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Opinion of the District Court

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OPINION OF THE DISTRICT COURT

State of North Dakota
County of McHenry.

In District Court,
Second Judicial District.

Regional Agricultural Credit Corporation of Minneapolis, a corporation,
Plaintiff,
vs.
E. C. Drader and Lena Drader,
Defendants.

MEMORANDUM DECISION

Plaintiff brings this action upon a promissory note made to the plaintiff by defendants, E. C. and Lena Drader, dated April 5, 1934, due October 10, 1935 for $1,172.81, with interest at 6½ per cent, on which payments have been made August 24, 1934, $75.00, October 2, 1934, $194.00, February 21, 1935, $15.96; leaving then due $887.85. No renewal or payments have been made since. An itemized statement shows that on June 10, 1946, when this action was brought, there was due on this note $1,433.46.

This note was a renewal of a note signed by E. C. Drader alone, dated October 5, 1933, for $1,128.67, due April 5, 1934, with interest at 6½ per cent. That note, again, was a renewal of the original note for $1,100.00 at 6½ per cent dated April 5, 1933, due October 5, 1933, marked "Barnyard" indicating that this was one of the so-called barnyard loans and was secured by a chattel mortgage on defendant's stock.

The answer admits the note and payments and sets up the defense of the statute of limitations, claiming that its enforcement is barred by section 28-0116 N. D. R. C. 1943.

If that statute supplies the defense is good and the action must be dismissed. Otherwise judgment must be granted plaintiff with interest to date.

On January 22, 1932 Congress created a body corporate with the name "Reconstruction Finance Corporation", to refinance business and agriculture. As a part of that act Congress authorized said Reconstruction Finance Corporation to create in any of the twelve Federal Land Bank Districts a Regional Agricultural Credit Corporation with a paid up capital of not less than three million to be subscribed for by the Reconstruction Finance Corporation and paid by the Secretary of Agriculture. The Act then provides "such corporations are hereby authorized and empowered to make loans or advances to farmers and stockmen, proceeds of which are to be used for an agricultural purpose and (including crop production) or for the raising, breeding, fattening or marketing of livestock, to charge such rates of interest or discount thereon as in their judgment are fair and equitable, subject to the approval of the Reconstruction Finance Corporation and to re-discount with the Reconstruction Finance Corporation and the various Federal Reserve Banks and Federal Intermediate Credit Banks any paper that

they require which is eligible for such purpose." Later the Act was amended to substitute the Farm Credit Administration for the Reconstruction Finance Corporation in the management and control of the RACC, otherwise the corporation has remained the same, except that now it is in the process of liquidation.

Whether a corporation thus created by Congress retains the immunities of the Government or is subject to local laws governing commercial corporations depends entirely upon the intent of Congress. In Casper vs. Regional Agricultural Credit Corporation (Minn.) 278 N. W. 896 it is held:

"Congress has full power to determine to what extent instrumentalities of the federal government partake of its sovereign character and immunity from suit. Whether federal agencies are subject to suit and to what extent is a question of congessional intent. Federal Land Bank vs. Priddy, 295 U. S. 229, 55 S. Ct. 705, 706, 79 L. Ed. 1408. The general rule is that the sovereign immunity of the United States does not extend to its agents, individual or corporate. Sloan Shipyards Corp. vs. U. S. Fleet Corp., 258 U. S. 549, 42 S. Ct. 386, 388, 66 L. Ed. 762; United States v. Lee, 106 U. S. 196, 1 S. Ct. 240, 27 L. Ed. 171; Belknap v. Schild, 161 U. S. 10, 16 S. Ct. 443, 40 L. Ed. 599; 26 R.C.L. 1459, 63, note 15; note, 15 Ann. Cas. 1109. No rule has been laid down by the Supreme Court of the United States by which the congressional intent may be determined in a particular case."

This intent must be determined from the wording of the statute, the nature of the government instrumentality established and all the circumstances bearing upon the enactment of the law.

In Keifer & Keifer v. Reconstruction Finance Corporation, 306 U. S. 381; 83 Law Ed. 784, it is put this way:

"The Congressional will must be divined, and by a process of interpretation which, in effect, is the ascertainment of policy immanent not merely in the single statute from which flow the rights and responsibilities of Regional, but in a series of statutes utilizing corporations for governmental purposes and drawing significance from dominant contemporaneous opinion regarding the immunity of governmental agencies from suit."

