10-25-1991

Cases, Regulations, and Statutes

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Assuming no adjustments in the denominator as noted above, the inclusion ratio would be
\[
I.R. = 1 - 0.6 = 0.4
\]
Thus, any taxable distributions or terminations from that trust would be subject to tax at a rate of —
\[
= 0.4 \times .55 = .22
\]
The GSTT would be imposed on that trust at a rate of 22 percent.

After 1992, the maximum rate of 55 percent is scheduled to drop to 50 percent. The additional 5 percent estate and gift tax surcharge for portions of estates exceeding $10 million does not apply for purposes of the generation skipping transfer tax.

**Who pays the tax.** The question of who pays the tax varies with whether a trust is involved and whether it is a direct skip, taxable termination or taxable distribution. 

- For a direct skip not from a trust, the transferor pays the tax.
- For a direct skip from a trust, the tax is paid by the trustee.
- For a taxable termination, the tax is paid by the trustee.
- For a taxable distribution, the tax is paid by the transferee.

Regardless of liability for payment, the GSTT is a charge on the property constituting the generation skipping transfer unless the dispositive instrument directs otherwise by specific reference to the generation skipping transfer tax.

**FOOTNOTES**

2 I.R.C. § 2631.
4 I.R.C. § 2642.
5 Id.
11 See note 8 supra.
12 I.R.C. § 2001(c)(1).
13 I.R.C. § 2001(c)(3).
14 I.R.C. § 2603.
15 I.R.C. § 2603(a)(3).
16 I.R.C. § 2603(a)(2).
17 Id.
18 I.R.C. § 2603(a)(1).
19 I.R.C. § 2603(b).

**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr.

**BANKRUPTCY**

**GENERAL**

**EXEMPTIONS.** The debtor's interest in an ERISA qualified retirement plan was not eligible for an exemption under ERISA as a federal nonbankruptcy exemption. *In re Brown, 130 B.R. 304 (Bankr. E.D. Mo. 1991).*

The debtor claimed a homestead in a residence of which a portion of the two story garage was rented out as rooms. The court held that the debtor was eligible to claim the entire property for the homestead exemption because the rented portion was not severable under local law which zoned the property as a single family residence. *In re Makarewicz, 130 B.R. 620 (Bankr. S.D. Fla. 1991), aff'g on reh'ng, 126 B.R. 127 (Bankr. S.D. Fla. 1991).*

**CHAPTER 11**

**PLAN.** The farm debtors failed to submit a plan within the 120 days after filing bankruptcy but filed a plan prior to the creditors' filing of a liquidating plan. The Bankruptcy Court confirmed the creditors' plan and the debtors objected, arguing that their plan should have been confirmed because it was filed first. The appellate court held that the Bankruptcy Court properly considered both plans and confirmed the creditors' plan as most appropriate. *In re Tranel, 940 F.2d 1168 (8th Cir. 1991).*

**CHAPTER 12**

**ELIGIBILITY.** The debtors' pre-bankruptcy income included social security benefits in excess of 50 percent of the debtors' gross income which were excluded from gross income on the debtors' tax returns. The debtors' gross income included income from discharge of indebtedness. The court held that the social security benefits were included in the debtors' gross income for purposes of Chapter 12 eligibility, even though the benefits were not included in the debtors' taxable gross income. In addition, the court held that the taxable income from discharge of indebtedness was not included in the debtors' income for purposes of Chapter 12, even though the discharge of indebtedness produced taxable income. The court focused primarily on whether the item of income produced any actual cash income to the debtors, instead of relying on whether the income was included in gross income for federal tax purposes. Query: are social security benefits income or return of contributions
and does not discharge of indebtedness result in an economic benefit to the debtors? Neither of these issues was raised by the debtors or discussed by the court. In re Koenegstein, 130 B.R. 281 (Bankr. S.D. Ill. 1991).

