

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

HAROLD L. RICHARDS and)
DELORES Y. RICHARDS,)

DEBTORS)

CASE NO. BK86-1871

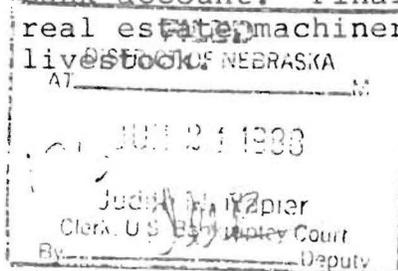
CH. 11

MEMORANDUM

A valuation hearing pursuant to Section 506 of the Bankruptcy Code and a confirmation hearing were held in two parts, first on September 11, 1987, and then finally, on February 17, 1988. Appearing on behalf of the objecting creditor, PCA of the Midlands, were James McClymont and Larry Baumann of Kelley, Scritsmier, Moore & Byrne, P.C., North Platte, Nebraska. Robert Richards of Chappell, Nebraska, appeared on behalf of the debtors at the first hearing and Wm. Needler, Chicago, Illinois, appeared at the second hearing.

The debtors filed Chapter 11 bankruptcy on June 26, 1986. They operate as farmers 2,086 acres of grassland and 2,154 of dryland cropland near Hayes Center, Nebraska. The debtors have a cow herd which they allege has been leased to their sons on a 40/60 calf share lease. In addition, the debtors claim to have leased their real estate on a 1/3-2/3 share which also includes all government payments. The machinery is purportedly leased on an annual depreciation payment rate. Pursuant to the leases, the debtors are required to maintain all of the farm and ranch land.

At this point in this case, the Court is asked to determine whether the PCA is fully secured and is, therefore, entitled to interest on its claim and attorney's fees and appraisal costs; whether the debtors are entitled to recover costs of preserving the property under Section 506(c); the proper date as of which the valuation is to be made; whether PCA's lien continues in the debtors' livestock from the date of filing; whether the debtors were entitled to exchange machinery which was PCA collateral prior to filing and allow their sons to have an interest in the machinery received in the exchange; whether PCA or the debtors are entitled to the interest accumulated in the joint cash collateral bank account. Finally, the Court is to determine the value of the real estate, machinery and equipment and the value of the



The Court finds as a fact the following values as of September 11, 1987, the original confirmation date:

1. PCA real estate equity, based upon the Smith appraisal, Exhibit No. 11: \$14,430.
 2. Machinery and equipment: \$201,210.
 3. Livestock on hand: \$916,512.
 4. Cash collateral fund: \$3,014.
 5. 1986 crop and ASCS payments: \$35,158.43.
 6. Proceeds of yearlings sold in 1987 from the 1986 calf crop: \$263,995.
 7. Cattle proceeds on hand on date of filing: \$207,560.
 8. PCA share of insurance proceeds: \$3,395.
 9. Interest accrued to 9/1/87 on joint bank account: \$6,469.
- Total: \$1,651,743.43.

The Court finds that as of the 11th day of September, 1987, the net claim of the PCA, after deducting all payments received pre and post petition and adding interest, is \$1,027,132.82 plus claims for attorney fees, appraisals and other costs plus accruing interest thereafter up to the value of the collateral.

The valuation of the collateral for purposes of confirmation must be determined as of the confirmation hearing date or the effective date of the plan. This means that the value of the collateral and the allowed secured claim of the PCA can change from date of petition to date of confirmation. 11 U.S.C. § 506 and its legislative history contemplate such changes and such valued determinations at different points in time for different purposes, such as adequate protection during the pendency of the case, liquidation valuations for determining the best interest of creditors' test at confirmation and for other purposes. Therefore, the Court concludes that post petition increases in value of collateral are included in the value of the collateral for purposes of claim determination for confirmation purposes.

The debtors have argued that inclusion of the increasing value of collateral penalizes the debtors because it is their effort at work that help to create such an increase in value. However, the debtors could have moved this case to confirmation quickly and not over a one-year period after the petition was

filed. This Court concludes that the confirmation date is the valuation date for final determination of the allowed secured claim pursuant to Section 1129(a)(7)(A)(ii).

