

IN THE COURT OF APPEALS 02/13/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00224 COA

WILLIAMS MISSISSIPPI FARM, INC.

APPELLANT

v.

FIRST NATIONAL BANK OF CLARKSDALE

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOHN LESLIE HATCHER

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

W. DEAN BELK

CLARK, DAVIS & BELK, P.A.

ATTORNEYS FOR APPELLEE:

WILLIAM G. WILLARD, JR. AND JEFFREY S. DILLEY

HOLCOMB, DUNBAR, CONNELL, CHAFFIN & WILLARD, P.A.

NATURE OF THE CASE: CONTRACT-LANDLORD'S LIEN ON ASCS DEFICIENCY
PAYMENTS PURSUANT TO CONTRACT

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT RENDERED IN FAVOR OF BANK
AS TO PRIORITY FOR ASCS DEFICIENCY PAYMENTS

BEFORE FRAISER, C.J., BARBER, AND McMILLIN, JJ.

McMILLIN, J., FOR THE COURT:

This Court is called upon today to decide a case of first impression in Mississippi. The issue may be simply framed, though the resolution of that issue may not admit of such simplicity. The issue before us is whether government subsidy payments received by a farmer from the United States Government in connection with that farmer's activities in producing a crop on leased land are subject

to the statutory landlord's lien covering "agricultural products of the leased premises." Miss. Code Ann. § 89-7-51 (1972).

I.

FACTS

A detailed recitation of the facts is unnecessary. In brief, those facts relevant to our decision are these. Ellis Farms leased land from Williams Mississippi Farm, Inc. (Williams), upon which Ellis produced certain crops. Ellis received governmental subsidies known as "ASCS deficiency payments" under programs enacted by Congress and administered by the United States Department of Agriculture. These payments, which totaled \$132,190.23, were assigned by Ellis to the First National Bank of Clarksdale (the Bank) to secure a crop- production loan made to Ellis by the Bank. The Bank received the payments directly from the government, crediting them towards the loan balance. Ellis failed to pay \$33,688.92 of the agreed lease payment due Williams, and Williams sued the Bank, claiming entitlement to recover the amount due on the lease out of the deficiency payments on the theory that the payments represented agricultural products produced on the Williams' land, or the proceeds thereof, within the meaning of the Mississippi landlord's lien statute. *See* Miss. Code Ann. § 89-7-51 (1972).

The trial court considered the matter on cross motions for summary judgment and granted judgment in favor the Bank without opinion. In accordance with our standard of review, we consider the matter *de novo*. *Fipps v. Glenn Miller Constr. Co.*, 662 So. 2d 594, 595 (Miss. 1995) (citations omitted).

II.

WHETHER THE STATE STATUTORY LIEN IS PREEMPTED BY FEDERAL LAW

The Bank asserts as its first argument the proposition that its assignment of deficiency payments from Ellis, accomplished in strict compliance with regulations prescribed by the federal government, takes precedence over the statutory landlord's lien in favor of Williams. The Bank's theory is that the federal government has preempted the priority issue by its establishment of this assignment procedure.

We must disagree with the Bank's contention that the matter of ultimate entitlement to these funds is controlled by a federal rule relating to the administration of the program. In the absence of a congressional directive delegating preemption authority, "the relative priority of private liens and consensual liens arising from Government lending programs is to be determined under nondiscriminatory state laws;" therefore, in federal litigation, state law is incorporated as a federal rule of decision. *See United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 740 (1979). The principle is the same in this state litigation.

None of the authorities cited in the regulations establishing the agricultural entitlements or the assignment procedure expressly delegates such authority of preemption; therefore, in the absence of express authority, the determination of preemption must be gleaned from the circumstances and purposes surrounding the federal legislation.

It is true that the regulations do, in fact, provide rather strict guidelines limiting the circumstances in which the paying federal agency will recognize anyone other than the farmer's right to payment of benefits. These regulations provide for the filing of the assignment on a specified form, signed by the farmer, and only in those circumstances will the agency disburse other than directly to the farmer. However, we determine that the anti-assignment provisions and resulting procedures outlined in the regulations are designed, not to answer substantive questions of ultimate entitlement to proceeds as between third parties, but to simply insulate the federal government as a provider of benefits and services from conflicting claims to payments based on the intricacies of applicable laws in multiple state jurisdictions. *See In re George*, 119 B.R. 800, 802-03 (D. Kan. 1990); *cf. Rural Gas Inc. v. North Cent. Kansas Prod. Credit Corp.*, 755 P.2d 529, 534 (Kan. 1988).

