

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
 ROBERT LEE FATTIG, )  
 MARLA L. FATTIG, ) CASE NO. BK84-355  
 )  
 DEBTORS ) A84-284  
 )  
 JAMES R. NISLEY, Interim Trustee, )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 DONALD V. FATTIG, )  
 )  
 Defendant )

OPINION AND ORDER RE COMPROMISE

IN THE MATTER OF )  
 )  
 ROBERT LEE FATTIG, )  
 MARLA L. FATTIG, ) CASE NO. BK84-355  
 )  
 DEBTORS ) A84-285  
 )  
 JAMES R. NISLEY, Interim Trustee )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 DAN HERRON, )  
 )  
 Defendant )

OPINION AND ORDER RE COMPROMISE

This matter comes before the Court on a request by the Interim Trustee and the defendant for approval of a stipulation in compromise of an adversary proceeding, a complaint to avoid a preferential transfer which was filed by the Interim Trustee. The proposed compromise provides that the defendant will pay to the

estate approximately 25% of the amount of the claimed preference as full settlement of the matter. Two creditors have objected to the compromise settlement. They are Bank of Brady and Farmland Service Coop, Inc., the major unsecured creditors of the debtors.

A hearing was held in North Platte, Nebraska, on September 26, 1985, on the proposed stipulation and the objections to it. After argument, the parties were given time to provide to the Court memoranda of law. Both the proponents and the objectors have provided such briefs.

After consideration of the briefs and the oral argument at hearing, it is the opinion of the Court that the compromise stipulation should not be approved. Trial shall be scheduled on this case for the March trial setting in North Platte, Nebraska.

Debtors are farmers who allegedly rented land from the father of one of the debtors and from a neighbor on an oral rental agreement which continued through several years. The annual rental payment was due at the end of the crop year and was paid consistently at the end of each crop year. Debtors filed their Chapter 7 petition on February 24, 1984. The final rental payment to the father and to the neighbor was made within 90 days of the filing of the petition. The total amount paid to the father is \$14,000 and to the neighbor is \$10,000.

The Interim Trustee filed a complaint to avoid a preference and recover the \$24,000. After negotiation between the defendants and counsel for the Interim Trustee, a compromise was reached and presented to the Court.

The objecting parties point out that there is no argument that the payment was made within 90 days of the filing of the Chapter 7 petition. They allege that it is clear under the scanty facts made available to the Court that the payment of rent on an annual rental program at the end of the crop year is payment for an antecedent debt. They also allege that such payment cannot be a contemporaneous exchange with new value given because the debtors' schedules filed in February of 1984 show that they have no rental agreements or leases of real estate. Finally, the objectors claim that since the leases are oral, claims about the intentions of the parties at the time the payments were made are basically self serving and, because of the relationship between the parties, are suspect. Therefore, the objectors believe that a factual hearing should be held.

While not making any determination upon the merits of either the complaint or the compromise, it appears that there are significant factual questions which should be brought forward at trial. They are, for example:

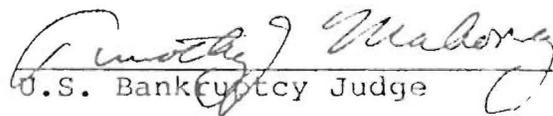
1. What was the intent of the parties and was it reasonable?
2. What was the likelihood of the debtors remaining in farming for the 1984 crop season as determined by them and the creditors as of the time the rent payment was made?
3. Do the actual facts of this case fit within the parameters of the theory that annual rental payments on an oral lease are actually payments on an executory contract and are not payments for an antecedent debt as proponents claim is the holding of In re Mindy's, Inc., 5 Collier Bankruptcy Cases, page 1451 (S.D. Ohio, 1982).

The Court is not unmindful of the practical problem of forcing the Interim Trustee to go to trial on a case in which he believes he has obtained a good settlement. Therefore, the Court is willing to permit the objecting creditors to intervene, after filing the appropriate pleadings and to participate in the trial.

Since the Interim Trustee has made a good faith effort to compromise a case in which he apparently questions the likelihood of success, and the Court is refusing to approve such compromise because of arguments made by objecting creditors, if it appears after trial that the analysis by trustee was correct, the Court shall consider assessing the Interim Trustee's attorney fees and costs of this case against the objecting creditors. Prior to any such assessment, a hearing will be held at which time all parties will be permitted to provide both factual and legal arguments.

DATED: January 2 1976

BY THE COURT:

  
U.S. Bankruptcy Judge

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