

FIRST-CITIZENS BANK & TRUST CO. v. FOUR OAKS BANK & TRUST CO.
576 S.E.2d 722 (N.C. Ct. App. 2003)

MARTIN, Judge.

Plaintiff, First-Citizens Bank & Trust Company, brought this action alleging that defendant, Four Oaks Bank & Trust Company, sold collateral, a drill rig engine, in which plaintiff had a superior security interest and appropriated the proceeds to its own use. Plaintiff further alleged that defendant had knowledge of plaintiff's interest in the engine at the time of the sale, and that defendant sold it without notice to, or knowledge of, plaintiff. Plaintiff sought to recover the amount of the outstanding debt secured it by the engine, together with costs and attorneys fees. Defendant answered, denying it was obligated to pay plaintiff any amount. Plaintiff subsequently moved for summary judgment.

... [O]n 17 October 1996, Jimmie and Valerie Beaty borrowed \$92,000 from defendant for which they gave defendant a security interest in a drill machine, consisting of a ten-wheeled truck with its own engine, as well as a drill rig with its own engine on the back of the truck frame. In February 1997, plaintiff loaned the Beatys \$13,466 for the purchase of a replacement engine for the drill rig[,] ... secured by a security agreement giving plaintiff a security interest in the drill engine, which plaintiff duly perfected. Mr. Beaty thereafter installed the drill engine on the drill rig on the back of the truck.

On 9 August 1999, the Beatys filed for Chapter 13 bankruptcy in the United States Bankruptcy Court for the Eastern District of North Carolina. Both plaintiff and defendant were listed on the bankruptcy court's schedule of creditors as having an interest in the drill rig. Thereafter, on 1 November 1999, defendant filed a motion in bankruptcy court seeking relief from the automatic stay, or in the alternative, other adequate protection of its interest in the drill machine.... Apparently, plaintiff received no notice of the hearing. However, on 14 January 2000, upon the Beaty's motion, the bankruptcy court entered an order, consented to by the Beatys and the Chapter 13 trustee, authorizing the Beatys to sell the entire drill machine to Ingle Brothers Drilling for \$50,000 and directing that all proceeds of the sale be given to defendant.

The district court entered an order concluding ... that defendant was entitled to judgment as a matter of law. Plaintiff's motion for summary judgment was denied and summary judgment was entered in favor of defendant. Plaintiff appeals.

Plaintiff assigns error to the entry of summary judgment ..., arguing that (1) plaintiff had a properly-perfected purchase money security interest in the drill rig engine which took priority over any interest of defendant's in the engine; (2) plaintiff had a properly-perfected security interest in the drill rig engine which took priority over defendant's security interest in the drill machine; (3) the new drill rig engine did not accede to the drill machine and was thus not subject to defendant's security interest in the drill machine; and (4) public policy dictates plaintiff should prevail because it did everything according to law to perfect its interest in the drill rig engine, and defendant should not be permitted to circumvent plaintiff's rights.

* * *

...[We] agree with plaintiff that it maintains an interest superior to that of defendant in the drill rig engine, and that it is entitled to recoup from defendant the remaining amount owing on its agreement with the Beatys. First, we agree with plaintiff that it maintains a purchase money security interest in the drill rig engine. Under Article IX of the Uniform Commercial Code ..., an interest is a purchase money security interest to the extent it is “taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.” N.C. GEN. STAT. § 25-9-107. Moreover, a purchase money security interest in collateral other than inventory “has priority over a conflicting security interest in the same collateral *or its proceeds* if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.” *Id.* § 25-9-312(4) (emphasis added).

The record in this case establishes the Beatys borrowed money from plaintiff for the purchase of a new drill rig engine for their drill machine; that plaintiff’s check was made out to Covington Diesel, the seller of the engine; that in exchange, the Beatys executed a security agreement in favor of plaintiff on 7 February 1997; and that its interest in the drill rig engine was perfected on 12 February 1997, within 20 days of the Beaty’s receipt of the engine. Moreover, defendant admitted in its answer that plaintiff maintained a “first priority perfected security interest” in the drill rig engine as reflected by financing statements filed with the Johnston County Register of Deeds and the Secretary of State.

Additionally, the record shows plaintiff’s security interest in the drill rig engine had priority over defendant’s security interest in the drill machine, for ... “[a] security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed ... over the claims of all persons to the whole.” *Id.* § 25-9-314(1). Although that statute provides some exceptions to the general rule, none of the exceptions applies here. Further, the record shows that the drill rig engine did not accede to the drill machine, nor was it otherwise commingled and processed with the drill machine as a whole such that plaintiff would lose the priority of its interest.

In *Goodrich Silvertown Stores v. Caesar*, 214 N.C. 85, 197 S.E. 698 (1938), our Supreme Court held that the seller of automobile tires and tubes who possessed a chattel mortgage on the parts at the time of sale was entitled to recover those parts or the value of them even though the parts had been placed on a truck later repossessed by the seller of the truck under a conditional sales contract containing an after-acquired property clause. In so holding, the court addressed the doctrine of accession, stating “[t]he doctrine of accession is inapplicable in cases where personal property is placed upon other personal property if the property so placed had not become an integral part of the property to which it was attached and could be conveniently detached.” *Id.* at 87, 197 S.E. at 700. Noting that tires are easily identified and removed without damage to the whole, the court concluded the doctrine of accession was inapplicable. *Id.* Moreover, the court dismissed the argument that the conditional sales agreement between the seller and buyer of the truck which purported to extend the seller’s interest over any replacements or accessories later placed upon the truck defeated the interest of the seller of the tubes and tires. In support, the court cited this general principle:

A mortgage given to cover after-acquired property covers such property only in the condition in which it comes into the hands of the mortgagor. If that property is already subject to mortgages or other liens at that time, the general mortgage does not displace them although they may be junior to it in point of time. It attaches only to such interest as the mortgagor acquires.

Id. at 88, 197 S.E. at 700 (citation omitted).

In the present case, Jimmie Beaty testified that he purchased the drill rig engine separately from the drill machine, that he removed the old engine himself, and replaced it with the new engine subject to plaintiff's interest, and that this process in no way caused any damage to the drill machine or its existing parts. Mr. Beaty further stated he could have removed the new engine from the drill machine without harm to the machine as a whole. ... [T]he drill rig engine was a detachable component of the drill machine and therefore had not become a commingled, integral part of the machine. Furthermore, any after-acquired property clause in the Beaty's agreement with defendant does not defeat plaintiff's superior interest in the drill rig engine, for defendant only acquired an interest in the engine to the extent of the Beaty's interest, which interest was always subject to plaintiff's.

Defendant has made no arguments on appeal regarding the priority of plaintiff's interest in the drill rig engine over its own interest. The record demonstrates no genuine issue of material fact as to plaintiff's interest in the drill rig engine, and accordingly, it was entitled to judgment as a matter of law. For the reasons stated herein, the trial court's entry of summary judgment for defendant is reversed and this case is remanded to the trial court for entry of summary judgment in favor of plaintiff.

Reversed and remanded.