"In U. S. ex rel Skinner & Eddy Corp. v. McCarl, 275 U. S. 1, 48 S. Ct. 12, 72 L. Ed. 131, it was pointed out that such corporations are created for convenience, it being supposed that the corporate form enables them to employ commercial methods and to conduct their operations with a freedom inconsistent with accountability to the treasury under its established procedure of audit and control over financial transactions of the United States. To the extent that such convenience is served, the corporate entity is recognized. It is recognized for all purposes relating to the transaction of ordinary corporate business and affairs." Casper vs. RACC, supra.

It has been held that when a parent corporation like the Reconstruction Finance Corporation is authorized to organize another corporation like the RACC it transmits the limitations of its immunitiese to such corporations without specific enumeration in the Congressional Act authorizing such organization.

In Keifer & Keifer v. Reconstruction Finance Corporation, supra, it is said:

"Congress naturally assumed that the general corporate powers to which it had given particularity in the original statute establishing Reconstruction would flow automatically to the Regionals from the source of

their being. Such, certainly, has been the practical construction of the Regional Agricultural Credit Corporation in the instinctive pursuit of their enterprise."

Thus there is no reference in the act creating the RACC to its liability to suit; but, because the RFC is particularly made liable to suit it followed that the RACC is also liable to suit.

In Keifer & Keifer vs. Reconstruction Finance Corporation, supra:

"The government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work."

In Federal Housing Administration v. Burr, 309 U. S. 242; 84 Law Ed. 724, the Court said:

"As indicated in Keifer & Keifer vs. Reconstruction Finance Corp., supra, we start from the premise that such waivers by Congress of governmental immunity in case of such federal instrumentalities should be liberally construed. This policy is in line with the current disfavor of the doctrine of governmental immunity from suit, as evidenced by the increasing tendency of Congress to waive the immunity where federal governmental corporations are concerned."

It is common knowledge that the RACC was engaged in a commercial business. It loaned money to farmers upon security; it maintained a system of collections. Except that it had more capital and could carry on its business in a more liberal manner it acted exactly the same as a private corporation.

The following quotation from Gill v. Reese, 4 N. E. 2d 273, this concerning the Home Owners Loan Corporation, applies as well to the RACC:

"The business in which the defendant corporation was to be engaged, to wit, that of loaning money and refinancing mortgages on real estate security, was such as had therefore been conducted by private persons and corporations. While it is true that the act provided that the United States government should own all of the capital stock, and the fact is that all of the capital stock is owned by the United States government, yet it has long been settled that those circumstances in no way change the character of the corporation, and that it still remains in the eyes of the law a private corporation. Osborn v. Bank of U. S., 9 Wheat. (22 U. S.) 738, 807, 6 L. Ed. 204; Bank of U.S. v. Planters' Bank of Georgia, 9 Wheat. (22 U. S. 904, 6 L. Ed. 244; Huntingdon, C. & I. Turnpike Co. v. Wallace, 8 Watts (Pa) 316; Seymour v. Milford & C. Turnpike Road Co., 10 Ohio, 476; Haines v .Lone Star Shipbuilding Co., 268 Pa. 92, 110 A. 788.

Great confusion has arisen in the submission of this case to this court on the proposition whether or not the corporation itself is a public one. There can be no question but that the corporation is an instrumentality of the government, engaged in a great undertaking effecting the public. The distinction failed to be recognized is that, while the underatking itself has the characteristics of a public enterprise, yet the acts have been authorized by Congress itself to be performed by and through the arm of a private corporation, rather than by means of the exercise of power by a government officer, or by the legislative body itself. The authorities are uniform in establishing the law to be that such a corporation is a private corporation."

In Gould Coupler Co. v. U. S. Shipping Board Emergency Fleet Corp., 261 E. 716, 718, it is said:

"It is in general highly desirable that, in entering upon industrial and commercial ventures, the government agencies used should, whenever it can fairly be drawn from the statutes, be subject to the same liabilities

and to the same tribunals as other persons or corporations similarly employed."

That seems to be the principle followed generally in recent decisions of the Supreme Court of the United States.

