

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

LYLE SPILGER, JR.)
MARY SPILGER,)

DEBTORS)

FIVE POINTS BANK,)
a corporation,)

Plaintiff)

vs.)

LYLE SPILGER, JR. and MARY A.)
SPILGER, and OFFICIAL CREDITORS)
COMMITTEE,)

Defendants)

CASE NO. BK82-826

A82-392

MEMORANDUM

APPEARANCES: Jerrold L. Strasheim
1500 Woodmen Tower
Omaha, Nebr. 68102
Attorney for plaintiff

Douglas Quinn
Suite 118
7400 Court Bldg
808 So. 74th Plaza
Omaha, Nebr. 68114
Attorney for defendants

In this adversary proceeding, plaintiff, a secured creditor on farm equipment, machinery and livestock owned by the debtor, seeks relief from the automatic stay of 11 U.S.C. §362 under alternative provisions §362(d)(1) and (2).

Under 11 U.S.C. §362(d)(1), the Court is to grant relief from the stay:

". . .for cause, including the lack of adequate protection of an interest in property of such party in interest;"

The evidence before me discloses that the defendants spent proceeds from a sale of livestock (hogs) after the filing of this Chapter 11 petition. The cash proceeds were spent by the defendants without authorization by the plaintiff and without authorization from this Court in violation of 11 U.S.C. §363(c)(2).

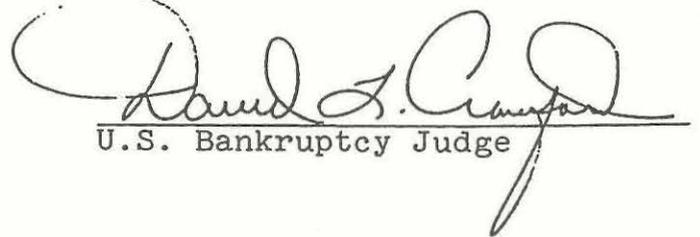
Violation of the prohibition against the use, sale or lease of cash collateral of 11 U.S.C. §363(c)(2) amounts to "cause" under §362(d)(1), in my view. A defendant-debtor should not be permitted to hold a secured creditor at bay while, at the same time, dissipating cash collateral in direct violation of the statute.

At the trial on the complaint for relief from the automatic stay, defendants suggested that they would provide adequate protection to the plaintiff by attempting to borrow money from relatives to replace the dissipated cash collateral. The promise to do an act in the future which does not provide adequate protection for the plaintiff at the time of trial is insufficient to provide adequate protection to the plaintiff, at least under the facts of this case.

A separate order has been entered in accordance with the foregoing vacating the stay as to the plaintiff's collateral.

DATED: August 9, 1982.

BY THE COURT:


U.S. Bankruptcy Judge

Copies to:

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