FEDERAL TAXATION

AUTOMATIC STAY. After the debtors had filed their bankruptcy petition and after the IRS had received notice of the filing and had filed a claim in the case, the IRS sent a Notice of Intention to Levy to the debtors. Although the IRS acknowledged that the levy was sent in error and was a violation of the automatic stay, the IRS argued that its sovereign immunity protected it from assessment of any damages from the violation. The court held that the government had waived its immunity through 11 U.S.C. § 106(c). See also Matter of Wilwerding, infra. In re Price, 130 B.R. 259 (N.D. Ill. 1991), aff'd, 103 B.R. 989 (Bankr. N.D. Ill. 1989).

AVOIDABLE TRANSFERS. The debtor sought to recover as avoidable transfers, under Section 547(b), amounts collected by the IRS under a levy within 90 days of filing bankruptcy. The IRS argued that it was immune from such actions under sovereign immunity which had not been waived. The court held that under Hoffman v. Connecticut Income Maintenance Dept., 492 U.S. 96 (1989), the federal government had not waived sovereign immunity from suit under Section 106(c) for action under Section 547 for monetary recovery. See also In re Price, supra. Matter of Wilwerding, 130 B.R. 294 (Bankr. S.D. Iowa 1991).

CLAIMS. After the IRS failed to file a claim for taxes, the debtor filed a claim more than 30 days after the bar date. The debtor filed a claim for 1989 taxes and for 1990 estimated taxes which accrued after the bankruptcy filing. The court held that the debtor's filing was too late because Rule 3004 allows a debtor to file a claim for a creditor only within 30 days after the bar date for claims. In addition, Section 1305 allows only the creditor to file a claim for post-petition claims, such as the estimated tax claim. In re Martin, 130 B.R. 349 (Bankr. M.D. Fla. 1991).

DISCHARGE. The court held that interest and penalties accruing post-petition, pre-confirmation on pre-petition nondischARGEABLE taxes were also nondischARGEABLE in Chapter 11. In re Fox, 130 B.R. 571 (Bankr. W.D. Wash. 1991).

NET OPERATING LOSSES. As part of a reorganization, shareholders of the debtor corporation formed a successor corporation. Under the debtor's Chapter 11 plan, the successor corporation would make use of the debtor's net operating loss carrybacks and carryforwards in order to eliminate income tax for several years. After confirmation of the plan, the IRS issued proposed regulations prohibiting use of net operating losses by successor corporations as part of a scheme to avoid taxes, and the debtor sought a ruling from the court that the Chapter 11 plan was not formulated for the purpose of avoiding tax. Although the court held that the debtor could not bring a motion concerning tax avoidance under 11 U.S.C. § 1129(b), the court held that the order of confirmation included a ruling that the plan was proposed in good faith and was not forbidden by law. In addition, the court held that the IRS was prohibited from raising the issue under 11 U.S.C. § 1144 because more than 180 days had passed since confirmation of the plan. In re McLean Indus., Inc., 91-2 U.S. Tax Cas. (CCH) ¶ 50,465 (S.D. N.Y. 1991).

PRIORITY. The debtor argued that a tax liability for which a return was due more than three years before the debtor filed for bankruptcy was dischargeable. The IRS argued that the three year period was tolled during the times the debtor had filed previous bankruptcy cases during the time between the date the return was due and the filing of the current bankruptcy case. The court agreed with the IRS and held the taxes to be nondischARGEABLE because the time between the date the returns were due and the current filing for bankruptcy was less than three years after subtracting the time the debtor had pending bankruptcy cases. Matter of Ross, 130 B.R. 312 (Bankr. D. Neb. 1991).

TRUSTEE. A trustee was assigned to oversee the operation and liquidation of a debtor business. During the tenure as trustee, the business failed to pay all federal employee withholding taxes and the IRS assessed the trustee for the 100 percent penalty as a responsible person. The trustee sought clarification of duties to determine that the trustee was not responsible for payment of the taxes. The court held that the bankruptcy court had no jurisdiction over the case because the trustee was not a debtor and the issue was substantially a federal tax question. Hoffman v. U.S., 130 B.R. 526 (W.D. Wis. 1991).