We therefore hold that the priority of the landlord's lien created by state statute is not preempted by the federal provisions setting forth the regulation for assignment of deficiency payments. In absence of a clear statement of congressional intent to the contrary, this Court is unwilling to accept the Bank's argument and allow the provisions of the federal regulations to "supplant well-established state law" governing priorities between third parties. *In re George*, 119 B.R. at 803.

Therefore, we must turn to Mississippi case law and statutory law to determine the resolution of this dispute.

III.

WHETHER ASCS DEFICIENCY PAYMENTS ARE ENCOMPASSED WITHIN THE LANDLORD'S LIEN STATUTE

The pertinent portion of the landlord's lien statute we consider today has come down to us unchanged since its original enactment in 1880. The bulk of litigation concerning the statute during its first one hundred ten years of existence concerned the extent of its enforceability against third parties acquiring an interest in the crop. It was decided early on that a purchaser of the crop was liable to the landlord. *Newman v. Bank of Greenville*, 66 Miss. 323, 5 So. 753 (1889). The liability of the third party purchaser was confirmed without regard to whether or not that purchaser was proceeding in good faith by application of the rule of *caveat emptor*. *Newman*, 5 So. at 757; *see also*

Eason v. Johnson, 69 Miss. 371, 12 So. 446 (1891). Interestingly however, the lien was determined to lose its effectiveness at the State's borders in the case of *Millsaps v. Tate*, wherein it was decided that crops removed from the State and sold to a third party were not subject to the landlord's lien. *Millsaps v. Tate*, 75 Miss. 150, 21 So. 663 (1897); see also *Ball, Brown & Co. v. Sledge*, 82 Miss. 749, 35 So. 447 (1903). Early attempts to expand the scope of the lien's effectiveness to permit the tracing and recovery of the money received by the farmer into the hands of third parties were unsuccessful to a large extent. See, e.g., *Newman v. Bank of Greenville*, 66 Miss. 323, 5 So. 753 (1889); *Eason v. Johnson*, 69 Miss. 371, 12 So. 446 (1891); *Jones v. Stevens*, 12 So. 446 (Miss. 1892); *Crutcher v. Commercial Bank*, 146 Miss. 404, 111 So. 569 (1927). In 1990, the Mississippi Supreme Court did permit those sale proceeds to be traced into the hands of a lender who had made a crop production loan to the farmer of leased property, at least in the limited circumstance where the lender had actual knowledge that the money it was receiving represented proceeds from disposition of the crop. *Planters Bank & Trust Co. v. Sklar*, 555 So. 2d 1024, 103 1 (Miss. 1990). Nothing in the long history of the statute and the case law that developed during that history, however, offers any guidance as to the threshold question of whether government payments in the form of agricultural subsidies can be said to be either (a) "agricultural products" within the meaning of the statute, or (b) proceeds derived therefrom within the meaning of *Sklar*.

Counsel for both sides have cited authority from other jurisdictions as persuasive on the issue. Practically all of the litigation arose in the context of bankruptcy cases and dealt with the issue of whether such governmental subsidy payments were "proceeds" derived from crops within the meaning of the Uniform Commercial Code in instances where a creditor holding a perfected security interest in crops sought to apply the security interest in the "proceeds" granted by section 9 of the Code to governmental subsidy payments. See Miss. Code Ann. § 75-9-306 (1972). A review of those cases reveals little more than a deep split on the issue.

A typical case holding that such governmental payments are "proceeds" is *First State Bank v. Holder*, 22 B.R. 287 (Bankr. N.D. Tex. 1982), which essentially states that these types of payments are in supplement, substitution, or replacement of the crop or what the farmer would expect to receive upon disposition of the crop and are therefore deemed the legal equivalent of "proceeds." On the other hand, an often-cited case determining that deficiency payments are not "proceeds" is *Kruger v. Peoples National Bank*, 78 B.R. 538 (Bankr. C.D. Ill. 1987), which applied a three-part test extrapolated from a decision by the United States Court of Appeals for the Seventh Circuit deciding whether benefits derived under another agricultural subsidy program (Payment in Kind or "PIK") could be classed as "proceeds." The *Kruger* court said that to represent "proceeds" there must be (1) a planted crop, (2) a disposition of the crop, and (3) the governmental payment must have been received in connection with that disposition. *Kruger*, 78 B.R. at 540 (citing *In re Schmaling*, 783 F. 2d 689 (7th Cir. 1986)).