The PCA had a lien on certain equipment which the debtors traded for other, newer equipment. The debtors claim that their sons contributed some value to the new equipment and that their sons, therefore, become one-half owners of the equipment and the lien, if any, extends only to a one-half ownership interest. Debtors are incorrect. The lien of the PCA in the equipment follows the equipment and its trade-in pursuant to Nebraska Uniform Commercial Code Section 9-306(2). Therefore, even if the sons have some ownership interest, the PCA has a lien in the total value of the equipment which came to the debtors as exchange for equipment for which the PCA had a security interest.

Debtors desire to reduce the claim of the PCA by an amount equal to the value of debtor services provided in preserving the collateral pursuant to Section 506(c). The debtors argue on the one hand that they should get all of the "profit" from the increasing collateral values and then argue that the PCA should pay debtors, by reducing the PCA claim, for the debtor services in taking care of the livestock. Debtors are incorrect on both counts and may not reduce the PCA claim by the value of their services nor receive all the "profit" from increasing collateral values. See Brookfield PCA v. Borron, 738 F.2d 951 (8th Cir. 1984).

Debtors claim that their sons have some type of a lease arrangement with regard to the calves and other livestock. They, therefore, argue that the PCA lien does not cover the calf crop. This Court does not agree. These debtors did not lease the cows to the sons in the ordinary course of business. Testimony was taken that the purported lease arrangement was not of benefit to the estate in that it required the debtors to maintain all of the premises and yet take only forty percent of the calf crop. In addition, the lease was not provided to this court for approval prior to its execution and, therefore, it has not been approved. The lien of the PCA in the livestock which was owned prepetition and the offspring of such livestock which were born post petition continue. Any claim that the sons have to the calf herd or any part of it is subject to the PCA lien until and unless the Court determines otherwise after notice and an opportunity for hearing under Section 552(b).

Cash collateral is by its nature collateral which stands as security for the claim. Any interest earned on the cash collateral during the pendency of the case becomes additional security for the loan. Therefore, the interest on the cash collateral accounts can and should be considered as part of the "value" in determining the allowed secured claim.

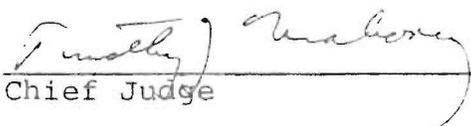
In conclusion, the Court finds that the PCA, as of September 11, 1987, was oversecured and had all the rights the Code grants it pursuant to Section 506 concerning attorney fees, interest and costs. A separate application itemizing each of those shall be submitted to the court within forty-five days.

Further, the Court finds that this plan cannot be confirmed no matter what the status of the values. This plan does not comply with the statutory requirements as finally determined by the United States Supreme Court in Norwest Bank Worthington et al v. Ahlers et ux, ___ U.S. ___, 108 S.Ct. 963, 99 L.Ed. 2d 169, 17 B.C.D. 201 (1988). The plan proposes at Class 10 that the unsecured claims shall be settled and satisfied by payment on a pro rata basis from income of the estate after all costs of the estate have been paid and all senior claim holder annual payments have been made in full and the contribution of the class of interests have been deducted. Therefore, the plan is not confirmable as a matter of law because it does not pay all creditors, including the PCA, in full, and the debtors, or their substitutes (their sons) propose to keep property of the estate. See 11 U.S.C. § 1129(b)(2)(B)(ii). No further hearings will be held on this plan, for valuation purposes or otherwise, until it goes through the complete disclosure statement and voting process in compliance with Ahlers or, all parties, including the PCA, agree to the treatment proposed by the plan.

The debtors have raised the issue of whether or not the Agricultural Credit Act of 1987 applies to them and to the PCA. This Court by previous rulings in unrelated cases has found that the Agricultural Credit Act does apply to Chapter 11 debtors and, therefore, directs the PCA to follow the provisions of that Act with regard to these debtors within the next forty-five days.

DATED: June 23, 1988.

BY THE COURT:



Chief Judge