

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK07-41110-TLS
)	
KENT E. FLETCHER and,)	CH. 12
JODY L. FLETCHER,)	
)	
Debtors.)	

ORDER

Hearing was held in Lincoln, Nebraska, on July 3, 2007, on the Expedited Motion for an Order to Determine the Effect of the Automatic Stay and for Relief from the Automatic Stay filed by Exchange Bank (Fil. #19). Peter O'Connor appeared for Debtors, with Debtor Kent E. Fletcher also appearing, and Michael R. Snyder and Richard Garden, Jr. appeared for Exchange Bank.

This is Debtors' fourth bankruptcy filing in the last two years. On March 1, 2005, Debtors commenced a Chapter 11 proceeding in this Court (Case No. BK05-40733). That case is still pending. Debtors also filed two Chapter 12 proceedings, one on June 7, 2005 (Case No. BK05-42314), and one on March 29, 2006 (Case No. BK06-40315).

Needless to say, there is substantial history between these Debtors and Exchange Bank. On April 9, 2007, an order was entered in the pending Chapter 11 proceeding granting to Exchange Bank relief from the automatic stay to proceed with foreclosure of Debtors' real estate.¹ Relief was granted to Exchange Bank for a variety of reasons, including the fact that there was no likelihood that a plan could be confirmed; that Debtors were in default under a stipulation with respect to insurance coverage and with respect to the sale of equipment at auction; and that the property which is the subject of Exchange Bank's security interest was not necessary for an effective reorganization since Debtors no longer operate a farm. Debtors appealed that order to the Bankruptcy Appellate Panel. Debtors' motion to stay foreclosure pending that appeal was denied by the bankruptcy court on May 29, 2007. Debtors were also unable to obtain a stay from the Bankruptcy Appellate Panel.

Having been unsuccessful in their attempts to thwart Exchange Bank's foreclosure in the Chapter 11 proceeding, Debtors have now commenced a Chapter 12 proceeding despite the fact that they are not "engaged in a farming operation" and further despite the fact that the Chapter 11 proceeding is still pending. Not only are Debtors not eligible for Chapter 12 relief, but they may not maintain simultaneous bankruptcy cases. *See In re Sidebottom*, 430 F.3d 893, 897-98 (7th Cir. 2005) (standing for the proposition that once a bankruptcy case has been filed, a second case cannot be maintained with respect to the same debts (citing *Freshman v. Atkins*, 269 U.S. 121, 46 S. Ct. 41, 70 L. Ed. 193 (1925))).

¹The legal description is attached hereto as Exhibit "A."

There is nothing new about the facts and circumstances of this new bankruptcy filing. Debtors' counsel even acknowledged that the purpose of this filing was to cram down Exchange Bank's debt, while maintaining the appeal of the relief from stay order in the Chapter 11 case. There is no question that Debtors' pattern of filing multiple bankruptcy cases is for the purpose of delaying and hindering Exchange Bank. Debtors simply cannot bypass proper appellate procedure by filing a new bankruptcy case.

THEREFORE, IT IS ORDERED:

1. Debtors' real property is part of Debtors' Chapter 11 bankruptcy estate in Case No. BK05-40733, and the filing of this new Chapter 12 proceeding did not give rise to a new automatic stay affecting such real property and does not prevent Exchange Bank from proceeding and/or continuing with its foreclosure against its real estate collateral; and

2. Debtors' actions in filing multiple bankruptcy filings purporting to affect the real property are part of a pattern or scheme to delay and hinder Exchange Bank, and this Order shall be deemed to be an order for relief from the automatic stay pursuant 11 U.S.C. § 362(d)(4), which shall be binding in any other case filed under Title 11 purporting to affect such real property filed within two years after entry of this Order.

DATED: July 5, 2007.

BY THE COURT:

/s/ Thomas L. Saladino
United States Bankruptcy Judge

Notice given by the Court to:

Peter O'Connor/Robert M. Cook
*Michael R. Snyder/Richard Garden, Jr.
Richard Lydick
U.S. Trustee

Movant (*) is responsible for giving notice to other parties if required by rule or statute.

EXHIBIT "A"

TRACT 1:

All of the East Half of the Northeast Quarter (E1/2NE1/4) of Section 3, Township 9 North, Range 13 West of the 6TH P.M., Buffalo County, Nebraska.

TRACT 2:

The North 60 acres of the West Half of the Northwest Quarter (W1/2NW1/4) of Section 2, Township 9 North, Range 13 West of the 6TH P.M., Buffalo County, Nebraska.

TRACT 3:

Northeast Quarter (NE1/4) and all of that part of the East Half of the Northwest Quarter (E1/2 NW1/4), lying northerly and easterly from the center of Wood River, all in Section 2, Township 9 North, Range 13 West of the 6TH P.M., Buffalo County, Nebraska.

TRACT 4:

A tract of land located in the East Half of the Northwest Quarter (E1/2NW1/4) of Section 2, Township 9 North, Range 13 West of the 6TH P.M., Buffalo County, Nebraska, more particularly described as follows:

The point of beginning being 70.0 feet north of the Center of the Northwest Quarter of said Section 2, said point being the intersection point of the West 1/16 Section Line of said Section 2, and center line of Wood River; thence southeasterly on and along the sinuosities of the centerline of Wood River to a point on the West 1/16 Section Line, said point being 318.2 feet north of the South ¼ Corner of the Northwest Quarter (NW1/4) of said Section 2; thence north on and along the West 1/16 section Line a distance of 1070.0 feet to the place of beginning. Containing 9.846 Acres, more or less, of which 6.672 Acres, more or less, are presently being used for cultivation.

