Affirmed at 87:126

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
CARL R. NELSON,	)	CASE NO. BK83-2087
	)	
DEBTOR	)	

MEMORANDUM OPINION

This matter came on for a hearing on July 31, 1986, in Omaha, Nebraska, upon multiple motions filed by the parties herein and the hearings were consolidated. Judith A. Spindler of Dixon, Dixon & Minahan, P.C., Omaha, Nebraska, appeared for the Arcadia State Bank. Carl R. Nelson, debtor-in-possession, appeared and represented himself. Mr. Nelson had previously filed some of his exhibits in the court file and attached them to various pleadings. The Court has reviewed the evidence presented at the hearing, arguments of counsel, the brief of the Arcadia State Bank and has based its decision on a complete review of the pleadings, including the following:

A. The debtor-in-possession's two basic requests:

(1) <u>Filing #160 - [debtor-in-possession's] Motion for Urgent Expedited Hearing on Use of Cash Collateral</u> (including debtor's 7 exhibits A, B, C, G, H, K & N)

(a) Filing #177 [Arcadia State Bank's] Resistance to Motion for Expedited Hearing for Use of Cash Collateral and Request for Adequate Protection and Prohibition of Use of Collateral.

(b) Filing #212 [debtor-in-possession's] Objection to Resistance of debtor's Motion for Expedited Hearing for Use of Cash Collateral and [debtor-in-possession's] Resistance to Arcadia State Bank's Motion or Request for Adequate Protection and Prohibition of Use of Cash Collateral. (no exhibits attached)

(2) <u>Filing #161 - [debtor-in-possession's] Motion for Urgent Expedited Hearing [for final determination of Security Agreement. . . .]</u> (including debtor's 10 attached exhibits D, [illegible], F, [illegible], [illegible], M, P, [illegible], [illegible], [illegible])

(a) Filing #178 [Arcadia State Bank's] Motion to Dismiss Debtor's Motion for Expedited Hearing for Final Determination of Validity of Security Agreement and Request for Sanctions (no exhibits attached)

(b) Filing #211 [debtor-in-possession's] Resistance to Motion to Dismiss debtor's Motion for Expedited Hearing for Final Determination of Validity of Security Agreement and Request for Sanctions (including debtor's attached exhibits A & B)

B. The Arcadia State Bank's two basic requests:

(1) <u>Filing #179 - [Arcadia State Bank's] Motion to Appoint Trustee and Request for Expedited Hearing</u>

(a) Filing #219 - [debtor-in-possession's] Resistance to Arcadia State Bank's Motion to Appoint Trustee and Request for Expedited Hearing (no exhibits attached to motion but see also separate Filing #220 affidavit of debtor-in-possession)

(2) <u>Filing #180 - [Arcadia State Bank's] Motion for Relief from the Automatic Stay</u>

(a) No formal "resistance" was filed to its motion but see separate Filings #217 & #218 - affidavits

(b) On August 4, 1986, Filings #229, an affidavit of debtor-in-possession, and #230, an affidavit and appraisal of personal property, were filed after the hearing without leave of Court and will not be considered. They appear to relate to a "motion for relief" but it cannot be determined whether it's the motion of Arcadia State Bank or the Travelers Insurance's motion which was heard the same date, later sustained, and was appealed by debtor.

<u>FINDINGS OF FACT</u>

This debtor-in-possession is an Arcadia, Nebraska, farmer whose disputes with this creditor have become memorialized in the state and the federal courts' literature. At the time of his filing this Chapter 11 case, the debtor had been a farmer for 36 years and had a grain and livestock operation in Valley County.

On or about September 30, 1983, the debtor-in-possession, Carl R. Nelson executed and delivered two promissory notes in favor of the Arcadia State Bank. Copies of the promissory notes were attached as Exhibits A & B to the defendant's Exhibit #1. Exhibit A is a 92-day promissory note numbered 10674 in the amount of $6,844.51 with a reference to a security agreement dated March 6, 1978. It provided for 14% interest per annum from the date of the note and with interest at the rate of 16% per annum from maturity until paid. Exhibit B is a 92-day promissory note numbered 10675 in the amount of $93,782.92 with a reference to a security agreement dated March 6, 1978. This note also provided for 14% per annum on the unpaid balance from the date of September 30, 1983, with interest thereon at the rate of 16% per annum from maturity until paid.

On or about March 6, 1978, Carl Nelson executed and delivered to the Arcadia State Bank a document entitled "Financing Statement and Security Agreement". A copy of said document was attached as Exhibit C to the defendant's Exhibit #1. By this document the debtor granted to the Bank a security interest in all equipment, all farm products including but not limited to crops, livestock, supplies used or produced in farming operations, contract rights, and accounts now owned or hereinafter acquired. There is no legal description on this document.

