

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
HUSKY HOG, INC.,)	CASE NO. BK03-43693
and)	
CURTIS O. GRIESS & SONS, L.L.C.,)	CH. 11
)	
Consolidated Debtor(s).)	
<hr/>)	
HUSKY HOG, INC.,)	
)	
Plaintiff,)	
)	
vs.)	A03-4105
)	
PREMIER FARMS, LC; BRIAN)	
MOGENSEN; AUSTIN DECOSTER; and)	
CENTRAL VALLEY AG COOPERATIVE)	
NONSTOCK,)	
)	
Defendants.)	
<hr/>)	
CURTIS O. GRIESS & SONS, L.L.C.,)	
)	
Plaintiff,)	
)	
vs.)	A03-4106
)	
PREMIER FARMS, LC; BRIAN)	
MOGENSEN; AUSTIN DECOSTER; and)	
CENTRAL VALLEY AG COOPERATIVE)	
NONSTOCK,)	
)	
Defendants.)	

ORDER

This matter is before the court on the motion for summary judgment by defendants Austin DeCoster, Brian Mogensen, and Premier Farms, LC (Fil. #25) and resistance by defendant Central Valley Ag Cooperative Nonstock (Fil. #112). Trev Peterson represents the moving defendants and Rocky Weber represents Central Valley Ag Cooperative. The motion was taken under advisement as submitted without oral arguments.

The motion will be denied.

This adversary proceeding was filed to determine the validity, priority, and extent of liens held by secured creditors. The Premier Farms, Mogensen, and DeCoster defendants have moved for

summary judgment on the issue of the priority of their liens over those claimed by Central Valley Ag Cooperative.

Summary judgment is appropriate only if the record, when viewed in the light most favorable to the non-moving party, shows there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c) (made applicable to adversary proceedings in bankruptcy by Fed. R. Bankr. P. 7056); see, e.g., Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986); Morgan v. Rabun, 128 F.3d 694, 696 (8th Cir. 1997), cert. denied, 523 U.S. 1124 (1998); Get Away Club, Inc. v. Coleman, 969 F.2d 664, 666 (8th Cir. 1992); St. Paul Fire & Marine Ins. Co. v. FDIC, 968 F.2d 695, 699 (8th Cir. 1992).

In ruling on a motion for summary judgment, the court must view the facts in the light most favorable to the party opposing the motion and give that party the benefit of all reasonable inferences to be drawn from the record. Widoe v. District No. 111 Otoe County Sch., 147 F.3d 726, 728 (8th Cir. 1998); Ghane v. West, 148 F.3d 979, 981 (8th Cir. 1998).

Husky Hog is a Nebraska corporation and Curtis O. Griess & Sons, L.L.C., is an Iowa limited liability company operating in Nebraska. Both were in the business of finishing swine for market. Both debtors granted security interests in their hog inventories to Premier Farms, Brian Mogensen, and Austin J. DeCoster as collateral ostensibly for rental of hog houses, supply of weaned pigs, loans or advances made, and performance of payment guaranties. Central Valley Ag supplied feed to the debtors and holds statutory agricultural liens in the livestock inventory to secure a debt of more than \$3 million. The movants want judgment entered in their favor finding their security interests superior to those of Central Valley Ag. They assert that all of their liens were perfected before those of Central Valley Ag. Central Valley Ag, in contrast, argues that its liens have priority based on theories of equitable subordination and unjust enrichment.

Central Valley Ag has raised a significant number of factual issues concerning the movants' involvement in the debtors' business. The intimation is that the movants had more than a debtor-creditor relationship with the debtors and for all practical purposes formed the debtors as alter egos through which to conduct business in Nebraska. The deposition evidence in this regard - by the movants - is dense and sometimes contradictory. At a minimum, the evidence demonstrates that the movants' relationship with the debtors encompassed more complexities and legal subtleties than is apparent from their summary judgment request.

The doctrine of equitable subordination permits the court to subordinate a claim if the claimant engaged in inequitable conduct and the misconduct either injured the debtor's creditors or conferred an unfair advantage upon the claimant, as long as the subordination is not otherwise inconsistent with the Bankruptcy Code. Bunch v. J.M. Capital Fin., Ltd. (In re Hoffinger Indus., Inc.), ___ B.R. ___, 2005 WL 1634542 (Bankr. E.D. Ark. July 12, 2005) (citing Bergquist v. Anderson-Greenwood Aviation Corp. (In re Bellanca Aircraft Corp.), 850 F.2d 1275, 1282 (8th Cir. 1988)). Central Valley Ag has put the nature of the movants' business and financial arrangements with the debtors into dispute by raising valid questions about those arrangements. For that reason, summary judgment cannot be granted in the moving defendants' favor.

IT IS ORDERED: The motion for summary judgment by defendants Austin DeCoster, Brian Mogensen, and Premier Farms, LC (Fil. #25) is denied.

DATED: August 11, 2005

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Trev Peterson
Rocky Weber
U.S. Trustee

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