

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1365**

AgCountry Farm Credit Services, PCA,
Appellant,

vs.

Tri-County Livestock Exchange, Inc.,
Respondent.

**Filed April 24, 2023
Reversed and remanded
Wheelock, Judge**

Todd County District Court
File No. 77-CV-20-321

Drew J. Hushka, Vogel Law Firm, Fargo, North Dakota (for appellant)

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Todd R. McWha (pro hac vice), Waite & McWha, North Platte, Nebraska (for respondent)

Considered and decided by Ross, Presiding Judge; Gaïtas, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant secured creditor challenges the district court's order granting respondent's motion for summary judgment based on the district court's determination that appellant's settlement with its debtor of an adversary action in bankruptcy court extinguished appellant's third-party conversion claim against respondent. Because

appellant's agreement dismissing its adversary action against the debtor and waiving its security interest against only the debtor did not settle the underlying debt and did not extinguish its claims against respondent, we reverse and remand for further proceedings consistent with this opinion.

FACTS

Appellant AgCountry Farm Credit Services PCA (AgCountry) made a series of loans to cattle farmers Shawn and Emily Becker between 2009 and 2017. The Beckers granted security interests to AgCountry in personal property they owned, including livestock, as collateral for the loans. AgCountry perfected its security interest in the Beckers' livestock by filing Uniform Commercial Code (UCC)¹ financing statements with the secretary of state.

The Beckers defaulted on two of their AgCountry loans, and in December 2019, the district court filed an order for judgment against the Beckers in favor of AgCountry for the amount they owed on the loans, totaling \$691,416.25. The order required the Beckers to deliver the collateral, including the livestock, to AgCountry. The Beckers then filed for chapter 7 bankruptcy in federal bankruptcy court and listed AgCountry's judgment against them as a claim in their bankruptcy schedule.

In February 2020, AgCountry sued respondent Tri-County Livestock Exchange Inc. (Tri-County) in district court, alleging that the Beckers sold cattle in 2015 and 2017 that constituted collateral for the defaulted loans to Tri-County without remitting payment to

¹ Minnesota has adopted the UCC. *See* Minn. Stat. §§ 336.1-101 to .10-105 (2022).

AgCountry. AgCountry claimed that Tri-County's purchase of the Beckers' cattle subject to its security interest constituted conversion of AgCountry's collateral. Tri-County denied the allegations.

AgCountry also filed a complaint commencing an adversary action in the Beckers' bankruptcy proceeding, requesting that the bankruptcy court determine the dischargeability of the Beckers' judgment obligation on the defaulted loans. The complaint (1) alleged that the Beckers' obligations to AgCountry included the principal and interest for the 2015 and 2017 loans, (2) listed the security interests in personal property that the Beckers granted to AgCountry as collateral for the loans, and (3) alleged that the Beckers defaulted on the loans and with willful and malicious intent converted some of the collateral property by selling it and failing to remit the proceeds to AgCountry. AgCountry asked the bankruptcy court to enter judgment determining that the Beckers' obligations to AgCountry are nondischargeable debts in the chapter 7 proceeding or any future proceeding.

AgCountry reached a stipulated agreement with the Beckers that settled the adversary action in the bankruptcy proceeding (agreement). Under the terms of the agreement, the Beckers were to pay AgCountry \$50,000 as consideration for AgCountry's dismissing the adversary action with prejudice and "releas[ing] its UCC filings² other than to the extent necessary to support any third-party conversion claims initiated by [AgCountry] to recover on the pre-petition obligations owed to it by [the Beckers]."

² The parties agree that the "UCC filings" to which the agreement refers are the filed financing statements required for AgCountry to maintain a perfected security interest in the Beckers' personal property, including the livestock. *See* Minn. Stat. § 336.9-310.

After the bankruptcy court approved the agreement, Tri-County moved the district court for summary judgment in AgCountry's suit against it, arguing that AgCountry's settlement with the Beckers resulted in the release of the security interest, and therefore, AgCountry's conversion claim against Tri-County fails as a matter of law. AgCountry opposed the motion. The district court granted Tri-County's motion for summary judgment.

AgCountry appeals.

DECISION

Summary judgment is appropriate when “the movant shows there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. “We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted).

In granting Tri-County's motion for summary judgment, the district court reasoned “that the bankruptcy settlement between the Beckers and [AgCountry] effectively extinguishe[d] any third-party liability [Tri-County] might have had to [AgCountry] for conversion.” The district court further determined that—notwithstanding the terms of the agreement preserving third-party conversion claims—AgCountry's third-party conversion claims against Tri-County were “completely dependent” on the existence of a valid claim

against the Beckers, and the effect of the agreement was that AgCountry's valid claim had been extinguished.

