UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	CV87-O-247	CV87-O-726
	)	CV87-O-248	CV87-O-727
CARL R. NELSON,	)	CV87-O-265	CV87-O-729
	)	CV87-O-440	CV87-O-730
Debtor-Appellant,	)	CV87-O-441	
(BK83-2087).	)		

FILED
DISTRICT OF NEBRASKA
AT ____ M
JAN 29 1988
William L. Olson, Clerk
By ____ Deputy

MEMORANDUM ORDER

The appellant in these cases is a farmer-debtor who, on December 5, 1983, filed for relief under Chapter 11 of the United States Bankruptcy Code. Arcadia State Bank (now known as First Nebraska Bank) is a secured creditor which was granted relief by the Bankruptcy Court from the automatic stay provision of the Bankruptcy Act. Litigation subsequently had in the state courts of Nebraska for replevin of property pledged by the debtor eventually resulted in favorable decision for the Bank by the Nebraska Supreme Court on May 9, 1986. On September 17, 1986, the Bankruptcy Court granted the Bank's motion for appointment of a Trustee with findings made as to necessity for protection of the interests of the secured creditor.[1]

In addition to the 9 cases identified in the above caption, 9 other appeals have been filed by the debtor-appellant. In CV86-O-835, the order of the Bankruptcy Court appointing the Trustee was affirmed by the District Court (then District Judge

[1] For a detailed recitation of the circumstances out of which the bankruptcy proceeding arose and the subsequent gyrations thereof, see the Memorandum Opinion of the Bankruptcy Judge under date of September 17, 1986 and appearing in the Bankruptcy Court file as filing 249. A copy thereof appears in the record on appeal filed in CV87-O-441.

Beam) and CV86-O-956, an appeal from the order of the Bankruptcy Court refusing to terminate the appointment of the Trustee, was summarily dismissed for failure to timely file notice of appeal. The appeals in CV86-O-1023 and CV87-O-118 were from the Bankruptcy Court's refusal to cite the Bank for contempt of court. In CV86-O-1023, the District Court affirmed the order of the Bankruptcy Court and disposed of CV87-O-118 by summary dismissal for failure to timely file notice of appeal. Summary dismissals by the District Court for failure to perfect the appeals given numbers CV87-O-117, CV87-O-119, CV87-O-120, CV87-O-121, and for lack of standing in CV87-O-415 (that being appeal from an order in Nelson's favor) disposed of those cases.

From the foregoing historical recitation, it is apparent that the rash of appeals by Mr. Nelson for the most part arise simply out of an obdurate refusal to accept the terms of any order made by the Bankruptcy Court. In his dissatisfaction with the Court's decision to appoint a Trustee, he has apparently elected to take an appeal from nearly every act performed by the Trustee. The result is a troublesome burdening of the judicial process with concomitant voluminous submissions of identical materials having little pertinence to orderly conduct of the bankruptcy proceedings. Persistence in such a course of conduct can create eventual necessity for the Court's consideration of appropriateness of imposition of sanctions, including those authorized by Bankruptcy Rule 9011.

With that caution to this appellant and with adherence to procedural requirements fixed for perfection of appeal proceedings and the rule that, upon review, the Bankruptcy Court's findings of fact made on the record before it are subject to the clearly erroneous standard while only its legal conclusions are subject to de novo consideration, In re Martin, 761 F.2d 472, 474 (8th Cir. 1985), ruling is made in each of the above identified appeals as follows:

CV87-O-247

This is an appeal from the Bankruptcy Court's order of March 23, 1987, made after hearing held on March 10, 1987, overruling debtor's objection to a sale of livestock. Notice of appeal dated March 31, 1987 was filed on April 2, 1987, but no stay of sale was sought. The sale was held on April 11, 1987. No stay having been obtained prior to the sale, this appeal is moot. In re Vetter Corporation, 724 F.2d 52 (7th Cir. 1983); 11 U.S.C. § 363m.

IT IS ORDERED that this action upon appeal is dismissed.

CV87-O-248

This is an appeal from the March 10, 1987 order of the Bankruptcy Court overruling the debtor's motion to remove the Trustee. Related above is the District Court's ruling in CV86-O-835 affirming the Bankruptcy Court's order appointing a Trustee. In this case, the debtor repeats his principal contentions that his appeal of the appointment automatically

deprived the Trustee of power to act and that the Trustee, by selling assets, was improperly liquidating the estate as if this were a Chapter 7 proceeding.

The debtor sought no stay of the Trustee's action. A Trustee, pursuant to 11 U.S.C. § 1108, may, but is not required to, operate the debtor's business. In re Curlew Valley Associates, 14 B.R. 506, 507 (Bankr. D. Utah 1981). Cause to remove a Trustee must be "something of a substantial nature directly affecting rights and interests of the public." In re Baker, 38 B.R. 705, 706 (D. D.C. 1985). Most cases have interpreted this substantial nature standard to include proof of actual fraud or harm to the estate. See, e.g., In re Hartley, 50 B.R. 852, 858 (Bankr. N.D. Ohio 1985). A Trustee's authority to sell assets is regulated by 11 U.S.C. § 363 and the record reflects compliance here with its provisions.

The Bankruptcy Court's conclusion that the activities of the Trustee were not other than a valid exercise of his business judgment under the circumstances and that no sufficient evidence of cause for removal was presented is not clearly erroneous.

IT IS ORDERED that the order appealed from in this case is affirmed.

CV87-O-265

This case, filed on April 9, 1987, seeks appeal from an order entered by the Bankruptcy Court on March 26, 1987 granting the Trustee's motion for assistance to secure possession of the involved farm real estate.

