

MEYER v. MCKENZIE.

4-3446

Opinion delivered April 16, 1934.

1. LANDLORD AND TENANT—WAIVER OF LIEN FOR RENT.—A waiver by a landlord of a lien for supplies furnished need not be in writing.
2. LANDLORD AND TENANT—WAIVER OF LIEN—EVIDENCE.—Evidence *held* to sustain a finding that a landlord had orally waived her lien in favor of one who supplied money to the tenant to make a crop.

Appeal from Jefferson Chancery Court; *Harvey R. Lucas*, Chancellor; affirmed.

*As to whether the directors signed in their official capacity or as individuals, in which latter case they would be sureties, see *Bank of Corning v. Nimnich*, 122 Ark. 316 (Reporter).

STATEMENT BY THE COURT.

Mrs. Carrie B. Meyer, the plaintiff in this action, bought a farm consisting of about 496 acres, known as the "Collier Place," which her husband intended to cultivate for the year 1932, but it was later decided by her to rent the farm to H. A. McKenzie for that year.

Joe C. Meyer, her husband, acting as her agent, went to the Hotel Pines to make the lease. Ben J. Alheimer was at the hotel with McKenzie, seemingly in the role of adviser. After some conversation it was agreed that the rental for the year should be \$1,500. When the question of waiver was discussed and settled, the following provision was incorporated in the lease and is the only part thereof in controversy:

"It is understood that the landlord will waive her landlord's lien on the crop in favor of an amount to actually cultivate this crop, but in no case to exceed \$2,000, for the making of the crop on said place."

Appellant in accordance with the agreement signed a written waiver to the Alheimer Agricultural Credit Corporation for a sum not to exceed \$1,650. No other waiver was signed by her or her husband as her agent, and appellant insists that until part of the proceeds from the sale of the cotton was claimed by appellee for \$350 they had advanced for the making of the crop, she did not know that McKenzie had exceeded the amount authorized to be furnished to him for which the written waiver was made.

Appellees when the crop was gathered claimed they had furnished \$350 to McKenzie, the tenant, and claimed a waiver for that amount, which Ben J. Alheimer insisted they were entitled to, basing his contention on the fact that the lease provided for a waiver to the amount of \$2,000, and that, since the Alheimer Agricultural Credit Corporation had a waiver for only \$1,650, said lease authorized an additional waiver up to the amount of \$2,000.

Appellant insisted that the waiver was personal to the lessor and could only be accomplished by agreement between the lessor and the third party claiming said

waiver. Appellant in her complaint asked for possession of the cotton due her or judgment against the appellees.

The answer denied the allegations of the complaint; admitted a certain amount paid toward the rent, but denied that there was a balance due plaintiff as claimed or that she was entitled to a lien on any of the cotton produced on the place for the \$624.35 claimed, and if the cotton had been sold that plaintiff was entitled to judgment against them or any of them; alleged that plaintiff waived the landlord's lien in the lease for a certain amount and that it was necessary to have this amount to gather the crop and same was furnished by the appellees.

The testimony showed that B. J. Altheimer indorsed the account. That the Altheimer Agricultural Credit Corporation furnished \$1,650 to make the crop, and that an additional \$350 was furnished by Altheimer, Bowen & Clary for the same purpose.

The chancellor, after hearing the testimony, found that there was a valid waiver by the landlord of an amount for furnishing in the sum of \$2,000, and that plaintiff was estopped by her conduct from claiming any sum used in making the crop up to \$2,000, and rendered judgment in favor of appellant in the sum of \$108.37 and costs, and the appeal comes from this decree.

Reinberger & Reinberger and *Arnold Fink*, for appellant.

Ben J. Altheimer and *Rowell & Rowell*, for appellees.

KIRBY, J., (after stating the facts). It was not necessary that there should be a waiver by the landlord in writing of his lien for supplies furnished. *Griggs v. Horton*, 84 Ark. 623, 104 S. W. 930; 36 C. J., p. 521; *Wilson v. Citizen's Bank*, 170 Ark. 1194; 282 S. W. 689.

B. J. Altheimer and others testified to the effect that Meyer, the agent of appellant, orally agreed with him that he would waive the landlord's lien up to \$2,000, if they would help his tenant to get merchandise and supplies for the purpose of making and gathering the crop. Altheimer also testified that he had to indorse the account with the Altheimer Agricultural Credit Corpora-

tion as they could not get the money without the indorsement, and that he furnished the remaining \$350 himself.

It is true that Meyer, the agent of appellant who executed the lease, denied making the oral agreement for the waiver of the landlord's lien, but his testimony cannot be said to have been uncontradicted; and McKenzie corroborated the testimony of B. J. Altheimer.

There is no doubt about the supplies having been furnished in the amount as stated, nor that the credit corporation authorized the furnishing of the additional \$350 by appellees.

On the whole case the testimony is sufficient to support the chancellor's findings that there was an oral waiver of the landlord's lien for said amount and that the credit company had the right to do the furnishing up to the amount specified in the lease, \$2,000, and upon its consent, or rather arranging for the loan of the balance of the amount necessary for making the crop, it cannot be said that the amount of this account, \$350, furnished by Altheimer, Bowen & Clary was furnished only upon an open guaranty.

A careful examination of the whole record does not disclose the chancellor's findings contrary to the preponderance of the evidence, and the decree will not be disturbed here. Affirmed.