AgCountry and Tri-County do not dispute the relevant facts. Rather, AgCountry argues that the district court misapplied the law in determining that the settlement between AgCountry and the Beckers in the adversary proceeding extinguished AgCountry's third-party conversion claim against Tri-County. First, AgCountry argues the agreement settled only the dischargeability claim regarding the Beckers' debt to AgCountry rather than settling the debt itself, and therefore any third-party liability of Tri-County to AgCountry is unaffected. Second, it argues the language of the agreement preserved AgCountry's enforceable security interest in the proceeds of the cattle against Tri-County notwithstanding that it released the Beckers from personal liability for any claim against the security interest. For those reasons, AgCountry argues, the district court erred in granting summary judgment in favor of Tri-County. We address each argument in turn.

A. The settlement of AgCountry's adversary action in bankruptcy against the Beckers did not extinguish Tri-County's third-party liability for conversion of collateral because it was not a settlement of the underlying debt.

Article 9 of the UCC governs secured transactions. Minn. Stat. §§ 336.9-101 to -809; *Farmers State Bank of Delavan v. Easton Farmers Elevator*, 457 N.W.2d 763, 765 (Minn. App. 1990), *rev. denied* (Minn. Sept. 20, 1990). A security interest continues in collateral after sale and attaches to any identifiable proceeds of that collateral. Minn. Stat. § 336.9-315(a). "When a debtor makes an unauthorized disposition of collateral, the security interest continues in the collateral in the hands of the purchaser or other transferee." *Farmers State Bank of Delavan*, 457 N.W.2d at 766. "Because the transferee

takes subject to the security interest, the secured party may repossess the collateral or maintain an action for conversion.” *Id.* However, a security interest cannot exist independently of the obligation it secures. *See, e.g., In re Negus-Sons, Inc.*, 460 B.R. 754, 758 (B.A.P. 8th Cir. 2011), *aff’d*, 701 F.3d 534 (8th Cir. 2012).

The agreement specifies that its purpose is to “resolve all claims in the . . . adversary action” of AgCountry against the Beckers. Therefore, the substance of the adversary action is critical to the effect of the agreement. And the complaint AgCountry filed in the adversary proceeding asked the bankruptcy court to establish only that the Beckers’ debt to AgCountry is nondischargeable under 11 U.S.C. § 523(a)(2), (a)(6) (2018).³

AgCountry’s complaint in the adversary proceeding alleged that the Beckers willfully and maliciously converted the collateral and asked for an entry of judgment determining that the Beckers’ debt to AgCountry is nondischargeable pursuant to section 523(a)(2) and (a)(6). AgCountry then agreed to dismiss the adversary action and release the security interest in the collateral only as to the Beckers. The agreement provides that for consideration in the form of a \$50,000 payment to AgCountry, AgCountry will (1) dismiss “the above-entitled adversary proceeding” with prejudice and (2) “release its UCC filings, other than to the extent necessary to support any third-party conversion claims initiated by [AgCountry] to recover on the pre-petition obligations owed to it by [the Beckers].” The agreement does not, however, settle the Beckers’ debt to AgCountry or

³ Pursuant to section 523(a)(2)(A) and (a)(6), a discharge in bankruptcy does not discharge an individual debtor from debt obtained by false pretenses, false representation, or actual fraud, or for willful and malicious injury by the debtor to another entity or to the property of another entity.

release the Beckers from all claims or liabilities—it merely functions to dismiss the claim in the Beckers’ bankruptcy proceeding that the debt was nondischargeable.

In determining that the agreement effectively extinguished any third-party claims AgCountry may assert, the district court looked to the reasoning from a nonprecedential opinion⁴—*Midwest Agriculture Warehouse Co. v. Farmers & Merchants State Bank*, No. C9-98-1179, 1999 WL 31167 (Minn. App. Jan. 26, 1999), *rev. denied* (Minn. Apr. 20, 1999). *Midwest Agriculture Warehouse* cites *Farmers State Bank of Delavan* for the premise that a settlement between a secured party and a debtor-farmer operates to discharge any secondary liability of the buyers of farm products. *Midwest Agriculture Warehouse*, 1999 WL 31167, at *2 (citing *Farmers State Bank of Delavan*, 457 N.W.2d at 766).