Because of the emergencies existing, and especially during the war, the government found it necessary to enter into many lines of business, For that generally corporations such as the RACC were established by the Congress. The conclusion seems to be that by so doing much of the red tape and difficulties in connection with direct governmental activities could be avoided. The intent of Congress seems to have been to secure the conveniences of carrying on business activities through these corporations which were enjoyed by private corporations. It would seem to follow that these corporations should be subject to the same limitations as private corporations and the holdings of the courts seem to largely sustain that.

With regard to the RACC the Court, in Keifer & Keifer v. Reconstruction Finance Corp., supra, says this:

"To give Regional an immunity denied to more than two score corporations, each designed for a purpose of government not relevantly different from that which occasioned the creation of Regional, is to impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none. A fair judgment of the statute in its entire setting relieves us from making such an imputation of caprice."

In United States v. Brown, 41 Fed. Supp. 838, the Federal District Court of S. D. Florida held that "The Regional agricultural credit corporations are purely 'commercial corporations' exercising no sovereign function." And it says:

"The mere fact that the United States owns all the capital stock of these corporations is not alone sufficient to endow them with sovereign immunity nor do they acquire such immunity merely because they are the medium through which the Government carries out certain proprietary activities. Note, 83 L. Ed. 709. et seq."

and, further:

"When a corporation is created for commercial as distinguished from Governmental purposes, it is ordinarily implied in the absence of statutory provisions to the contrary, that such corporation shall have all the requisities and responsibilities of corporate existence, even though the United States owns all the stock. Such a corporation is an entity separate from the Unted States. United States v. Strang, 254 U. S. 491, 41 S. Ct. 165, 65 L. Ed. 368."

This was a suit to determine whether the RACC was immune from taxation on real property and the court concludes:

"The statute being silent, the same reasons which deny Regional's immunity from suit, impel the same conclusion with respect to taxation of its real property. Both are sovereign immunities of like quality. No doubt Congress might grant one and withhold the other. But no evidence of such Congressional intent is to be found in the controlling statute. It follows that these lands were subject to taxation for the years 1939 and 1940."

In the case of the United States v. Guaranty Trust Company of New York, 280 U. S. Rep. 478 the question was whether notes given by the Minneapolis and St. Louis Railroad to the Government under title II of Transportation Act of 1920 were entitled to preference and priority over

claims of all creditors under section 3466 of Revised Statutes USC Tit. 31, section 191, in the Bankruptcy Courts. The loans represented by the notes were made to the railway company to enable it to meet its fixed charges and operating expenses, its maturing indebtedness, provides itself with equipment or other additions and betterments, all were made only on security and on reasonable assurance of the applicant's ability to repay. The court says:

"These appropriations were made in order to meet a pressing need. At the time of the passage of Transportation Act, 1920, most of the railroads of the United States lacked funds for necessary improvements, equipment, and expansion of facilities. Some of the carriers needed funds, also to meet maturing obligations. The credit of many carriers was seriously impaired. There was a general reluctance among investors to purchase new railroad securities even of the strongest railroads. Congress deemed it important to preserve for the nation substantially the whole existing transportation system. Compare New England Divisions Case, 261 U. S. 184, 190. In order to accomplish this, it was thought necessary that the United States should, to a certain extent, finance the carriers until it would become possible to restore their credit, by increase of rates or otherwise. The provisions of Title II of Transportation Act, 1920, were framed to that end. Through them, the financial aid which had been given during Federal control was to be extended for a further period.

To have given priority to debts due the United States pursuant to Title II, would have defeated the purpose of Congress. It not only would have prevented the restablishment of railroad credit among bankers and investors, but it would even have seriously impaired the market value of outstanding railroad securities. It would have deprived the carriers of the credit commonly enjoyed from supplymen and others; would have seriously embarrassed the carriers in their daily operations; and would have made necessary a great enlargement of their working capital. The provision for loans under Sec. 210 would have been frustrated. For, carriers could ill afford voluntarily to contract new debts thereunder which would displace, pro tanto, their existing bonded indebtedness. The entire spirit of the Act makes clear the purpose that the rule leading to such consequences should not be applied.