CONTRACTS

BREACH OF WARRANTY. The plaintiff had entered into a bailment contract with a third party to plant and grow lima beans using seeds purchased by the third party from the defendant. However, when the third party's financial status became uncertain and before planting the seeds, the plaintiff contracted with the defendant for the defendant to purchase lima beans produced by the plaintiff which met U.S. No. 1 grade standards. The purchase agreement had a disclaimer typed at the top disclaiming any expressed or implied warranty. Because the seeds were planted late, the seeds did not produce a crop before frost and the plaintiff sued the defendant for the loss under breach of implied warranty of fitness. The court held that no breach occurred because under the contract, the defendant was the purchaser and not the seller and because the disclaimer was effective to disclaim any implied warranty of the seeds' fitness for a crop where the plaintiff was located. Clements Farms, Inc. v. Ben Fish & Son, 814 P.2d 917 (Idaho 1991).

GOOD FAITH DEALING. The defendant defaulted on a loan from the plaintiff secured with dairy cows. The defendant arranged for a third party to purchase the cows and resell the cows to the defendant and requested, under Ore. Rev. Stat. § 79.2080, the plaintiff to supply information about the loan for use in the sale. The plaintiff failed to comply with the request until one day before requiring the defendant to turnover the collateral for sale. The failure to
provide the information caused the sale of the cows to the third party to fall through. The lower appellate court upheld the trial judgment that the plaintiff breached its duty of good faith and fair dealing in failing to promptly provide the information where the information was readily available. The higher appellate court, however, reversed and remanded the case because the transaction was subject to the U.C.C. standard of subjective good faith of honesty in fact and in conduct in U.C.C. transactions. The case was remanded because an issue of fact remained as to whether the bank prevented the defendant from redeeming the cows by failing to inform the defendant of the payoff amount. U.S. Nat'l Bank v. Boge, 311 Or. 550, 814 P.2d 1082 (1991), rev'g and rem'g, 794 P.2d 801 (Or. Ct. App. 1990).

FEDERAL AGRICULTURAL PROGRAMS

BORROWER'S RIGHTS. The debtors defaulted on a loan to the defendant bank and the bank foreclosed upon the property. The bank offered the debtors the right of first refusal to repurchase the property under the Agricultural Credit Act of 1987 but the parties were unable to agree on the price. The bank then sold the property to third parties and the debtors filed an action to prevent the sale for violation of the 1987 Act. The debtors also filed a lis pendens against the property. The case was dismissed and although the debtors appealed, the debtors did not file a stay of judgment pending the appeal. The bank completed the sale to the third parties and the deed was recorded. The court held that the appeal was moot because the lis pendens, under Illinois law, was dissolved by the final judgment in the trial court. Duncan v. Farm Credit Bank of St. Louis, 940 F.2d 1099 (7th Cir. 1991).

WETLANDS. Fourteen farmers had petitioned their local watershed district for permission to drain 85 acres of wetlands but were prevented by passage of the Food Security Act of 1985. The farmers sought a determination from ASCS that the draining would meet the pre-1985 commencement exception of 16 U.S.C. § 3822(b). Although the county committee denied the exception, the state committee approved the exception and the draining project was completed. The national office, however, reviewed the project and determined that the exception did not apply but allowed the farmers some relief from the ineligibility penalties resulting from the conversion of the wetlands. The plaintiffs in this case challenged the relief provided by the national ASCS as beyond the authority of the statute. After judgment was obtained for the plaintiffs and before this appeal, the Food, Agriculture, Conservation and Trade Act of 1990 was enacted which provided relief for good faith violations of the wetlands provisions. The appellate court vacated and remanded the case and held that the FACTA 1990 provision could be retroactively applied to violations, thus permitting the relief provided by the ASCS in this case. National Wildlife Fed. v. ASCS, 941 F.2d 667 (8th Cir. 1991).

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The decedent's will established a split interest trust with the decedent's sisters and a charitable foundation as beneficiaries. Although the trust as established would not qualify for the charitable deduction under Section 2055, the trial court held that the property which was actually transferred to the foundation outside of the trust was eligible for the deduction. The appellate court reversed, holding that the estate was not eligible for the deduction because the trust did not qualify as a charitable remainder annuity trust, a charitable remainder unitrust or a pooled income fund and the charitable interest was not subject to valuation. Est. of Johnson v. U.S., 91-2 U.S. Tax Cas. (CCH) ¶ 60,084 (5th Cir. 1991), rev'g, 90-2 U.S. Tax Cas. (CCH) ¶ 60,032 (S.D. Miss. 1990).

