

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

FILED
DISTRICT OF NEBRASKA
AT _____ M
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William L. Olson, Clerk
By _____ Deputy

IN THE MATTER OF)
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CASSIDY LAND AND CATTLE CO.,)
INC.,)
)
Debtor.)
)
CASSIDY LAND AND CATTLE CO., INC.,)
)
Appellant,)
)
v.)
)
COMMERCIAL NATIONAL BANK & TRUST)
COMPANY,)
)
Appellee.)

CV. 83-0-188

BK. 82-1257

MEMORANDUM OPINION

This action is presently before the Court on appeal from an order of the United States Bankruptcy Court for the District of Nebraska, entered on March 10, 1983, and filed on March 15, 1983. The appellant-debtor, Cassidy Land and Cattle Company, Inc., appeals the bankruptcy court's order confirming a Chapter XI liquidating plan of reorganization proposed by the principal creditor, Commercial National Bank, the appellee herein. This Court has heard oral argument, has reviewed the briefs of the respective parties and the authorities cited therein, and the entire record submitted on appeal, and concludes that the bankruptcy court's decision must be affirmed for the reasons hereinafter stated.

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1. The Honorable David L. Crawford, Bankruptcy Judge, presiding.

The relevant facts are these. Cassidy Land and Cattle Company, Inc. (hereafter debtor) filed a voluntary Chapter XI petition in the United States Bankruptcy Court for the District of Nebraska on July 19, 1982. The petition indicates that the debtor intended to file a plan of reorganization, but the debtor filed no plan within the first 120 days, nor asked for an extension. Thereafter, on December 21, 1982, the Commercial National Bank and Trust Company, the principal creditor, (hereafter creditor) filed a disclosure statement and a creditor's plan of reorganization which called for the sale of all the debtor's assets.

On January 24, 1983, the debtor filed a motion to dismiss the Chapter XI proceeding stating that because the creditor had obtained relief from the automatic stay in related adversary proceedings, the debtor could not formulate an effective plan of reorganization.

On January 26, 1983, the bankruptcy court held a hearing on the disclosure statement filed by the creditor. The debtor filed no objections prior to the hearing, but argued during the hearing that because it had filed a motion to dismiss, the Chapter XI proceedings were no longer voluntary. The bankruptcy court approved the disclosure statement having found that no substantive objections had been filed or raised. (Designated record, Filing No. 8, Tr. 4:3-5). Judge Crawford then scheduled a confirmation hearing for March 10, 1983, and requested that any objections to the plan be filed by March 5, 1983.

On February 9, 1983, the debtor filed objections to the creditors' plan and the already court-approved disclosure statement. The debtor's central objection was that the plan was forcing the involuntary liquidation of a farmer.

A hearing was held in the bankruptcy court on February 17, 1983, regarding the debtor's motion to dismiss. In support of its motion, the debtor argued that because it was a farming operation, the liquidation plan proposed by the creditor was not permissible under the Act. The creditor opposed the motion to dismiss, contending that the debtor failed to establish any grounds for dismissal of the case. The bankruptcy court found that there was no allegation sufficient to persuade the court that it was in the best interest of the creditors to dismiss the case and, therefore, denied the motion (Designated record, Filing No. 8, Tr. 8:1-12). The debtor did not appeal the bankruptcy court's denial of its motion to dismiss.

The plan confirmation hearing was held on March 10, 1983, as scheduled. At the hearing, the creditor's attorney described the plan as "essentially a liquidating plan which would provide for the appointment of a trustee . . . to facilitate and effectuate the terms and provisions of the plan." (Designated record, Filing No. 8, Tr. 4:18-22). The debtor refused to consent to the plan and objected to it on the basis that a farmer could not be forced into liquidation by way of a Chapter XI plan. The bankruptcy judge overruled the debtor's objections to the plan and held that a creditor could propose a liquidating plan against

the farmer who voluntarily filed a Chapter XI petition. Judge Crawford then proceeded with the remainder of the confirmation proceedings and concluded by confirming the creditor's plan with some deletions not relevant to this appeal. The bankruptcy court order approving the plan was filed on March 15, 1983.

