

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
DLC, LTD.,) CASE NO. BK97-82177
)
DEBTOR.) A97-8134
_____)
DLC, LTD.,)
) CH. 11
Plaintiff,)
vs.)
)
CENTRAL FARMERS COOPERATIVE)
NONSTOCK AND BLAKELY CROP HAIL,)
INC.,)
)
Defendant.)

MEMORANDUM

Hearing was held on April 16, 1998, on Motion for Remand filed by Central Farmers Cooperative Nonstock. Appearances: Larry R. Demerath for DLC, LTD., and Donald Swanson for Central Farmers Cooperative Nonstock. 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) and (C).

Background

On September 2, 1997, an order for relief under Chapter 7 was entered for DLC, Ltd. (hereafter "DLC"), which was converted, upon motion by DLC, to an order for relief under Chapter 11 on December 23, 1997. After conversion to Chapter 11, DLC, as debtor-in-possession, filed a notice of removal and removed a case entitled Central Farmer Cooperative Nonstock v. DLC, Ltd., #A-97-0351, which was pending before the Nebraska Court of Appeals. The case involves an appeal by DLC of the decision of the District Court of Antelope County, Nebraska, which dismissed DLC's counterclaim against Central Farmers Cooperative Nonstock (hereafter "Central Farmers"). On February 25, 1998, Central Farmers filed a Motion to Remand the case to the Nebraska Court of Appeals.

Analysis

All federal courts, including bankruptcy courts, are courts of limited subject matter jurisdiction. In order to proceed with the removed action, the Bankruptcy Court must have jurisdiction to hear and decide the case or controversy brought before it.

Under the Rooker-Feldman doctrine, lower federal courts, including bankruptcy courts, lack subject matter jurisdiction to engage in appellate review of state court determinations. Goetzman v. Agribank, FCB (In re Goetzman), 91 F.3d 1173, 1177 (8th Cir. 1996), *citing* Keene Corp. v. Cass, 908 F.2d 293, 296 (8th Cir. 1990). A Rooker-Feldman challenge asserting that a court lacks subject matter jurisdiction may be raised at any time, by any party, or *sua sponte* by the Court. Ritter v. Ross, 992 F.2d 750, 752 (7th Cir. 1993), *cert. denied*, 510 U.S. 1046 (1994).

Neither the United States District Court for the District of Nebraska nor the Bankruptcy Court for the District of Nebraska have subject matter jurisdiction to conduct an appellate review of a Nebraska District Court decision. Therefore, the Motion to Remand by Central Farmers is hereby granted. Furthermore, by agreement of the parties, for the limited purpose of completing the case in the Nebraska Court of Appeals, relief from the automatic stay is granted.

Separate journal entry to be entered

DATED: April 17, 1998

BY THE COURT:

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

Copies faxed by the Court to:

DEMERATH, LARRY	359-5304
GARDEN, RICHARD JR.	402-474-5393
WELCH, JAY	398- 1762
SWANSON, DONALD	390-9005

Copies mailed by the Court to:

Larry Bird, 140 S. Fourth St., Albion, NE 68620
Terry R. Wittler, 1900 First Bank Bldg., 233 S. 13th
Street, Lincoln, NE 68508-2095
J. Franklin Hummer, P.O. Box 3575, Topeka, KS 66601-
3575
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.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
DLC, LTD.,)	CASE NO. BK97-82177
)	A97-8134
<u>DEBTOR(S)</u>)	CH. 11
DLC, LTD.,)	Filing No. 6, 15
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
CENTRAL FARMERS COOPERATIVE)	
NONSTOCK AND BLAKELY CROP)	
HAIL, INC.,)	
)	DATE: April 17, 1998
<u>Defendant(s)</u>)	HEARING DATE: April 16, 1998

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Remand filed by Central Farmers Cooperative Nonstock and Resistance thereto.

APPEARANCES

Larry R. Demerath for DLC, Ltd.
Donald Swanson for Central Farmers Cooperative Nonstock

IT IS ORDERED:

The motion to remand the Central Farmers Cooperative Nonstock portion of this adversary proceeding to the Nebraska Court of Appeals is granted. Relief from the automatic stay to complete the appeal is granted. See Memorandum entered this date.

BY THE COURT:

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

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