Moreover, Congress evidenced unmistakably its purpose to rely, for obtaining payment of the Government's advances, upon means other than the priority provided for by sec. 3466. Under all of the sections, the giving of adequate security was either required or left to the discretion of the President. Under sec. 210 no advance could be made, unless the Interstate Commerce Commission was satisfied that the earning power of the carrier and the security given furnished reasonable assurance that the loan would be repaid and all obligations in connection therewith would be performed. The interest rate required is much greater than that which ordinarily accompanies even a business loan carrying such assurance of repayment as would have resulted from an application of the priority rule. Thus, both the general purposes of Title II and its specific provisions make it clear that Congress intended to exclude the indebtedness so arising from the scope of Sec. 3466 of the Revised Statutes, just as under the Federal Control Act it had excluded therefrom claims incident to current operation of the railroads. Mellon v. Michigan Trust Co., 271 U. S. 236, 240."

Thus it appears that the purposes for which the loans to the railroad were made were identical to the purposes for which the barnyard loans were made. At the time that Congress passed the act providing for the organization of the Regional Agricultural Corporations the farmers were in sore need of further credit. The banks could not extend it and, in fact, would have had to foreclose on the loans they already had. That

would, in many cases, have brought an end to such individual agricultural operations. The continuation of agriculture was deemed essential to the welfare of the nation. To maintain its credit and the financial structure this law was passed and the RACC organized. It went into the field as an ordinary business corporation. It charged at least the going rate of interest, in this case 6½ percent. It took the security it deemed adequate. It made collections on its loans in the ordinary manner. When the Regional Agricultural Corporations were liquidated they were found to have made a profit. The plaintiff, the records will probably show, made the biggest profit of them all.

On this case of United States of America v. Guaranty Trust Co., of New York, the Supreme Court of South Dakota largely based its decision in the case of In Re Buttke's Estate. United States Department of Agriculture, Emergency Crop and Feed Loans, v. Remund. (S. D.) 23 N. W. 2d, 281. That was based on emergency feed and crop loans made by the Governor of the Farm Credit Administration to Wilhelm Buttke. After his death claims were filed and a preference claimed under section 3466 of the Revised Statutes. The probate court disallowed the claim as not being entitled to preference under the state law. In sustaining that holding the Supreme Court of South Dakota, after quoting from the United States of America v. Guaranty Trust Co., supra, said:

"The facts in the foregoing decision are practically an exact parallel with the case we have under consideration. In one case the Government loaned money direct to the needy railroads to assist and sustain the transportation system, and in our case the money was loaned to needy farmers with the thought of assisting and sustaining agriculture which was in distress. The reasons given why the United States should not claim priority in this case are equally pertinent in our case under consideration, as knowledge of priority of Government claims certainly would have been a handicap to a farmer in using his credit with local bankers and investers. We consider this decision controlling in this case. Without discussion of them the following supporting decisions are cited: Keifer & Keifer, a Co-partnership, v. Reconstruction Finance Corporation and Regional Agricultural Credit Corporation of Sioux City, Iowa, 306 U. S. 381, 59 S. Ct. 516, 83 L. Ed. 784; United States v. Strang; 254 U. S. 491,41 S. Ct. 165, 65 L. Ed. 368; Eichberg v. United States Shipping Board Emergency Fleet Corporation, 51 App. D. C. 44, 273 F. 886; Luxton v. North River Bridge Company, 153 U. S. 525, 14 S. Ct. 891, 38 L. Ed. 808; McCulloch v. State of Maryland, et al., 4 Wheat., 316, 4 L. Ed. 579; State of Ohio v. Helvering, 292 U .S. 360, 54 S. Ct. 725, 78 L. Ed. 1307; Guarantee Title & Trust Co., v. Title Guaranty & Surety Co., 224 U. S. 152, 32 S. Ct. 457, 56 L. Ed. 706; Lewis v. United States, 92 U. S. 618, 23 L. Ed. 513; United States v. State Bank, 6 Pet. 29, 8 L. Ed. 308; United States v. Mason, 218 U. S. 517, 31 S. Ct. 28, 54 L. Ed. 1133; La Roque v. United States, 239 U. S. 62, 36 S. Ct. 22, 60 L. Ed. 147; Bank of United State v. Planters' Bank of Georgia, 9 Wheat., 904 6 L. Ed. 244; Cook County National Bank v. United States, 107 U. S., 445, 2 S. Ct. 561, 27 L. Ed. 537; State of Georgia v. City of Chattanooga, 264 U. S. 472, 44 S. Ct. 369, 68 L. Ed. 796."

