held by *claimants*. R.C. 926.021(A)(1) defines “claimant” as “a person to whom an agricultural commodity handler owes a financial obligation for agricultural commodities or the actual monetary proceeds from agricultural commodities that have been delivered

to the handler.” R.C. 926.021(B) creates a statutory lien over agricultural commodity assets in favor of claimants. R.C. 926.021(C) describes when those liens shall arise, attach, and become effective, and provides that they shall terminate when “the liability of the agricultural commodity handler to the claimant is discharged.” Further, R.C. 926.021(C) provides that “[i]n the event of a failure, the lien claims of all claimants shall be considered to be assigned by this section to the department of agriculture.” R.C. 926.021(D) then describes how the director of agriculture shall enforce the lien claims and allocate the proceeds amongst claimants.¹ Finally, R.C. 926.021(E) states that where

¹ R.C. 926.021(D) provides,

[I]n the event of a failure, the director of agriculture shall possess exclusive authority to enforce the lien claims and allocate the proceeds as follows:

(1) First priority against all agricultural commodity assets shall be the following:

(a) *Claimants*, including lenders, who possess receipts covering grain owned or stored by the agricultural commodity handler;

(b) *Claimants* who possess written evidence of ownership other than receipts disclosing a storage obligation of the handler, including tickets;

(c) *Claimants* who surrendered receipts as part of an agricultural commodity transaction, but were not paid fully for the agricultural commodity and the handler failed within twenty-one days after the surrender.

(2) Second priority against all commodity assets shall be to *claimants* who possess written evidence of the sale of an agricultural commodity, including, but not limited to, tickets, delayed price agreements, or similar agricultural commodity delivery contracts who completed

an adversary proceeding has been commenced to recover an agricultural commodity asset that is subject to a lien, and the department of agriculture declines to enter the proceeding, the department may assign the lien back to the original claimant so that he or she may pursue the lien.

{¶ 23} Importantly, R.C. 926.021 is entirely silent as to the relative priorities of a claimant and a competing secured party whose interest arises under R.C. Chapter 1309. Even a cursory examination of the statute reveals that R.C. 926.021(D) only determines priorities *amongst claimants*. R.C. 926.021(D) simply cannot stand for the proposition that claimants have a security interest that is superior to those held by other, non-claimant, secured parties. Thus, the majority’s blanket assertion that R.C. 926.021(D) gives first priority to “claimants” is misleading.

{¶ 24} Indeed, the majority recognizes that R.C. Chapter 926 does not specifically address the scenario where a claimant and a non-claimant have competing security interests in the same asset. Because R.C. Chapter 926 provides no guidance on the issue, it seems only logical that R.C. Chapter 926 cannot conflict with the priority rules found in R.C. Chapter 1309, and therefore R.C. 926.33(A) does not apply.

delivery and pricing within thirty days immediately prior to the failure of the handler.

(3) To the extent not necessary to satisfy first and second priority claimants, all other *claimants* who possess written evidence of the sale of agricultural commodities to the handler shall participate in the pro rata distribution of the remainder of the agricultural commodity assets in an amount not to exceed the value of each claim. (Emphasis added.)

{¶ 25} Perhaps the result that comes from my analysis is not the “right” result.

Perhaps it is preferable for Ohio’s farmers to have the first chance to recover their losses when a grain handler fails. I certainly would not object to such a result. However, there also are compelling reasons why a bank that has lent money to a grain handler, and perfected its security interest in the collateral that secures the loan, should be the first to recover when the grain handler fails. Thus, I agree with the majority that this is a matter properly reserved for the legislature. Yet, unless and until the legislature acts, we are bound to interpret the law as it is currently written, not as we wish it to be. Here, the legislature has provided nothing in R.C. Chapter 926 that allows us to determine the relative priorities of a claimant and a non-claimant secured party.² Therefore, there is no conflict between R.C. Chapter 926 and the priority rules of R.C. Chapter 1309. As a result, I would hold that Citizens has the first priority in the proceeds deposited into the bank account.

² In contrast, see, e.g., Ill. Ann. Stat., Chapter 240, § 40/20-10:

(a) * * * This statutory lien arises, attaches, and is perfected at the date of delivery of grain, and is at that time deemed assigned by the operation of this Code to the Department.

(b) The lien on grain assets created under this Section *shall be preferred and prior to any other lien, encumbrance, or security interest relating to those assets described in the definition of ‘grain assets’ in Section 1-10, regardless of the time the other lien, encumbrance, or security interest attached or became perfected.* * * *

(c) To the extent any portion of this Code conflicts with any portion of the Uniform Commercial Code, the provisions of this Code control. (Emphasis added.)

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