The allure of a "test" and its seeming objectivity has proven irresistible, and the *Kruger* test has been cited in a number of cases. See, e.g., *Covey v. Ipava State Bank*, 106 B.R. 174 (Bankr. C.D. Ill. 1989); *In re Hunerdosse*, 85 B.R. 999, 1004 (Bankr. S.D. Iowa 1988). The Bank, in fact, cites *Kruger* to us as being "the leading case" on the issue. In reality, the first two steps of the *Kruger* test are a meaningless circular proposition that essentially says that in order to decide whether a certain thing (government benefit payment) is derived from the disposition of a crop, you must have a crop and you must dispose of it. The third step is nothing more than a restatement of the definition of

"proceeds" contained in the Code itself: "'Proceeds' includes whatever is received upon the sale, exchange, collection or other disposition of collateral. . . ." Miss Code Ann. § 75-9-306(1) (1972).

Decisions from other jurisdictions are cited as *persuasive* authority. If they fail to persuade, they are of little use. We find nothing particularly persuasive in the *Kruger* test, and most cases from other jurisdictions reaching the same result are content to state simply that they relied on *Kruger*. Conversely, in those decisions that reach a contrary result on the issue, we find nothing that is notably persuasive in the courts' opinions.

As a result, our research for guidance in other jurisdictions leaves us without much beyond a scorecard for tallying which position has been upheld in the most jurisdictions. This is unsatisfactory and unenlightening. Additionally, as we stated earlier, these cases all involve the interpretation of the Uniform Commercial Code and do not deal with the particular statute before us, though admittedly the issues are, to some degree, analogous.

Our research revealed only one jurisdiction that has considered a similar issue in regard to a statutorily-created landlord's lien. In *Knosby v. First Iowa State Bank*, the Iowa Court of Appeals was called upon to determine whether corn received by a farmer under the PIK Program to supplement that produced on leased land should be considered as "crops grown upon the leased premises" within the meaning of that State's landlord's lien statute granting a lien on such crops. *Knosby v. First Iowa State Bank*, 390 N.W.2d 605, 608 (Iowa Ct. App. 1986). It was argued by the landlord that the PIK products in the farmer's hands "served as a substitute for growing crops" and were, therefore, "equivalent to growing crops for purposes of [the] landlord's lien." *Id.* at 607. The Iowa court rejected the argument, citing an earlier case for the proposition that the clear and explicit language of a statute has "no room for construction." *Id.* at 608. We approach the question before us in the same spirit.

It must be conceded in beginning our analysis that the deficiency payments received by Ellis in this case bore only an indirect relation to the crop actually produced. Entitlement to benefits is based upon estimated yields, without regard to the actual amount of crop produced. The government receives no interest in the harvested crop in exchange for the deficiency payments. The amount received is based upon a formula comparing a government-determined "target" price to average actual prices received by producers generally in the market over a span of time without any regard to what the particular farmer received for his crop. *See* 7 U.S.C.S. § 1441 *et seq.* (Law. Co-op. 1995).

In this context, we must determine whether the language of the landlord's lien statute is broad enough to encompass these payments under any theory. Our conclusion is that it is not.

We must never forget, that it is a *statute* we are expounding. The language of a statute, unlike documents setting out broad concepts capable of an evolving interpretation as changing circumstances warrant, is precise. Its meaning generally does not change or expand with time. This landlord's lien statute was adopted in a time when government incentive programs such as the deficiency payments we now consider were unheard of. It is not enough to say that these payments are in substitution of, or are the equivalent of, the agricultural products contemplated in the statute. Neither can we say that they represent the "proceeds" of these products in any normal sense of the word since the government acquires no interest in the crop in exchange for the payments. This Court is not at liberty to expand the language of the statute through interpretation or by analogy. While

general concepts such as "freedom of speech" may be readily interpreted to encompass electronic communications on the Internet, an ancient statute exempting from execution a farmer's mule cannot be interpreted by the judiciary today to exempt a tractor on the very valid, but irrelevant, proposition that the tractor has been effectively substituted for the once-venerated mule. The necessary modification in such instance must be provided by the legislative branch of government and not the judicial. Absent such amendment, this Court is bound to enforce a statute as we find it.

We find that the statute encompasses agricultural products produced on the land. In this case, that is clearly the crops themselves. That lien attaches to the crop and follows it into the hands of a purchaser. Under *Sklar*, the lien also attaches itself to the money received by the farmer from that sale and follows it, at least in limited circumstances, into the hands of a third-party. That is the limit of the lien. Government deficiency payments do not fit into this scheme and, thus, the statutory landlord's lien cannot be said to apply to those payments.

The trial court was correct in its decision and should be affirmed.

**THE JUDGMENT OF THE CIRCUIT COURT OF COAHOMA COUNTY IS AFFIRMED.
COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING,
PAYNE AND SOUTHWICK, JJ., CONCUR.**