The United States Supreme Court in United States Department of Agriculture Emergency Crop & Feeding Loans v. Remund, 330 U. S. Rep. 539 reversed that holding. In so doing, Mr. Justice Murphy differentiates the Guaranty Trust Company case on the grounds that the Farm Credit Administration is merely an administrative unit of the United States Government and he says:

"It bears none of the features of a government corporation with a legal entity separate from that of the United States... At no time has the Farm Credit Administration been other than an unincorporated agency of the United States Government, administering and lending funds appropriated by Congress out of the United States Treasury and returning the money to the Treasury upon repayment. In short, it is an integral part of the government mechanism...

The main contention, however, is that the purpose of the statutes under which the loans were made is inconsistent with No. 3466, thereby rendering it inapplicable. The Acts of February 23, 1934, and June 19, 1934, authorize feed and crop loans to farmers in drought and storm stricken areas of the nation. It is said that the prime purpose of these Acts was to restore the credit of the farmers and that to give effect to 3466 would impair that credit. Reliance is placed upon United States v. Guaranty Trust Co., supra. This Court there held that 3466 was inapplicable to the collection of loans made by the Government to railroad carriers to rehabilitate and maintain their credit status; it was felt that to give priority under such circumstances would defeat the purpose of the legislation by impairing the credit of the railroads. See also Cook County National Bank v. United States, 107 U. S. 445.

But it is manifest that the purpose of the Acts of February 23, 1934, and June 19, 1934, was to give emergency relief to distressed farmers rather than to restore their credit status. These were but two of a series of emergency feed and crop loan statutes enacted at various times from 1921 to 1938, a period when farmers were the victims of repeated crop failures and adverse economic conditions. Their credit was often impaired, but their most urgent need was for money to purchase feed and to plant crops: without such money, distress and unemployment might have been their lot. It was to meet that urgent need that Congress passed these statutes.

More specifically, the two Acts under consideration were designed to make loans available to those farmers who were unable to secure credit from the Production Credit Associations, organized pursuant to the Farm Credit Act of 1933. It was recognized that many farmers could not qualify for loans from those Associations. Some method of lending aid and assistance to those who had no credit and no money with which to buy feed for their livestock and seeds for their crops was essential in the absence of a more direct form of Government relief."

Thus the main reasoning of this decision does not apply to the case at bar. The RACC were not organized to give relief to a distressed individual. They were organized to maintain his credit and support the financial system, then also in dire straits. They took security that was considered adequate. That shows that reliance was made on the ordinary business methods rather than on any priority rights of the government itself.

Even then Mr. Justice Douglas dissented and "would affirm the judgment on the authority of the United States v. Guaranty & Trust Co., 280 N. S. 478."

The situation in the case at bar has much more similarity to the facts in the Guaranty Trust case than it has to the Remund case..

Considering that and the facts in the case, as well as the general trend of the holdings of the courts of the land heretofore quoted, (and the court has quoted portions of the cases extensively as counsel may not have them available in their libraries.) and because it seems to be the logical interpretation of the statute when viewed in connection with all the circumstances of the time, that the RACC should be subject to all the liabilities of a private corporation, this court holds that the North

Dakota statute of limitations, section 28-0116 N. D. R. C. 1943, applies in this case and bars recovery in court on the notes sued upon.

That does not mean that defendant should not pay his just debt. The moral obligation is there still. He should not foreget that the RACC helped him out when he needed it. Now that fortune has smiled on farming and given the defendant the opportunity to recoup his fortunes it is not but fair that he should make a reasonable settlement. In that connection, however, it would hardly be fair for the RACC, or whoever now handles that paper, to charge 6½ per cent interest for all this time. Interest rates have gone down and the government has been repaid for all its advances in the RACC. To still try to collect 6½ per cent interest is just as unreasonable as it would be for the defendant to avoid his normal obligation of he has the means to take care of it. The RACC, like any other corporation, should make the best settlement it can under the circumstances.

The attorney for the defendant may draw up the necessary findings, conclusions and order for judgment in accordance herewith.

Dated April 3, 1948.

By the Court:

G. Grimson
Judge