

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
)  
CIRCLE S CATTLE COMPANY, a )  
Nebraska Partnership, )  
WILLIAM SELLHORST, JR., )  
GLENN SELLHORST, ) CASE NO. BK95-82099, 82097, 82098  
) CH. 11  
DEBTOR(S) ) Filing No. 24

MEMORANDUM

Hearing was held on January 24, 1996, on a Stipulation for relief from automatic stay between Debtor and Lloyd DeBruycker. Appearances: Mark Fitzgerald, Attorney for J. Seabeck; Tim Haight, Attorney for DeBruycker; R.L. Stoney Burk, Attorney for DeBruycker; Robert Cook, Attorney for Circle S and William Sellhorst; John Feller, Attorney for Glenn Sellhorst; Victor Lich, Attorney for United Cattle; Robert Yates, Attorney for 1st Bank Montana; Sam King, Attorney for United States Trustee; Michael Washburn, Attorney for Creditors' Committee; Forret Sherwood, Attorney for Kudlacek; Richard Stafford, Attorney for McCarroll; Michael Kopp, Attorney for Eastern Livestock Co.; Richard Werner, pro se, Werner; and David Mitchell, Attorney for creditors. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A).

Background

In this administratively consolidated case, the operating debtor is in the business of feeding cattle at a feedlot. In some situations, the debtor takes in cattle from an owner and contracts to feed the cattle to a certain weight. At an agreed upon weight, the cattle are sold for slaughter.

Lloyd DeBruycker (DeBruycker) is a rancher from Montana. He contracted with the debtor for its feeding services. United Cattle Co. (United) is an organization that provides financing and marketing services for individuals and organizations in the cattle business. It contracted with the debtor to place cattle with the debtor and receive the feeding services of the debtor.

The debtor is in a Chapter 11 bankruptcy and there is a dispute between the debtor and DeBruycker, on the one hand, and United, on the other, with regard to the ownership of or the

interest in certain cattle in pen 14 located on the premises of the debtor.

The parties agree that United has a claimed interest in the proceeds of the cattle which were located in pen 14 only to the extent of \$142,646.84. Five hundred ninety-nine cattle which were located in pen 14, pen 19, and pen 24 have been sold and the debtor-in-possession is holding the proceeds. The proceeds equal more than \$500,000 and the portion in dispute is \$142,646.84. By separate order, the balance of the funds being held by the debtor-in-possession which represent proceeds of the sale of cattle in pens 14, 19 and 24 over and above the disputed amount of \$142,646.84 represent property of DeBruycker and should be immediately paid to DeBruycker. This memorandum and journal entry deal with the rights of DeBruycker and United with regard to the disputed proceeds.

#### Findings of Fact

1. DeBruycker owned cattle in Montana. Each animal was branded with a family brand. In September of 1995, DeBruycker shipped several hundred head of branded cattle from Montana to the debtor. Prior to leaving Montana, the branded animals received veterinary inspections and brand inspections. The cattle arrived at the debtor during the month of September.

2. The DeBruycker cattle were given blue ear tags for identification purposes. The DeBruycker cattle were placed in pens 14, 19 and 24. DeBruycker was billed for feeding the animals and the billing statements showed that the animals being fed were located in pens numbered 14 and 24. The feed bills were timely paid.

3. On January 16, 1996, 599 animals were slaughtered. The records from the slaughterhouse show an approximate average daily weight gain of three pounds per day per animal from the arrival date in September to the slaughter date.

4. United placed cattle on the premises of the debtor in late June of 1995. A representative of United inspected the cattle on several occasions between the first of July, 1995, and the middle of December, 1995. The first few inspections were made by one United employee and the last several inspections were made by a different United employee. The early inspection reports list the cattle which were being inspected as being located in pen 13 and specifically state that there were no identification tags on the animals. Beginning with the inspection report of September 13, 1995, and including the inspection report of October 9, 1995, the reports state that the animals inspected were tagged with United Cattle Co. green tags. Neither of those inspection reports stated the pen location or number. The inspection report of November 7, 1995, shows blue

tag for identification and does not show the pen number. The inspection report of November 15, 1995, shows blue tags for identification and no pen number. The inspection report of November 27, 1995, shows blue tags and pen number 14.

5. A video tape made in October, 1995, shows blue tagged, branded DeBruycker cattle in pens 14, 19 and 24.

6. The representatives of the debtor that were in charge of the debtor prior to the bankruptcy filing and who showed the United employees the location of their cattle are no longer in charge and did not testify. The father of the two individuals that operated the debtor prepetition is now acting on behalf of the debtor-in-possession and is in operational control of the debtor. He testified that the animals in pen 14 had the DeBruycker brands during the time they were being fed and that the animals in pen 14 that were taken from the feedlot in the middle of January of 1996 for slaughter also had the DeBruycker brands. He was a credible witness who had experience in the industry and whose honesty and eyesight were not seriously questioned by any party at the hearing.