GIFT. In 1952, the decedent agreed to allow a daughter to live on and farm land owned by the decedent. The daughter and husband paid for the operation of the farm and did not charge or pay the decedent for rent. The decedent later transferred by deed the homestead of the farm for no consideration, although the daughter granted the decedent a mortgage which was not supported by a promissory note. The court held that the transfer was a gift because the mortgage was unsupported by an enforceable promissory note and the daughter had no intention of paying the mortgage amount to the decedent. Est. of Holmes v. Comm'r, T.C. Memo. 1991-477.

The grantor transferred stock in a farm corporation in trust to members of the grantor's family. The grantor retained the power to appoint successor trustees but the other trustees had the power to determine distributions and accumulations of trust income and corpus and had broad powers to manage the trust property. Under a conservatorship of the grantor, one of the grantor's sons obtained a court order amending the trust to relinquish the grantor's power to appoint successor trustees and to receive any income or corpus from the trust. The court held that the court ordered relinquishment of the grantor's power to appoint successor trustees and the right to receive trust income caused the gift of the stock to the trust to become complete. Est. of Vak v. Comm'r, T.C. Memo. 1991-503.

The decedent transferred stock to several individuals, apparently to make use of multiple federal gift tax annual exclusions, who signed the stock certificates in blank so that the stock could be reissued to the decedent's family. The court upheld a jury verdict that the transfers were gifts to the family members subject to federal gift tax and were fraudulent attempts to evade taxes. Heyen v. U.S., 91-2 U.S. Tax Cas. (CCH) ¶ 60,085 (10th Cir. 1991), aff'd, 731 F. Supp. 1488 (D. Kan. 1990).

GROSS ESTATE. In 1952, the decedent agreed to allow a daughter to live on and farm land owned by the decedent. The daughter and husband paid for the operation of the farm and did not charge or pay the decedent for rent. The
decedent later transferred by deed the homestead of the farm for no consideration, although the daughter granted the decedent a mortgage which was not supported by a promissory note. The estate claimed that the farm was not included in the gross estate because the daughter acquired the farm by adverse possession. The court held that the farm was included in the gross estate, except as to portions transferred, because under state law, the daughter could not gain ownership of the land by adverse possession where possession was by permission of the decedent. Est. of Holmes v. Comm'r, T.C. Memo. 1991-477.

MARITAL DEDUCTION. The decedent bequeathed stock in a company in trust to the decedent's spouse with a remainder to the decedent's son. The son, however, received the voting rights to the stock with the spouse receiving the remainder interest in the voting rights. If the son was unable or unwilling to continue the day-to-day management of the company, the trustee was to sell the stock at book value to the son. The IRS ruled that the son had the right, by certifying that the son was unwilling to continue managing the company, to obtain a bargain purchase of the stock at book value. This power of the son was ruled equivalent to a power to appoint a portion of the trust property to someone other than the surviving spouse. In addition, because the future book value of the stock was not ascertainable, the surviving spouse's interest in the trust was not a right to income from a specific sum or a specific portion of the trust property. The IRS rejected the estate's argument that book value was intended to mean the book value as of the decedent's death. The IRS noted that even if date of death book value was used, the spouse's interest did not have an adequate right to income because the son controlled the voting rights of the stock which controlled the dividends. The IRS ruled that the surviving spouse's interest in the trust was not QTIP. Ltr. Rul. 9139001, April 30, 1991.

