

RENDERED: DECEMBER 18, 2015; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2015-CA-000128-MR

JOE FRAZEE and CYNDE FRAZEE

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE CRAIG Z. CLYMER, JUDGE  
ACTION NO. 09-CI-00055

RABO AGRIFINANCE, INC.;  
REGIONS BANK;  
DONALD C. EDWARDS;  
SHIRLONDA EDWARDS;  
DONNIE EDWARDS FARMS, INC.;  
JACKSON PURCHASE AGRICULTURAL  
CREDIT ASSOCIATION;  
JACKSON PURCHASE  
FEDERAL LAND CREDIT ASSOCIATION;  
HAWKINS AND CO., P.S.C.;  
STINE SEED CO.;  
COMMERCIAL WASTE OF KENTUCKY;  
MCCRACKEN COUNTY, KENTUCKY;  
KLAS PROPERTIES, LLC;  
COMMONWEALTH OF KENTUCKY,  
DEPARTMENT OF REVENUE,  
DIVISION OF COLLECTIONS;  
HARVEST CREDIT MANAGEMENT VII, LLC;  
FARM BUREAU BANK;  
FIA CARD SERVICES, NATIONAL ASSOCIATION;  
COMMONWEALTH OF KENTUCKY,  
ENERGY AND ENVIRONMENT CABINET;  
MIDLAND FUNDING, LLC;  
MARTIN MARIETTA MATERIALS, INC.; and  
JSC TERMINAL, LLC d/b/a MIDWEST TERMINAL

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, KRAMER, AND STUMBO, JUDGES.

COMBS, JUDGE: Joe and Cynde Frazee appeal from a judgment and order of sale entered on January 12, 2015, by the McCracken Circuit Court. The Frazees argue that the court erred by permitting Rabo Agrifinance, Inc., to enforce its judgment lien against their property. Following our review of the record and the arguments of counsel, we affirm.

The following facts are not in dispute. On May 24, 2006, an Iowa court entered a default judgment against Donald Edwards in an action brought against him by Rabo Agrifinance. The judgment was in the amount of \$180,690.11 and has been accruing interest at the rate of 21% per annum since January 31, 2006.

On July 3, 2006, that default judgment was registered in Kentucky. On July 15, 2006, Rabo Agrifinance filed a notice of judgment lien with the McCracken County clerk's office. The lien attached to "any and all real estate owned in whole or in part" by Edwards in McCracken County. By deed dated September 1, 2008, Edwards conveyed to the Frazees real property in McCracken County known as Temple Mill Farm.

Thereafter, Regions Bank, a secured creditor, filed an action seeking to foreclose its mortgage on all of Edwards's real property. It joined all other lienholders and parties of interest -- including Rabo Agrifinance. Rabo

Agrifinance filed an answer, counterclaim, and cross-claim seeking enforcement of its judgment lien. Edwards filed for relief under Chapter 12 of the Bankruptcy Code.

On February 5, 2014, the Frazees filed a proof of claim as creditors in Edwards's bankruptcy proceeding. They claimed to be entitled to \$149,994.00 – the sum that they had paid for Temple Mill Farm.

In its order entered April 22, 2014, the bankruptcy court recognized the claim of Rabo Agrifinance against “non-Debtor owned real estate [Temple Mill Farm] by virtue of its judgment lien. . . .” Further, the bankruptcy court observed that the claim against the farm had been “expressly preserved” by Rabo

Agrifinance. On June 5, 2014, the United States Bankruptcy Court for the Western District of Kentucky terminated its stay with respect to Temple Mill Farm since it was not part of the debtor's estate. As a result, Rabo Agrifinance was authorized to proceed with enforcement of its judgment lien against the property.

Once the stay was terminated, Rabo Agrifinance filed a motion in McCracken Circuit Court requesting an order of sale of Temple Mill Farm. The Frazees opposed the motion. After a hearing, the circuit court concluded that Rabo Agrifinance had done all that it was required to do in order to protect its interest in Temple Mill Farm. It observed that the Frazees' decision to forego a title examination, which would have given them notice of the judgment lien against the property, was fatal to their claim to the farm. The court's order of sale was entered on January 8, 2015. This appeal followed.

On appeal, the Frazees contend that their purchase of Temple Mill Farm benefitted all of Edwards's creditors, including Rabo Agrifinance, to the same extent as a judicial sale of the property would have done and that, as a result, it is inequitable for Rabo Agrifinance to reap any additional benefit. They imply that the judgment lien of Rabo Agrifinance should have been released by operation of law once they paid full value for the farm and the mortgage-holder was satisfied. Finally, they argue that because it is within the discretion of the trial court to decide whether to order a sale of property to enforce a lien, the court should have denied the motion since the Frazees were never indebted to Rabo Agrifinance. We disagree with each of these assertions.

Kentucky Revised Statute[s] (KRS) 382.280 provides as follows:

All bona fide deeds of trust or mortgages shall take effect in the order that they are legally acknowledged or proved and lodged for record.

KRS 382.270 provides:

No deed or deed of trust or mortgage conveying a legal or equitable title to real property shall be valid . . . against creditors, until such deed or mortgage is acknowledged or proved according to law and lodged for record. As used in this section, "creditors" includes all creditors irrespective of whether or not they have acquired a lien by legal or equitable proceedings or by voluntary conveyance.

Taken together, these two statutes create what is known as a "race-notice" rule for priority of liens or claims of ownership in real property. With very limited exceptions, an earlier interest in real property takes priority over a subsequent

interest that was taken with notice -- either actual or constructive -- of the prior interest. *Minix v. Maggard*, 652 S.W.2d 93 (Ky.App.1983).

Since the judgment lien of Rabo Agrifinance was properly recorded more than two years before the Frazees' deed was recorded, it would have been discovered during the course of a title examination. Consequently, the Frazees are chargeable with constructive notice of the judgment lien against the property. They took the farm subject to the lien of Rabo Agrifinance -- the prior recorded interest. Pursuant to the recording statutes, the Frazees' interest is undoubtedly subordinate to that of Rabo Agrifinance.

The Frazees' contention that Rabo Agrifinance will reap a windfall based solely upon their failure to have the title examined is erroneous as a matter of law. Rabo Agrifinance will clearly benefit from its position as a lien-holder with priority over the Frazees' subordinate interest. However, when it filed its lien in 2006, Rabo Agrifinance *expected* to have priority over all subsequently recorded interests in the property. And so it does. Such a result does not amount to a windfall.

In *Mortgage Elec. Registration Sys., Inc. v. Roberts*, 366 S.W.3d 405 (Ky. 2012), the Supreme Court of Kentucky declined a lender's request to deviate from the ordinary requirements of the recording statutes. While the lender contended that overriding policy and economic concerns should provide an exception to the strict operation of the recording statutes, the Court observed that it was primarily concerned with the accuracy and efficiency of Kentucky's recording scheme. The

Court adopted our observation that the recording statutes provide an orderly system that gives notice to those who seek to secure a subsequent interest in property and for a sequential method of payment of the obligor's debts.

The Frazees had at least constructive notice of the superior interest of Rabo Agrifinance, and they had a sufficient opportunity to protect their own interests. Thus, there is no basis upon which to justify our deviation from the statutory scheme for recording and ordering liens. Under the circumstances, we cannot ignore the clear requirements of the recording statutes. The trial court did not err by ordering a sale of the farm property.

We affirm the judgment of the McCracken Circuit Court.

ALL CONCUR.

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