On March 18, 1983, the debtor filed this notice of appeal. The debtor unsuccessfully filed motions for reconsideration and a stay pending appeal in the bankruptcy court. The debtor also petitioned for a stay in this Court but was denied such on August 16, 1983.

Following submission of briefs on the merits, the parties presented oral argument to the Court on December 5, 1983, and the matter is now ripe for determination.

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The sole issue on appeal is whether it was proper for the bankruptcy court to confirm a Chapter XI plan which provided for the liquidation of a farming corporation.

The debtor argues that confirmation of a liquidating plan of reorganization, after a denial of a motion to dismiss by a farmer-debtor and over the objections to confirmation by a farmer-debtor is

2. The appellant also briefed a jurisdictional issue based on the Supreme Court's holding in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 102 S.Ct. 2858 (1982): This issue was not addressed during oral argument and the Court finds that it has no merit within the context of this appeal. Also Filing Nos. 10 and 12 need not be discussed in this opinion.

contrary to the express terms of the Bankruptcy Reform Act of 1978.
First, the debtor points out that Section 303(a)³ of the Bankruptcy Code precludes the filing of an involuntary bankruptcy case against a farmer. Second, the debtor contends that because Section 1112(c)⁴ prohibits the involuntary conversion of a Chapter XI case to a chapter VII liquidation if the debtor is a farmer, it was error for the bankruptcy court to confirm the liquidating plan proposed by the creditor. Third, the debtor maintains that § 1112(e)⁵ prohibits the bankruptcy court from doing indirectly what the Code prohibits in the first instance. Thus, the gist of the debtor's argument is that these statutory provisions prohibit a creditor from compelling the liquidation of a farmer in a Chapter XI bankruptcy proceeding because the farmer enjoys special status under the Code.

3. 11 U.S.C. § 303(a) provides as follows:

An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

4. 11 U.S.C. § 1112(c) provides as follows:

The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such a conversion.

5. 11 U.S.C. § 1112(e) provides as follows:

Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

In addition to the statutory provisions, the debtor relies on dicta in *In re Blanton Smith Corporation*, 7 B.R. 410 (Bkrtcy. M.D.Tenn. 1980). In that case major secured creditors filed applications to liquidate debtors either by converting the Chapter XI case to a Chapter VII case or by appointing a liquidating trustee. Unlike this instant case, the main issue in the *Blanton Smith* case was whether the debtor in question fell within the meaning of "farmer" as used in the bankruptcy code. After resolving the question in the affirmative, the bankruptcy court, without any discussion, concluded that a creditor could not compel a farmer-debtor's liquidation in a bankruptcy proceeding under either Chapter VII or Chapter XI. 7 B.R. at 414.

The position of the creditor on appeal is that it was proper for the bankruptcy court to confirm the liquidating plan as proposed by the creditor. The creditor suggests that the Section 303(a) prohibition against involuntary proceedings against farmers is not applicable to the situation, since the debtor itself filed a voluntary petition seeking Chapter XI relief on July 19, 1982. Further, creditor maintains that Section 1123(b)(4)⁶ specifically authorizes a liquidating plan, and contains no exception or exclusion relating to farmers. The creditor discounts the relevance of the *Blanton Smith* case because the central

6. 11 U.S.C. § 1123(b)(4) provides as follows:

Subject to subsection (a) of this section, a plan may . . . (4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests

issue was whether the debtor was a farmer within the Code and that fact is not contested in this appeal. In sum the creditor submits that the bankruptcy court properly analyzed the rationale of the statutory provisions protective of farmers and correctly found them inapplicable in this instance where the debtor voluntarily sought Chapter XI relief.