The decedent's taxable estate included property passing to the spouse under the will which was not eligible for the marital deduction and property held by the decedent and surviving spouse as tenants by the entireties which passed outside of the will and which was eligible for the marital deduction. The decedent's will stated that real property passing under the will was not to be used to pay any state or federal estate taxes; however, the residuary estate was insufficient to pay the taxes due. The estate allocated the remaining taxes against the entireties property, arguing that under Virginia law, the decedent could not encumber the entireties property without the consent of the spouse. The court initially held that federal law controlled and that the decedent's provision that taxes were not to be charged against the real property passing under the will required the remaining taxes to be charged against the property passing outside of the will, thus decreasing the property eligible for the marital deduction. On rehearing, the court vacated the earlier decision and held that state law controlled and that the decedent did not have the power under state law to subject the entireties property to the estate taxes. Est. of Reno, 91-2 U.S. Tax Cas. (CCH) ¶ 60,083 (4th Cir. 1991), vac'g on reh'ing, 916 F.2d 955 (4th Cir. 1990).

SPECIAL USE VALUATION. The decedent owned wooded lands enrolled in a state contract designating the land as forest cropland, which required the decedent to remove underbrush and mature and overmature trees by 1990. The estate elected to value the wooded land under the special use valuation rules. The special use election was denied because neither the decedent nor any qualified heir planted, cultivated or harvested the trees from the property. Est. of Holmes v. Comm'r, T.C. Memo. 1991-477.

The decedent's will bequeathed so much of the decedent's estate which equalled the maximum marital deduction with the remainder to pass to the decedent's children. As a result, not all of the decedent's farm land eligible for special use valuation passed to the surviving spouse; some passed to the children. However, on the special use election return none of the children was identified as having a present interest in the specially valued land. The court held that the special use valuation was ineffective because the estate return did not substantially comply with the election requirements. Parker v. U.S., 91-2 U.S. Tax Cas. (CCH) ¶ 60,082 (E.D. Ark. 1991).

TRANSFERS WITHIN THREE YEARS OF DEATH. The decedent had established a revocable trust with income to be distributed to the decedent for life and with the decedent having the power to require distributions of trust income and principal. The remainder of the trust would pass to the decedent's spouse or family in trust. Within three years of death, the decedent instructed the trustee to make several transfers of trust property to third parties as gifts. The IRS ruled that the pre-death transfers were includible in the decedent's gross estate. Ltr. Rul. 9139002, June 14, 1991.

TRUST DISTRIBUTIONS. Under the terms of the trust, the beneficiary was to receive net income at least annually, one-half of the trust corpus at age 37 and the remainder of trust corpus at age 45. Because the whereabouts of the beneficiary was unknown, the co-trustee made the net income payments to a separate bank account for the beneficiary and distributed income and corpus to that account. The IRS ruled that in the taxable years that only net income was distributed, the trust was a simple trust allowed a deduction from taxable income for the distributions. In the taxable years trust corpus was distributed, the trust was a complex trust and was allowed deductions under Section 661(a). The IRS ruled that the co-trustee was not required to file an income tax return for income distributed to or earned by the separate bank account. Ltr. Rul. 9138034, June 30, 1991.

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTION. The taxpayers granted to a nonprofit organization a scenic easement over a portion of their property which restricted the development of the property. The IRS denied the charitable deduction for the value of the easement, arguing that the taxpayers lacked donative intent in that the easement was granted in order to enhance the value of their property and to obtain the tax
deduction and the transfer was without an exclusive conservation purpose. The court held that the transfer was an exclusive conservation purpose because the easement was granted to an organization devoted to conserving the property. The court also found that the transfers had the requisite donative intent in that the granting of the easement reduced the fair market value of the property. *McLennan v. U.S.*, 91-2 U.S. Tax Cas. (CCH) ¶ 50,447 (Cis. Ct. 1991).

COOPERATIVES. An exempt agricultural cooperative sold its assets and had proceeds and assets remaining after payment of creditors. The cooperative proposed to allocate the proceeds to members of the cooperative during the years the cooperative was in business back to a point before which the cooperative's records were no longer complete. During this period the cooperative did no business with or for nonmembers. The IRS held that the allocations would be deductible under I.R.C. § 1382(c)(2)(A) and would not affect the cooperative's tax exempt status. *Dundee Citrus Growers Ass'n v. Comm',r*, T.C. Memo. 1991-487.

