

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
 NORMAN P. KRAMER and)
 BETTY J. KRAMER,) CASE NO. BK87-3176
)
 DEBTORS) Ch. 11

MEMORANDUM OPINION

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Relief by PCA and Stout-Kennedy; Motion for Change of Venue; Motion to Dismiss.

APPEARANCES

Steve Turner, Attorney, 1500 Woodmen Tower, Omaha, NE 68102
Donald Girard, Attorney, P.O. Box 1456, North Platte, NE 69103
Arlan Wine, Attorney, Wauneta, NE 69045

IT IS ORDERED:

Debtors filed a Chapter 11 petition in Colorado that was dismissed at the request of a creditor, but the order was not effective for 180 days. Debtors, after effective date of dismissal, filed a Chapter 11 petition in Nebraska. Creditors filed various motions which are the subject of this opinion.

Motion to dismiss and motion for change of venue are both overruled. The Colorado order of dismissal entered in May 1987 permitted creditors six months to complete foreclosure matters. There is nothing in the statute that prohibits these debtors from filing a subsequent bankruptcy more than 180 days after an order for dismissal, unless the Court finds from the circumstances that the filing is abusive or there have been no changes in circumstances since the entry of the order. In this case the debtors harvested a crop or a portion of the crop between the hearing on dismissal in May and refiled in November. Commodity prices changed also. Venue is proper because a majority of the assets owned and capable of reorganizing were in Nebraska when the case was filed in Nebraska.

However, with regard to the motion for relief, the Court finds from the evidence that the Colorado Bankruptcy Judge made findings that the debtors had no equity and the property was not necessary to an effective reorganization. Debtors admitted at the

final hearing and initial hearing on the Colorado motion to dismiss that the business could not be reorganized. In addition, this Court finds that debtors have no equity in the Colorado property and it is not necessary for an effective reorganization.

Finally, and separate from the above findings, the Court finds that relief should be granted to PCA and Stout-Kennedy because of the interplay between Colorado law and Section 362 of the Bankruptcy Code and Section 108(b) of the Bankruptcy Code.

PCA received relief from the automatic stay in the Colorado case and proceeded to foreclosure sale. PCA purchased a portion of debtors' Colorado land and the sale and movant Stout-Kennedy purchased a portion. Colorado law provides debtors a statutory redemption period after sale. Prior to the expiration of the statutory redemption period, the Nebraska case was filed.

Under Colorado law, although the debtor is still the titleholder until the redemption period expires and the purchaser obtains a deed from the sheriff, the only thing that becomes property of the bankruptcy estate is the right to redeem, not the property itself. In re Jenkins, 13 B.R. 721 (Bkrtcy. D. Colo. 1981). When the bankruptcy petition was filed, Section 108(b) of the Bankruptcy Code gave the debtor in possession, at most, sixty days beyond the petition date to exercise the redemption rights. In re Cucumber Creek Development, Inc., 33 B.R. 820 (D.C. 1983).

The time allowed to debtors in possession under the Colorado statutes and bankruptcy Code to redeem the property expired in January, 1988. Redemption rights had not been exercised by the expiration date.

Since record title is still in debtors and movants must take an affirmative act to obtain title by deed from the sheriff, movants correctly reason that they must seek relief from the automatic stay to do so. Debtors now have only bare legal title. Relief from the stay is granted.

PCA and Stout-Kennedy may proceed to obtain the appropriate sheriff deeds in Colorado.

Separate Journal Entry shall be entered.

DATED: March 4, 1988.

BY THE COURT:


Chief Judge