

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
LEO TOBIN FARMS, INC.,) CASE NO. BK
DEBTOR) A85-353
LEO TOBIN FARMS, INC.,)
Plaintiff)
vs.)
FIRST NATIONAL BANK OF TEKAMAH,)
Defendant)

MEMORANDUM

The Motion for Reconsideration filed by the Federal Deposit Insurance Corporation ("FDIC"), successor in interest to the First National Bank of Tekamah ("Bank"), was heard on April 13, 1988. Michael Helms of Schmid, Mooney & Frederick, Omaha, Nebraska, appeared for Leo Tobin Farms, Inc., ("Farms"), and Terry Fredericks of Dixon & Dixon, P.C., Omaha, Nebraska, appeared for the FDIC. Briefs were submitted by both parties.

The FDIC's Motion for Reconsideration is overruled.

The FDIC contends that the Court erred in its solvency calculation because the debt owed the FDIC was included in both balance statements of Farms and Leo Tobin Ranch, Inc. The Court ruled on this issue in its Memorandum and finds no facts or legal arguments presented by the FDIC to amend its judgment:

The Court recognizes that FDIC Exhibit No. 11 reconstructs Farms' balance sheet as of August 29, 1984, without including the Bank debt. However, Tobin Ranch, as well as Farms, were both totally liable for the entire debt, and the FDIC may look to each of the entities for repayment. No arguments claiming a piercing of the corporation were presented at the hearing.

FILED
DISTRICT OF NEBRASKA
AT _____ M
APR 26 1988
Judith M. Napier
Clerk, U.S. Bankruptcy Court
By _____ Deputy

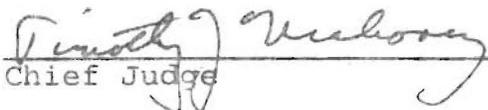
Leo Tobin Farms, Inc., v. First National Bank of Tekamah, No. A85-353, Slip Op. at 4 n.3. (Bankr. D. Neb. Jan. 8, 1988).

Second, the Court recognizes that it utilized the financial statement of Leo Tobin Ranch, Inc., without making an independent finding of Ranch's land value. In other words, when the Court calculated the net worth of Leo Tobin Ranch, Inc., it assumed as correct the land values of Ranch portrayed in its financial statements. As Farms points out, this assumption "gave the FDIC every benefit of the doubt." Farms reply brief at 7.

Last, the FDIC claims that the burden of proof to rebut the presumption of fair consideration was not met by Farms. After considering the evidence presented at the November 13, 1987, hearing, particularly the testimony of Paul Tobin, the Court found no fair consideration for the challenged transaction. Again, the Court finds no new facts or legal arguments to support an amendment to its January 8, 1988, Memorandum.

DATED: April 25, 1988.

BY THE COURT:


Chief Judge