ESOP'S. The taxpayers formed a corporation to operate a farm on which oil was discovered. The corporation established an ESOP with one of the taxpayers as trustee. The ESOP purchased some of the land from the taxpayers and leased it to the corporation. The court held that the sale of the land to the ESOP was a prohibited transaction causing excise tax to be assessed against the taxpayers under I.R.C. § 4975(a). *Zabolotny v. Comm' r*, T.C. Memo. 1991-483.

INVESTMENT TAX CREDIT. The taxpayers were denied an investment tax credit for lighting systems leased to governmental units. *Musco Sports Lighting, Inc. v. Comm' r*, 91-2 U.S. Tax Cas. (CCH) (8th Cir. 1991), aff'd, T.C. Memo. 1990-331.

Taxpayers, sole shareholders of an S corporation, were not allowed to claim investment tax credit for equipment purchased by the corporation because the taxpayers were not at risk for loans of the corporation guaranteed by the taxpayers. Under state law, the taxpayers had a claim against the corporation if they would be required to pay on the guarantees. *Goatcher v. U.S.*, 91-2 U.S. Tax Cas. (CCH) ¶ 50,450 (10th Cir. 1991).

PARTNERSHIPS


RETIREMENT PLANS. For plans beginning in September 1991 the weighted average is 8.54 with the permissible range of 7.68 to 9.39 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). *Notice 91-30, I.R.B. 1991-39, 6.*

The taxpayer elected to receive payments from a qualified retirement trust in an annuity payable over several years. The Court held that the taxpayer was not entitled to use the 10-year averaging method of declaring income from the trust but must declare a portion of each annual payment as income and a portion as return of contribution. *Twombly v. Comm',r*, T.C. Memo. 1991-416.

RESPONSIBLE PERSON. The taxpayer, husband and wife, incorporated a cement contracting business in which the taxpayers served as officers and sole owners (although the corporation did not issue stock). Both taxpayers had access to the corporation bank account and knowledge that federal employment taxes were not being paid. The taxpayers argued that they were not liable for the 100 percent responsible person penalty because their payment of the employment taxes was prevented by restrictions on amounts they received from the general contractors which did not provide funds for payment of the employment taxes. The court held that the restrictions were not sufficient excuse where the corporation made payments to other creditors before paying the employment taxes. The court also held that the 100 percent penalty was not dischargeable in bankruptcy. *In re Fernandez*, 91-2 U.S. Tax Cas. (CCH) ¶ 50,476 (W.D. Mich. 1991).

The debtor was a manager for a short time of a restaurant owned and operated by a corporation. Although the debtor was an officer and shareholder in a corporation which had shareholders and officers in the restaurant-owning corporation, the debtor was not a shareholder or officer in the restaurant-owning corporation. The debtor did not have access to the restaurant's bank accounts and had authority over hiring only restaurant waitresses. The court held that the debtor was not a responsible person liable for the 100 percent penalty for failure of the restaurant to pay withholding taxes. *In re Brown*, 130 B.R. 456 (Bankr. W.D. Pa. 1991).

The taxpayer was president and one-third owner of a corporation. The corporation obtained a line of credit with a bank which was used to pay creditors, employees and employment withholding taxes. Although the taxpayer admitted being a responsible person for purposes of the 100 percent penalty for failure of the corporation to pay employment taxes, the taxpayer argued that the failure was not willful because the bank refused to allow the corporation to withdraw funds from the line of credit to pay the employment taxes and the corporation had no other source of funds to pay the taxes. The court held that the taxpayer had willfully failed to pay the taxes because the taxpayer had acquiesced in the payment of other creditors while knowing that employment taxes were not being paid. *McDonald v. U.S.*, 91-2 U.S. Tax Cas. (CCH) ¶ 50,472 (11th Cir. 1991).
The defendant agreed to this and the third party obtained party and planting the original set aside acres with beans. Another tenant of the defendant talked to the defendant about program which were planted in a cover crop of oats.

The defendant and had enrolled 15 acres in a federal set aside. The court held that the defendant's knowledge and acquiescence in the moving of the set aside acres was sufficient to prove trespass against the defendant. Freese v. Buoy, 576 N.E.2d 1176 (Ill. Ct. App. 1991).

