

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

**CENTRAL FARMERS COOPERATIVE,
NONSTOCK,**

Plaintiff,

vs.

BOB McCART,

Defendant.

Case No. CI99-123

**NUNC PRO TUNC
ORDER ON MOTION
TO IMPRESS LIEN**

DATE OF HEARING: September 16, 1999.

DATE OF DECISION: September 21, 1999.

APPEARANCES:

For plaintiff:	Larry D. Bird.
For defendant:	no appearance.
For claimant United Nebraska Bank—O’Neill:	James D. Gotschall.
For Tom Earley:	Tom Earley pro se.

SUBJECT OF ORDER: plaintiff’s motion to impress lien.

FINDINGS: The court finds and concludes that:

1. Defendant Bob McCart was previously married to Terri McCart. Their marriage was dissolved on January 28, 1999. The decree changed her name to Terri Monahan. The decree awarded certain real estate to Terri Monahan as her sole and separate property. The decree ordered Terri Monahan to pay a property settlement monetary judgment to the court clerk for disbursement to Robert McCart, the defendant in this case. By operation of law, that judgment became a lien upon the real estate awarded to Terri Monahan.

2. On August 11, 1999, the defendant, Robert McCart, assigned ownership of the judgment to the claimant United Nebraska Bank – O’Neill. The assignment appears absolute in form, and there is no evidence that it was assigned solely as security for some indebtedness. As of August 11, 1999, by virtue of the assignment, the claimant became the judgment creditor upon the property settlement judgment against Terri Monahan. The defendant’s judgment lien against the real estate transferred by operation of law to the claimant upon assignment of the judgment.

3. After the entry of the decree, the defendant had no ownership interest in the real estate. Terri Monahan subsequently sold the real estate. The defendant's judgment lien remained a lien upon the title to the real estate to secure payment of the property settlement monetary judgment. In order for the buyers to acquire marketable title to the real estate, the judgment lien needed to be satisfied.

4. The plaintiff's judgment was transcribed to this court on August 27, 1999. It would attach by operation of law to any real estate of the defendant. The defendant then had no ownership interest in the real estate sold by Terri McCart. Prior to that date, the defendant had assigned his judgment lien to the claimant by the assignment absolute in form. Even if the transcription of the plaintiff's judgment could have attached to the defendant's judgment lien against the real estate of Terri Monahan, by the time of such transcription the judgment and its corresponding lien had been transferred to the claimant.

5. The plaintiff bases its motion upon two statutes. Under § 25-1569, the plaintiff may enforce its judgment against another where "that person or corporation has property of such judgment debtor, or is indebted to him" The proceeds of the sale of the real estate in the hands of Tom Earley constituted property of Terri Monahan, not the defendant. As of the time of entry of this court's order to Tom Earley on August 30 (or even as of the date of transcription of judgment on August 27), the defendant no longer had any ownership interest in the property settlement judgment. As of that date, neither Terri Monahan nor her agent, Tom Earley, was indebted to defendant Bob McCart.

6. The plaintiff alternatively bases its motion on § 25-1573, which allows certain relief as to "property of the judgment debtor" The money in the hands of Tom Earley did not, at least after August 11, 1999, and certainly at all times from and after August 27, 1999, constitute property of defendant Bob McCart.

7. From and after August 27, 1999, the defendant Bob McCart had no ownership interest, legal or equitable, in the real estate or the proceeds of sale of such real estate in the hands of Tom Earley.

8. The clerk of the court should be ordered to apply the proceeds in satisfaction of the judgment lien of the United Nebraska Bank – O'Neill, as assignee of the judgment in favor of Robert McCart against Terri Monahan. The plaintiff's motion to impress a lien should be denied.

ORDER: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The plaintiff's motion to impress lien is denied.

2. The Clerk of the District Court of Holt County, Nebraska, is directed to release the sum of \$15,000.00 deposited with the clerk by Tom Earley, and to apply the same in satisfaction of the claimant's judgment in Case No. CI98-52. In accordance therewith, the funds shall be disbursed to the United Nebraska Bank – O'Neill.

3. This order nunc pro tunc is entered to correct a scrivener's error in the first paragraph of the findings section.

Entered: September 21, 1999.

If checked, the Court Clerk shall:

: Mail a copy of this order to all counsel of record and to any pro se parties.

Done on _____, 19__ by _____.

: Note the decision on the trial docket as: 9/21/99 Signed "Nunc Pro Tunc Order on Motion to Impress Lien" entered.

Done on _____, 19__ by _____.

Mailed to:

BY THE COURT:

William B. Cassel, District Judge