Although not set out in memorandum opinion form, Judge Crawford's analysis may be gleaned from a reading of the transcript of the confirmation hearing held on March 10, 1983 (Designated record, Filing No. 8). Judge Crawford rejected the debtor's argument that a creditor may not file a liquidation plan against a debtor-farmer in a Chapter XI proceeding for a number of reasons. First, the bankruptcy judge considered the historical justification for exempting farmers from involuntary bankruptcy proceedings. He stated that Congress understood that farmers quite frequently could not pay their bills as they came due, because of the cyclical nature of the farming business. He then found that a Chapter XI proceeding was very different because the statutory provision clearly provided for a liquidating plan, but did not, in any way, except farmers from that provision. Lastly he noted that a farmer who voluntarily seeks protection under the Bankruptcy Act by filing a petition in Chapter XI assumes the risk that a creditor will propose a liquidating Chapter XI plan. (Designated record, Filing No. 8, Tr. 15:9-25; 16:1-21).

The bankruptcy court found it in the best interests of the creditors and the estate to confirm the liquidating plan. It is well established on appeal that findings of the bankruptcy court are to be

accepted unless found to be clearly erroneous. Rule 810, Rules of Bankruptcy; *Matter of PRS Products, Inc.*, 574 F.2d 414, 416-17 (8th Cir. 1978); *Carter v. Woods*, 433 F.Supp. 291, 294 (W.D.Mo. 1977). This Court cannot say that the bankruptcy court's finding that confirmation of the plan was in the best interests of the creditors was "clearly erroneous." Nor can it be said that the bankruptcy court abused its discretion in confirming this plan. Bankruptcy courts should have wide latitude in approving a plan even if it calls for the sale of all or substantially all of the estate assets. Section 1112(b) gives wide discretion to the Court to make an appropriate disposition of the case when a party in interest requests it, and it appears to this Court that the bankruptcy court's disposition of this matter was well within its discretion.

This Court declines to adopt the position proffered by the debtor and implied in the *Blanton Smith* case. Rather, the Court is of the opinion that it was not error for the bankruptcy court to confirm the liquidating plan given the circumstances of this case. This was a voluntary petition filed by the debtor seeking relief under Chapter XI. There is no absolute right to withdraw a voluntary petition after it has been filed. The debtor in question had the time and opportunity to pursue its rights under Chapter XI. The debtor had the exclusive right to file its plan of reorganization the first 120 days after the date of the order for relief under Chapter XI, (11 U.S.C. § 1121(b)) and it did not do so. When a debtor fails to file a plan, any party in interest may file a plan and in this case, the creditor availed itself of the opportunity and filed

its plan. Further, a Chapter XI plan may provide for the sale of all or substantially all of the debtor's assets and the section sanctioning such a liquidating plan, section 1123(b)(4), does not contain any exceptions relating to farmers.

The debtor's argument throughout these proceedings is that a Chapter XI liquidating plan is not an available option when the debtor is a farmer and opposes the plan. The debtor reasons that because conversion to a Chapter VII is not available in this case because of § 1112(c), then a liquidating plan is likewise not available. However, Section 1123(b)(4) which sanctions liquidating plans does not exempt farmers and the absence of such express language is significant to the Court. For this reason, this Court cannot say it was error for the bankruptcy court to decline to read an exception for farmer-debtors into the statutory provision permitting liquidating plans. In fact another court has considered the appointment of a liquidating trustee to be the reasonable solution in a situation where conversion to a Chapter VII would have been the most equitable and just solution, but was not possible due to the language in the bankruptcy code prohibiting the conversion. See *In the Matter of Mandalay Shores Cooperative Housing Assoc.*, 22 B.R. 202, 207 (Bkrcty. M.D.Fla. 1982).

This Court considers the position taken by Judge Crawford to be a better reasoned approach given the circumstances and facts of this case. The Court finds no error in the bankruptcy court's decision to confirm the plan proposed by the creditor.

Accordingly, a separate order affirming the March 10, 1983, order of the bankruptcy court which was filed on March 15, 1983, and dismissing the appeal will be entered contemporaneously with this memorandum opinion.

BY THE COURT:

Albert G. Aulet

JUDGE, UNITED STATES DISTRICT COURT