The facts in *Midwest Agriculture Warehouse* differ from those here, however. In *Midwest Agriculture Warehouse*, the secured creditor initiated an action against third parties for conversion after the debtor-farmers sold crops to the third parties that were collateral against the creditor’s loan. *Id.* at *1. The debtor-farmers filed for bankruptcy, and the secured creditor filed a complaint in the bankruptcy action, which they then settled through an agreement that

release[d] and forever discharge[d debtor-farmers] and their employees, agents, consultants, advisors, representatives, heirs, successors and assigns from any and all claims, demands, actions, proceedings, orders, obligations, contracts, agreements, debts and liabilities whatsoever, whether known or unknown, suspected or unsuspected, both at law and in equity, which . . . [secured creditor] now has, has ever had, or

⁴ Nonprecedential opinions are not binding authority, and we consider them only for their persuasive value. See Minn. R. Civ. App. P. 136.01, subd. 1(c); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993).

may later have against [debtor-farmers] on account of or arising out of any matter, cause or event occurring at the time of or prior to the signing of this release.

Id.

A settlement of the debt between the secured party and the debtor “operates to discharge any secondary liability” of the buyer of secured collateral. *Farmers State Bank of Delavan*, 45 N.W.2d at 766 (citing *Austin Farm Ctr., Inc. v. Austin Grain Co.*, 418 N.W.2d 181, 186 (Minn. App. 1988)). But “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.” 11 U.S.C. § 524(e) (2018); accord *Frost State Bank v. Peavey Co.*, 524 N.W.2d 739, 742 (Minn. App. 1994). As we stated in *Frost State Bank*, “[a] discharge in bankruptcy, . . . unlike a settlement, does not extinguish the debt. Rather, a discharge in bankruptcy merely provides the debtor with a personal defense to debt collection actions. A third party’s liability for debt is unaffected by the debtor’s discharge.” 524 N.W.2d at 742 (emphasis added).

Here, the parties concur that the agreement did not settle the underlying debt. Because the agreement functioned only to dismiss the claim in the Beckers’ bankruptcy proceeding that the debt was nondischargeable, any liability of Tri-County is unaffected by AgCountry’s agreement.

Tri-County argues, however, that the district court correctly applied the law in determining the agreement extinguished any third-party conversion claim that may apply to Tri-County. To support its position, Tri-County points us back to the cases the district court used to reach its determination, such as *Prairie Sun Bank-Appleton v. Boerboom*,

No. A05-786, 2006 WL 9615, at *3 (Minn. App. Jan. 3, 2006) (first citing *Austin Farm Ctr., Inc.*, 418 N.W.2d at 186, and then citing *Farmers State Bank of Delavan*, 457 N.W.2d at 766), *rev. denied* (Minn. Mar. 28, 2006). But these cases, as previously discussed, all involve agreements between the debtor and creditor that *fully settled the underlying debt* and released the debtors from all claims of the creditor—unlike the situation here. *See Prairie Sun Bank-Appleton*, 2006 WL 9615, at *1 (“[Debtor] and Prairie Sun entered into a settlement agreement that satisfied in full [debtor]’s debt to Prairie Sun for \$20,000.”).

Tri-County cites no authority for the proposition that settlement of something other than the underlying debt, such as settlement of an adversary claim challenging the debt’s dischargeability, that does not also settle the underlying debt extinguishes a security interest attached to the debt. Nor does Tri-County account for our holding in *Frost State Bank* that, unlike a settlement of the debt, a discharge in bankruptcy does not extinguish the debt, and therefore, third-party liability remains unaffected. 524 N.W.2d at 742. We are not persuaded by Tri-County’s argument and conclude that *Frost State Bank* controls. Therefore, Tri-County’s third-party liability to AgCountry is unaffected by the agreement between AgCountry and the Beckers.

B. The limited release of the UCC filings in AgCountry’s agreement with the Beckers preserves AgCountry’s security interest in the collateral for purposes of its conversion claim against Tri-County.

Tri-County argues that the district court’s grant of summary judgment should be affirmed because the language in the agreement releasing the UCC filings means that AgCountry has no enforceable security interest against Tri-County, and therefore, AgCountry’s conversion claim must fail as a matter of law.

The parties dispute the effect of the “saving clause” language in the agreement, which states that in return for the Beckers’ \$50,000 payment, AgCountry will release its UCC filings “other than to the extent necessary to support any third-party conversion claims initiated by [AgCountry] to recover on the pre-petition obligations owed to it by [the Beckers].” The district court addressed this language in its order granting summary judgment in favor of Tri-County, determining that “[a]n attempt to preserve third-party liability via the terms of a settlement is ineffective.” The district court cites the nonprecedential opinion⁵ in *Prairie Sun Bank-Appleton* for the premise that “regardless of whether a bank attempts to preserve third party claims, a secured creditor has the right to only one recovery.” 2006 WL 9615, at *3 (citing *Farmers State Bank of Delavan*, 457 N.W.2d at 766).⁶

Again, the facts here differ from those in *Prairie Sun Bank-Appleton*, in which the settlement satisfied the debtor’s debt to the creditor in full. *Id.* The satisfaction in full

⁵ As previously noted, nonprecedential opinions are not binding authority, and we consider them only for their persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c); *Dynamic Air, Inc.*, 502 N.W.2d at 800.

