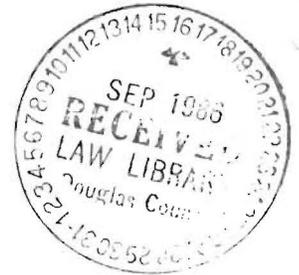


UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA



IN THE MATTER OF )  
 )  
 HARRY EUGENE REEKER, ) CASE NO. BK85-2798  
 )  
 DEBTOR ) Chapter 11

ORDER RE MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Preliminary hearing on motion for relief filed by the United States was held on July 3, 1986. Douglas Semisch and Gary Campbell appeared on behalf of the United States acting by and through the Commodity Credit Corporation (CCC). Eric Wood of Omaha, Nebraska, appeared on behalf of the debtor.

The parties agreed to a stipulation of facts and to a briefing schedule. The final brief was filed on September 3, 1986. Moving party waived any 30 or 60-day time requirements for resolution by the Court.

Findings of Fact and Conclusions of Law

The debtor filed a petition pursuant to Chapter 11 of the Bankruptcy Code on December 2, 1985. On March 3, 1986, the CCC filed its Proof of Claim in an amount not significant for the purposes of this order. No objection has been filed to the Proof of Claim.

Prior to filing for protection under the bankruptcy laws, the debtor had participated in one of the many Government programs for farmers. In 1981 the debtor requested price support benefits from the Government and on December 10, 1981, the debtor signed a farm storage note and security agreement in which he obtained \$42,316.35 from a Government agency and pledged 17,855 bushels of 1981 corn as collateral for the loan.

In 1982 the CCC performed an inspection and determined that the actual collateral available was short 11,782 bushels and determined that the Government had over disbursed \$27,923.34 to the debtor.

Over the years since that time, the debtor has participated in Government programs and the Government has offset payments due the debtor against the 1981 overdishbursement. As of the date the debtor filed bankruptcy, there still existed a balance due on the 1981 overdishbursement.

Pursuant to Government regulations at 7 C.F.R. §13.4, the Government has the right to setoff any payments due to a farmer under any of the Government programs against any outstanding obligation of the farmer.

On February 21, 1985, approximately nine months prior to the filing of the bankruptcy, the debtor executed three contracts to participate in the 1985 price support and production adjustment programs. (Government farm programs.) Pursuant to the contracts, the debtor agrees to limit the acreage of the crop planted for harvest to no more than certain permitted acreage specified in the contract. The contract further requires the farmer to maintain soil conservation practices on the acreage that is left unplanted. The contract requires the Government to agree that the harvested crop will be eligible for Government loans and purchases and deficiency payments as well as other benefits according to the program as it is eventually defined.

Following the crop year 1985, and after the debtor had filed the bankruptcy petition, the Government made a determination that the debtor was entitled to a deficiency payment in the amount of \$5,605.79. Since more than that amount is still due on the 1981 overdisbursement, the Government filed the motion for relief from stay so that it can effect a setoff against the payments due the debtor from the 1985 program participation. The debtor argues that relief should not be granted because the amount due from the Government to the debtor cannot be setoff against the amount due from the debtor to the Government. The debtor's theory is that the amount due from the debtor to the Government is a prepetition obligation. Since the 1985 deficiency payment could not be determined by the Government until after the 1985 crop was in and after the bankruptcy petition was filed, the amount of the deficiency payment is a post-petition obligation of the Government to the debtor-in-possession. Since the amounts due are not both prepetition and are not mutual, the debtor believes they cannot be offset under the federal regulations.

This Court disagrees with the debtor and agrees with the Government that both obligations are prepetition obligations and that they are mutual in that they are concerning the same parties and they arise out of the same type of transaction. Therefore, the motion for relief filed by the CCC is granted.

This Court has read the terms of each of the contracts in issue here. The Court concludes that the requirements of the program constituted contractual duties on the part of the debtor rather than conditions precedent. The debtor promises to set aside a certain amount of land and keep it out of production. The debtor promises to practice specific conservation techniques on the land set aside. In consideration for such actions, the Government was obligated to make deficiency payments to the debtor.

based upon a formula that was in existence at the time the contract was executed, but which required that the actual calculation await the end of the marketing period.

The regulations governing the contracts provide for liquidated damages in the event of non-compliance (7 C.F.R. 713.49). These provisions indicate an intent by the parties to create mutual obligations under the contract. The obligations of the Government under the deficiency program contracts arose at the time the contract was created and is a prepetition obligation subject to offset under 11 U.S.C. §553.

A detailed analysis of a factual situation quite similar to this case is found at In re Matthieson, 63 B.R. 56 (D. Minn. 1986). In the Matthieson case the District Court analyzed the agricultural contracts and the governing regulations and affirmed the Bankruptcy Court decision that the 1985 deficiency payments payable in 1986 could be offset by the Government against a prepetition obligation of the debtor.

Counsel for the debtor argues that the Matthieson case is not applicable because the contracts between the debtors and the Government in Matthieson are different from the contracts in the Reeker case. This Court does not have the benefit of the exact wording of the contracts in the Matthieson case but has compared the language of the Reeker contract with the language of the Court in Matthieson when the Court discusses both the regulations and the contractual provisions. They seem to be identical or at least very similar. Even if they are not, this Court adopts the analysis of the Matthieson case.

DATED: September 10, 1986.

BY THE COURT:

  
U.S. Bankruptcy Judge

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