No record on appeal nor statement of issues to be presented on appeal has ever been filed as required by Bankruptcy Rule 8006 and no extension of time within which to make such filings has ever been sought.

IT IS ORDERED that this action is dismissed.

CV87-O-440

This is an appeal from the Bankruptcy Court's order of May 8, 1987 granting to the Trustee permission to lease the involved farm real estate.

Though no briefing of the stated issues has been supplied, the appellant's statement of issues repeats his contention that the Trustee could not be cloaked with authority from the Bankruptcy Court while the order of his appointment was pending on appeal. That contention has been addressed above and found without merit.

With finding that the Bankruptcy Court's order is neither factually or legally erroneous,

IT IS ORDERED that the order appealed from in this case is affirmed.

CV87-O-441

This is an appeal from the Bankruptcy Court's order of May 19, 1987 overruling the debtor's motion to show cause why the Bank, several named attorneys, and the Trustee should not be held in contempt.

As stated earlier in this memorandum, the Court, in CV86-O-1023, affirmed the Bankruptcy Court's decision overruling the debtor's first motion seeking citation for contempt. That

judgment is res judicata precluding a raising of the same issues in this appeal. At the motion hearing before the Bankruptcy Court on March 10, 1987, the debtor tendered no evidence differing from or adding to that received at hearing upon his first motion for contempt citation and the legal argument he presses here is essentially identical to that previously presented.

The Bankruptcy Court did not err in its order overruling the second motion for contempt citation.

IT IS ORDERED that the order appealed from in this case is affirmed.

CV87-O-726 and CV87-O-727

CV87-O-726 is an appeal from the Bankruptcy Court's order of May 27, 1987 approving the Disclosure Statement filed by the Trustee on April 23, 1987. CV87-O-727 is an appeal from the Bankruptcy Court's order also made on May 27, 1987 overruling the Disclosure Statement filed by the debtor on May 4, 1987. The orders were made following hearings had on the respective motions on May 27, 1987.

The objection made by the debtor to the Trustee's disclosure statement is that it contemplates liquidation which he urges can not be authorized without his consent to conversion of the bankruptcy proceeding from one under Chapter 11 to one under Chapter 7. The Bankruptcy Judge, in findings made on the record, correctly ruled that the decisions in In the Matter of Button Hook Cattle Co., Inc., 747 F.2d 483 (8th Cir. 1984), and In the Matter of Cassidy Land and Cattle Co., Inc., 747 F.2d 487 (8th

Cir. 1984), declare that where a farmer-debtor fails to submit an appropriate reorganization plan within 120 days from the filing of a Chapter 11 petition, the Bankruptcy Court may confirm a liquidation plan.

In findings made on the record, the Bankruptcy Court also found that the Disclosure Statement (which was in fact a sixth submission by the debtor although entitled as a "Third") did not merit approval because incorporated in it were numerous inaccuracies and misrepresentations. A catalogue recital of those deficiencies is set forth in those findings.

Laying aside consideration as to whether the orders here involved are final orders subject to appeal, the conclusion is quite evident that the findings made in these cases by the Bankruptcy Court, both as to fact and as to law, are not clearly erroneous.

IT IS THEREFORE ORDERED that the orders appealed from in CV87-O-726 and CV87-O-727 are each respectively affirmed.

CV87-O-729

This is an appeal from the Bankruptcy Court's order of May 29, 1987 which denied the debtor's motion for stay of an earlier order authorizing lease of the farm real estate by the Trustee.

A copy of the order is not included in the record on appeal in this case; but the Court has located such a copy included in filing No. 14 in CV87-O-247 with identification there as "item #1." As a journal entry order, it states as follows:

> This Court did not order trustee to rent land to any specific person -- but authorized trustee to rent land on best terms available in excess of $9,000 and one-

fourth of ASCS payments. To stay this order would cause irreparable harm to tenant and interfere with trustee's duties. No stay is appropriate.

Appellant's brief reflects anew his dissatisfaction that the Trustee chose not to lease the farm to him; and his statement of issues reflects again the contention that his taking of an appeal from the order appointing the Trustee deprived the Trustee of authority to enter into a lease. That contention has been dealt with adversely to appellant in directions made earlier in this memorandum in its sections relating to CV87-O-440 and CV87-O-248.

IT IS ORDERED that the order appealed from in this case is affirmed.

CV87-O-730

This appeal, filed on July 9, 1987, appears to be one taken from an order of the Bankruptcy Court made on June 25, 1987 in disposition of a motion by the Trustee requesting a writ of assistance to remove the debtor and members of his family from the farm property.

A copy of the order has not been included in the record as required by Bankruptcy Rule 8006. Neither has the appellant submitted briefing though he was granted extension of time to January 13, 1988 to do so.

IT IS ORDERED that this case is dismissed for lack of prosecution.

Consolidation and Withdrawal of Reference

In the interest of better conservation of judicial resources,

IT IS ORDERED that the reference of cases CV87-O-247, CV87-O-248, and CV87-O-265 to United States Magistrate Peck, as made in the order entered on November 13, 1987, is withdrawn; and consolidation of the above-identified cases has been made only to facilitate an orderly entry of the dispositions as directed above.

IT IS FURTHER ORDERED that the clerk shall file a copy of this order in the pleading files maintained for each of the above-identified cases.

Dated this 29th day of January, 1988.

BY THE COURT:

LYLE E. STROM
UNITED STATES DISTRICT JUDGE