7. The only evidence supporting the position of United that its animals were located in pen 14 is the testimony of employees of United that they were told by representatives of the debtor that the United animals were in pen 14 at some point. All of the other evidence presented is totally inconsistent with the position of United.

#### Conclusion

The animals in pen 14 from September of 1995 until removed in mid-January of 1996 were the animals owned by DeBruycker and United has no claim to the proceeds of the sale of those animals.

The stipulation for relief from the automatic stay entered into between the debtor-in-possession and DeBruycker which permits DeBruycker to take possession of and sell all of the animals in pens 14, 19 and 24 should be and is hereby approved. Relief from the automatic stay is granted DeBruycker pursuant to the terms of the stipulation.

Separate journal entry to be entered.

DATED: January 26, 1996

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

FITZGERALD, MARK	402-371-5673
HAIGHT, TIMOTHY	344-0588
COOK, ROBERT	520-539-0960
LICH JR, VICTOR	397-1254
FELLER, JOHN D.	402-528-3366
YATES, ROBERT	341-8290
WASHBURN, MICHAEL	390-7137
KOPP, MICHAEL	502-583-2927
STAFFORD, RICHARD	402-371-2256

Copies mailed by the Court to:

R.L. Stoney Burk, Attorney, P.O. Box 70, Choteau, Montana  
59422  
Forret Ebersold, Attorney, 26 Hillsdale Dr., Council Bluffs,  
IA 51503  
Richard Werner  
David Mitchell, Attorney, 81 W. 5th St., Fremont, NE 68025-  
4951  
Sam King, Attorney for United States Trustee

Movant (\*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
CIRCLE S CATTLE COMPANY, a	)	
Nebraska Partnership,	)	
WILLIAM SELLHORST, JR.,	)	
GLENN SELLHORST,	)	CASE NO. BK95-82099, 82097, 82098
<u>DEBTOR(S)</u>	)	
	)	CH. 11
	)	Filing No. 24
Plaintiff(s)	)	
vs.	)	<u>JOURNAL ENTRY</u>
	)	DATE: January 26, 1996
<u>Defendant(s)</u>	)	HEARING DATE: January
	)	24, 1996

Before a United States Bankruptcy Judge for the District of Nebraska regarding Stipulation for relief from automatic stay between Debtor and Lloyd DeBruycker.

APPEARANCES

Mark Fitzgerald, Attorney for J. Seabeck  
Tim Haight, Attorney for DeBruycker  
R.L. Stoney Burk, Attorney for DeBruycker  
Robert Cook, Attorney for Circle S and William Sellhorst  
John Feller, Attorney for Glenn Sellhorst  
Victor Lich, Attorney for United Cattle  
Robert Yates, Attorney for 1st Bank Montana  
Sam King, Attorney for United States Trustee  
Michael Washburn, Attorney for Creditors' Committee  
Forret Sherwood, Attorney for Kudlacek  
Richard Stafford, Attorney for McCarroll  
Michael Kopp, Attorney for Eastern Livestock Co.  
Richard Werner, pro se, Werner  
David Mitchell, Attorney for creditors

IT IS ORDERED:

The animals in pens 14, 19 and 24 belong to Lloyd DeBruycker. The stipulation for relief from the automatic stay, Filing No. 24, is approved. Relief from the automatic stay is granted pursuant to the stipulation. See memorandum entered this date.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

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GLENN SELLHORST,	)	CASE NO. BK95-82099, 82097, 82098
<u>DEBTOR(S)</u>	)	
	)	CH. 11
	)	Filing No. 24
Plaintiff(s)	)	
vs.	)	<u>JOURNAL ENTRY</u>
	)	DATE: January 25, 1996
<u>Defendant(s)</u>	)	HEARING DATE: January
	)	24, 1996

Before a United States Bankruptcy Judge for the District of Nebraska regarding Stipulation for relief from automatic stay between Debtor and Lloyd DeBruycker.

APPEARANCES

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 Tim Haight, Attorney for DeBruycker  
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 Michael Washburn, Attorney for Creditors' Committee  
 Forret Sherwood, Attorney for Kudlacek  
 Richard Stafford, Attorney for McCarroll  
 Michael Kopp, Attorney for Eastern Livestock Co.  
 Richard Werner, pro se, Werner  
 David Mitchell, Attorney for creditors

IT IS ORDERED:

The parties have agreed that the amount of money in dispute as between DeBruycker and United is \$142,646.84. The balance of the proceeds in excess of that amount, which balance is now being held by the debtor-in-possession, should be immediately paid by the debtor-in-possession to DeBruycker.

BY THE COURT:

/s/ Timothy J. Mahoney  
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