MINERAL RIGHTS

SUBSIDENCE. The plaintiff suffered damage to crop and pasture land from subsidence of mine shafts dug by the defendant under the plaintiff's property. The mines were dug under mineral rights granted by the plaintiff's successor in title. The mineral deed had a clause relieving the mineral estate owner of any duty to provide subjacent support and any liability for subsidence. The plaintiff argued that the Surface Coal Mining Land Conservation and Reclamation Act, Ill. Rev. Stat. ch. 96 1/2, ¶ 7901.01 et seq., made such waiver of liability for subsidence against public policy. The court held that the SCMLRA recognized the existence of and permitted subsidence. The court also upheld the validity of the waiver of the duty of subjacent support. Rocking M Ranch, Inc. v. Sahara Coal Co., 576 N.E.2d 1120 (Ill. Ct. App. 1991).

MORTGAGES

RECEIVER. The plaintiff filed a foreclosure action against the defendant to foreclose three mortgages against farmland owned by the defendant. The defendant leased all but 62 acres of the land. The plaintiff filed a motion for appointment of a receiver. The court held that under Ind. Code § 34-1-12-1(4), a receiver was required because the defendant was 50 percent or more at fault, the plaintiff's father engaged the auger. The plaintiff sued the defendant for trespass and breach of the lease. The plaintiff still received the same federal program payments without the plaintiff's permission or knowledge. The plaintiff accused the defendant for trespass and breach of the lease. The court held that the defendant's knowledge and acquiescence in the moving of the set aside acres was sufficient to prove trespass against the defendant. Freese v. Buoy, 576 N.E.2d 1176 (Ill. Ct. App. 1991).

PRODUCTS LIABILITY

COMBINES. The plaintiff was injured while attempting to clean an unloading auger on a combine when the plaintiff's father engaged the auger. The plaintiff sued the combine manufacturer but did not sue the father. The jury returned a verdict for the plaintiff but found the manufacturer only 50 percent at fault, the father 30 percent at fault and the plaintiff 20 percent at fault. The trial court then awarded 50 percent of the damages to the plaintiff to the extent of the manufacturer's fault. The plaintiff appealed, arguing that the manufacturer should also have been assessed for the father's fault under joint and several liability of Iowa Code § 668.4. The appellate court held that because Iowa Code § 668.4 refers only to situations where the defendant is less than 50 percent at fault, the statute could not be read to require joint and several liability where the defendant is 50 percent or more at fault. Christopherson v. Deere & Co., 941 F.2d 692 (8th Cir. 1991).
SECURED TRANSACTIONS

PRIORITY. In June 1983, the debtors signed a security agreement granting the bank a security interest in crops growing or to be grown on specified land. The security interest was perfected. The debtor signed two promissory notes in August 1985 which were due in February 1986. The debtors received supplies used to produce the 1986 crop from a supplier and granted the supplier a security interest in the 1986 crop which was perfected. The 1986 crops were planted from April to May 1986. The court held that the term "due" in U.C.C. § 9-312(2) meant "overdue" and that because the bank's promissory notes were not overdue more than six months prior to the time the collateral crops became growing crops, the bank's security interest was superior to the supplier's security interest. First Nat'l Bank of Joliet v. Associated Stockdale Cos., 577 N.E.2d 524 (Ill. Ct. App. 1991).

REPLEVIN. The defendant was a co-owner of farm equipment and machinery in the possession of the other co-owners. The other co-owners granted a security interest in the property to the plaintiff bank which filed an action in replevin to recover the property after the other co-owners defaulted on some loans. Under a court order the property was seized and sold at auction and the defendant sought actual and punitive damages for the sale of the property. The court held that the jury award of punitive damages was improper where the replevin and sale of the property was made pursuant to law and a court order. The court noted that the other co-owners had sufficient interest in the property to grant a security interest and this security interest gave the plaintiff the right to replevin and sell the property, subject to payment to the defendant of the defendant's interest in the property. Community Bank of Chillicothe v. Campbell, 813 S.W.2d 40 (Mo. Ct. App. 1991).

CITATION UPDATES