TRACT 5:

The South Half (S1/2) of the Northeast Quarter (NE1/4) of Section 10, Township 9 North, Range 13, West of the 6TH P.M., Buffalo County, Nebraska.

TRACT 6:

The West 1/2 of the Southeast 1/4 of Section 10, Township 9 North, Range 13 West of the 6th P.M., Buffalo County, Nebraska, except a tract of land located in the Southeast Corner of the West 1/2 of the Southeast 1/4 of Section 10, more particularly described as follows: Beginning at the Southeast Corner of the West 1/2 of the Southeast 1/4 of said Section 10, thence North along the East boundary of the West 1/2 of the Southeast 1/4 a distance of 308.94 feet; thence West parallel to the South Section line a distance of 141 feet; thence South parallel to the East line a distance of 308.94 feet to the South Section line, thence East along the South Section line a distance of 141 feet to the place of beginning.

TRACT 7:

The South 1/2 of the Southwest 1/4 of Section 13, Township 9 North, Range 13 West of the 6th P.M., Buffalo County, Nebraska, except a strip of land described below being apart of the South 1/2 of the Southwest 1/4 of Section 13, Township 9 North, Range 13 West of the 6th P.M., described as follows: Beginning at the Southwest Corner of Section 13, Township 9 North, Range 13 West of the 6th P.M., Buffalo County, Nebraska, a strip of land 50 feet wide on the East side of the West Section line, running North on the above described course 1324.5 feet.

TRACT 8:

A tract of land being part of the Northeast 1/4 of Section 18, Township 10 North, Range 13 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Beginning at the Northeast Corner of said Section 18 and assuming the North line of the Northeast 1/4 of said Section as bearing North 89 43'00" West and all bearings contained herein are relative thereto; thence 89 43'00" West and on the North line of the Northeast 1/4 of said Section, a distance of 1792.51 feet; thence South 01 14'00" West, a distance of 874.76 feet; thence South 01 13'19" West, a distance of 481.93 feet; thence South 00 16'24" West, a distance of 536.56 feet; thence South 00 05'00" East, a distance of 746.25 feet to a point on the South line of the Northeast 1/4 of said Section 18; thence South 89 59'18" East and on the aforesaid South line, a distance of 1903.13 feet to the Southeast Corner of the Northeast 1/4 of said Section; thence North 01 44'36" West and on the East line of said Northeast 1/4, a distance of 2631.92 feet to the place of beginning.

TRACT 9:

The East 1/2 of the Northeast 1/4 of Section 30, Township 9 North, Range 13 West of the 6th P.M., Buffalo County, Nebraska.

TRACT 10:

The North Half of Lot 8, and all of Lot 9, both in Block 6, Parkview Addition to Shelton, Buffalo County, Nebraska.

TRACT 11:

A tract of land being part of Tax Lot 27, part of Tax Lot 28, and part of the Northwest Quarter of the Northwest Quarter of Section 1, Township 9 North, Range 13 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as follows: Referring to the Southwest corner of the Northwest Quarter of said Section 1 and assuming the West line of said Northwest Quarter as bearing N 00 01'30" W and all bearings contained herein are relative thereto; thence N 00 01'30" W a distance of 86.4 feet to the ACTUAL PLACE OF BEGINNING, said place of beginning being on the North right-of-way line of Highway No. 30; thence continuing N 00 01'30" W and on the West line of Tax Lot 28 (if extended) a distance of 1334.08 feet to a point on the centerline of Wood River; thence downstream and on said centerline of Wood River S 32 01'30" E a distance of 11.81 feet; thence S 50 53'23" E a distance of 168.46 feet; thence S 71 29'07" E a distance of 176.87 feet; thence N 74 40'24" E a distance of 105.9 feet; thence N 49 41'16" E a distance of 327.01 feet; thence N 03 32'39" E a distance of 203.41 feet; thence N 11 15'49" E a distance of 182.77 feet; thence N 20 19'23" E a distance of 143.96 feet; thence N 34 34'27" E a distance of 179.74 feet; thence N 49 54'50" E a distance of 156.85 feet; thence N 65 57'48" E a distance of 161.79

feet; thence N 88 07'21" E a distance of 193.67 feet; thence S 08 11'22" E a distance of 1143.15 feet; thence S 01 59'08" W a distance of 150.0 feet; thence S 89 20'40" W a distance of 200.0 feet; thence S 00 19' E a distance of 644.37 feet to a point on the North right-of-way line of Nebraska State Highway No. 30, said point being 200.0 feet Northerly from the centerline of the Union Pacific Railroad; thence S 70 14'56" W and on the aforesaid North right-of-way line a distance of 610.85 feet; thence S 81 33'14" W a distance of 712.54 feet to the place of beginning. Containing 48.860 acres, more or less. EXCEPT a tract of land being part of the North Half of Section 1, Township 9 North, Range 13 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as being all that part of Tax Lot 27 lying West of the centerline of the Wood River as determined by the thread of the stream.

TRACT 12:

A tract of land being part of the North Half of Section 1, Township 9 North, Range 13 West of the 6th P.M., Buffalo County, Nebraska, more particularly described as being all that part of Tax Lot 27 lying west of the centerline of the Wood River as determined by the thread of the stream.