

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

IN THE MATTER OF:)

ALVIN E. SEKUTERA and)
CLAUDETTE C. SEKUTERA,)

ALVIN E. SEKUTERA and)
CLAUDETTE C. SEKUTERA,)

Plaintiffs,)

v.)

MASON STATE BANK, MASON CITY,)
NEBRASKA,)

Defendant.)

CV. 85-0-905

BK. 85-1208

ORDER

FILED	
DISTRICT OF NEBRASKA	
AT _____	M
JUN 25 1986	
William L. Olson, Clerk	
By _____	Deputy

This matter is before the Court on appeal from a judgment entered by the United States Bankruptcy Court for the District of Nebraska granting Mason State Bank (Bank) relief from the automatic stay imposed as a result of the debtors' petition in bankruptcy. On September 26, 1985, Bankruptcy Judge Timothy J. Mahoney held that the Bank's creditor's interest in certain property held by the bankrupts' estate was not adequately protected and thus, released the automatic stay. Judge Mahoney's holding was evidenced by a journal entry filed September 30, 1985, which was subsequently modified on October 1, 1985. Upon careful consideration of the record submitted on appeal and the briefs filed by the respective parties, this Court is of the view that the order of the bankruptcy court should be affirmed for the reasons hereinafter stated.

Appellants, Alvin E. and Claudette C. Sekutera, are debtors in possession in a Chapter 11 proceeding filed May 29, 1985. The Bank filed its motion for relief on August 30, 1985, claiming that the debtors failed to adequately protect the Bank's creditor interest in certain farm equipment and livestock. The matter was set for an evidentiary hearing on September 26, 1985. On the day of the hearing, the Sekuteras filed a disclosure statement, a plan of reorganization, and a complaint challenging the validity of the Bank's security interest in estate property (including the equipment and livestock at issue in the relief hearing).

During the September 26 hearing, argument was made by counsel for both the Bank and the debtors, and evidence was submitted by both sides. The bankruptcy court, having reviewed the record held (1) the Bank has a valid security interest in the debtors' farm equipment and livestock; (2) the evidence submitted by the Bank regarding the value of the collateral as well as the depreciation on the equipment was more credible than that submitted by the appellants; and (3) the collateral was not adequately protected as defined by 11 U.S.C. § 362(d)(1). Additionally, the Judge held that his ruling as to the validity of the Bank's security interest shall not be treated as final and cannot be cited as controlling during the adversary proceeding wherein the validity of the security interest was made issue, or during any subsequent state lawsuit.

The debtors raise three issues on appeal. First, appellants contend the bankruptcy court improperly failed to combine the hearing on the Bank's motion for relief with the adversary proceeding. Next, the Sekuteras assert that the bankruptcy judge erroneously found the collateral not to be adequately protected. Finally, they argue the Court's ruling is detrimental to the reorganization of the estate and should be overturned.

Before this Court addresses the merits of the appeal, it is prudent to state the general standard of review that guides the court in matters such as this. On appeal, a district court is not bound by the bankruptcy judge's conclusions of law; however, the bankruptcy judge's findings of fact are entitled to stand unless clearly erroneous. In *re American Beef Packers, Inc.*, 457 F.Supp. 313, 314 (D.Neb. 1978); see Bankruptcy Rule of Procedure 8013.

With this standard in mind, the Court must now determine whether Judge Mahoney erred in granting relief from the automatic stay. The debtors' argument that the bankruptcy court improperly failed to combine the relief hearing with the adversary proceeding is without merit. No authority has been cited in support of their assertion, and the Court can find none. The bankruptcy court had ample evidence before it to determine whether the Bank had a valid security interest in both the farm equipment and livestock. The evidence before the Court included promissory notes, a guarantee, security agreements, continuation statements, and appraisals. While not bound by Judge Mahoney's

legal conclusions as to the validity of the security interest, this Court finds it to be correct. Moreover, the conclusion was not final and could be further adjudicated during the adversary proceeding and any subsequent state lawsuit concerning the parties' relative interest in the collateral.

Next, the Court addresses the issue of adequate protection. Under 11 U.S.C. § 362(d), a creditor is entitled to relief from the automatic stay if either (1) there exists a lack of adequate protection of the creditor's interest, or (2) the debtor has no equity in the property, and such property is not necessary to an effective reorganization. Here, the bankruptcy court based its ruling on a determination that there was no adequate protection of appellee's interest. In reviewing that finding, the Court observes that the question of what protection is adequate is a question of fact. *Brookfield Production Credit Ass'n v. Borron*, 36 B.R. 445 (D.Mo. 1983), *aff'd*, 738 F.2d 951 (8th Cir. 1984). As such, the bankruptcy court's decision is subject to review under the clearly erroneous standard.

The bankruptcy court found that the debtors could not adequately protect the bank's interest in the equipment and livestock because the debtors failed to insure the collateral, the debt owed was greatly in excess of the collateral's value, and the equipment was quickly depreciating. (Tr. 21). Upon review of the record, this Court fails to find the bankruptcy judge's conclusions to be clearly erroneous. On the contrary, the record contains substantial evidence supporting Judge

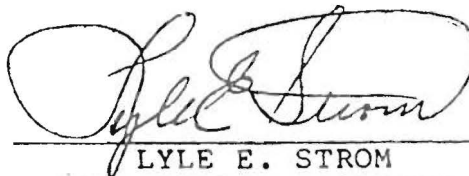
Mahoney's ruling. It appears Judge Mahoney carefully weighed the evidence before him at the September 26 hearing and rendered a just decision.

Appellants' final contention is also meritless. Code Section 362(d) reads in the alternative. The section allows a court to grant relief from the automatic stay upon finding (1) lack of adequate protection, or (2) the debtor lacks equity in the property at issue and the property is not necessary to an effective reorganization of the bankrupt's estate. In the matter at hand, Judge Mahoney found the debtors could not adequately protect the Bank's interest in the farm equipment and live stock. As such, no determination need be made as to whether the collateral is necessary for an effective reorganization of their estate. Accordingly,

IT IS HEREBY ORDERED that the bankruptcy court order granting relief from the automatic stay is affirmed.

DATED this 25th day of June, 1986.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "Lyle E. Strom", is written over a horizontal line.

LYLE E. STROM
UNITED STATES DISTRICT JUDGE