⁶ We disagree with Tri-County’s assertion that that the “one recovery” principle applies in this situation, premised as it is on Tri-County’s argument that AgCountry’s agreement with the Beckers extinguished the security interest, and thus the settlement payment was AgCountry’s one satisfaction for the collateral. *See* Minn. Stat. Ann. § 336.9-315 UCC cmt. 2 (West 2019) (“The secured party may claim both any proceeds and the original collateral but, of course, may have only one satisfaction.”); *Farmers State Bank of Delavan*, 457 N.W.2d at 766 (Minn. App. 1990) (“Bank, having settled with and released [debtors], has already received the proceeds and had its one satisfaction.”). Here, AgCountry received neither proceeds nor collateral from the Beckers in settling the adversary claim in the bankruptcy proceeding, and AgCountry is not attempting to recover both collateral and proceeds. Indeed, AgCountry has not yet had its “one recovery” for the Beckers’ debt to it.

underlay the district court’s determination that the security interest was extinguished and the buyer of the encumbered property did not have third-party liability for the debt. *Id.* AgCountry argues yet again that its agreement settled only the adversary proceeding, not the debt itself. We agree with AgCountry.

In addition, as a matter of contract interpretation, AgCountry did not agree to terminate its security interest with respect to the Beckers. Rather, by releasing its security interest “other than to the extent necessary” to support third-party conversion claims it had initiated to recover on the obligations the Beckers owed—such as the conversion claim against Tri-County—AgCountry agreed not to pursue a claim against the Beckers and to release its UCC filings once any conversion claims are resolved. Nothing in the record indicates that AgCountry terminated its UCC filings as to the Beckers. *See* Minn. Stat. § 336.9-513(c) (requiring that the secured party file or provide a termination statement on demand from the debtor when there is no secured obligation or the obligation has been discharged).

Tri-County further argues, based on its assertion that the agreement calling for a partial or eventual release of the UCC filings extinguished AgCountry’s security interest, that there can be no valid third-party conversion claim against Tri-County. Tri-County relies on the nonprecedential District of Minnesota opinion in *H&S Contracting, Inc. v. Kinetic Leasing, Inc.*, for the principle that the lack of an enforceable security interest in the property by the party asserting the conversion claim is a complete defense against conversion because “in the secured transactions context, conversion claims are based on the secured party’s security interest in the subject property.” No. 17-CV-355, 2018 WL

3340372, at *10 (D. Minn. June 8, 2018) (citing *Noble Sys. Corp. v. Alorica Cent., LLC*, 543 F.3d 978, 986 (8th Cir. 2008); *Wangen v. Swanson Meats, Inc.*, 541 N.W.2d 1, 3 (Minn. App. 1995), *rev. denied* (Minn. Jan. 25, 1996)). *H&S Contracting* and the cases it cites are inapposite here because the security interests in those cases were unenforceable for other reasons, such as failing to maintain a perfected interest or maintaining an interest junior to another creditor.

“Conversion is defined as the intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.” *Wangen*, 541 N.W.2d at 3 (quotation omitted). The elements of conversion are (1) plaintiff holds a property interest, and (2) defendant deprives plaintiff of that interest. *Olson v. Moorhead Country Club*, 568 N.W.2d 871, 872 (Minn. App. 1997), *rev. denied* (Minn. Oct. 31, 1997).

Tri-County’s argument is that AgCountry no longer holds a property interest in the proceeds of the collateral for the Beckers’ debt; thus, any conversion claim fails. But “a security interest . . . continues in collateral notwithstanding sale, lease, license, exchange or other disposition thereof unless the secured party authorized the disposition free of the security interest . . . [and] a security interest attaches to any identifiable proceeds of collateral.” Minn. Stat. § 336.9-315(a); *see Wangen*, 541 N.W.2d at 3 (quoting former version of statute, Minn. Stat. § 336.9-306(2) (1990)).

Because the agreement functioned only to release the Beckers personally from liability on the debt, but not to settle the debt itself and extinguish the security interest, and because AgCountry’s waiver of the security interest as to the Beckers did not fully release

its security interest, we conclude the district court erred in determining that Tri-County was entitled to summary judgment dismissing AgCountry's conversion claim. We therefore reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.