On or about March 10, 1978, a financing statement naming Carl Nelson as debtor and the Arcadia State Bank, as secured party was filed with the office of the County Clerk of Valley County, Nebraska, as Filing No. 4259 and filed with the Nebraska Public Service Commission on March 2, 1978, as File No. 4148. A copy of said financing statement was attached as Exhibit E to defendant's Exhibit #1.

On April 20, 1981, Carl R. Nelson executed and delivered a security agreement to the Bank. A copy of the security agreement was attached as Exhibit D to defendant's Exhibit #1 and referred to all equipment, including but not limited to all farm equipment, tractors, machinery and implements, all farm products, including but not limited to crops, livestock, and supplies used to produce in farming operations, all contract rights, and accounts.

On or about April 20, 1981, a financing statement naming Carl Nelson as debtor and the Arcadia State Bank as secured party was filed with the Office of the County Clerk of Valley County, Nebraska, as filing No. 59-25 and was filed with the Nebraska Public Service Commission on or about April 27, 1981, as Filing No. 26040. Copy of said financing statement was attached to defendant's Exhibit #1 as Exhibit D.

On or about March 4, 1983, a continuation statement continuing the original financing statement bearing File No. 4259 was filed with the Office of the County Clerk of Valley County, Nebraska, and was filed with the Secretary of State of Nebraska-- Uniform Commercial Code Division on or about March 14, 1983. A copy of said continuation statement was attached to defendant's Exhibit #1 as Exhibit F.

On or about December 5, 1983, the debtor filed for relief under Chapter 11 of Title 11, United States Bankruptcy Code. At the time of the filing, debtor was represented by counsel, Michael Heavey. The debtor filed an application for authority to grant a post-petition lien this same date. Arcadia State Bank filed a written resistance to both motions on December 16, 1983, and both motions were withdrawn December 22, 1983, and January 6, 1984.

Early in the case, January 11, 1984, Arcadia State Bank filed its first motion for relief from the automatic stay. On or about January 30, 1984,, a preliminary hearing was held and the Bank's motion was sustained by the Bankruptcy Court. Michael Heavey represented the debtor; Clifton Jessup represented the Bank. Evidence was entered that the debt due Arcadia State Bank upon the date of filing was $103,174.81 and that the debt due at the date of this hearing was $105,501.62. The affidavit of Leo Wolf, an Ord, Nebraska, appraiser established that the value of the collateral in which the Arcadia State Bank had a security interest was $103,190 as of January 5, 1984. This total value included $62,875 for machinery and equipment, $36,155 for livestock, and $4,160 for feed. As of the date of filing of the petition, the value of the collateral exceeded the debt due the Bank by only $16.19. Evidence introduced also was that no payments had been remitted to the Bank since filing. Mr. Heavey argued that with a sale of some assets and paydown of the debt, an increase in the herd, and the debtor's using his veteran's benefits, there would be adequate protection for the creditor (defendant's Exhibit #3, attachment D, page 6, lines 3-14-transcript of January 30, 1984, relief hearing.)

Judge Crawford granted relief to the Bank. The debtor was unsuccessful in his attempts to obtain a stay of the relief order. On March 21, 1984, a motion to withdraw was filed by debtor's attorney, Michael Heavey. On April 10, 1984, an order approving the appointment of Bruce Abrahamson as debtor-in-possession's attorney was entered.

During the pendency of the debtor's appeal of the relief order, Arcadia State Bank obtained a summary judgment order in replevin against the debtor. The debtor at the replevin hearing raised the issue that one-half of the property which Arcadia claimed as collateral was owned by Jerry Nelson, the debtor's son. A jury verdict was entered on January 17, 1985, whereby the jury found that Jerry Nelson did own one-half of the collateral. Arcadia State Bank appealed this jury verdict to the Nebraska Supreme Court.

On or about May 9, 1986, the Nebraska Supreme Court reversed the jury verdict and remanded the replevin action to the District Court of Valley County for a finding that Arcadia State Bank was entitled to possession of the collateral (see Arcadia State Bank v. Nelson, [illegible] N.W.2d [illegible], 222 Neb. 704.)

During the pendency of Arcadia State Bank's appeal of the jury verdict to the Nebraska Supreme Court, the United States District Court for the District of Nebraska reversed the January 30, 1984, decision of the Bankruptcy Court granting relief to the Arcadia State Bank. However, during the pendency of that appeal to the Federal District Court, the debtor's attorney, Bruce Abrahamson, and the Arcadia State Bank were attempting to negotiate a workout. Mr. Abrahamson filed notices of intent to sell certain items of property. Counsel for the Bank indicated that during the course of the negotiations Mr. Abrahamson forwarded to her checks in the amount of $15,865.03 as proceeds of the Bank's collateral.

On April 9, 1974, and June 7, 1984, the debtor-in-possession claimed that he endorsed and delivered to his attorneys, Michael Heavey and Bruce Abrahamson, checks totaling $16,341.92 ($476.89, $4,724.90, $7,840.13 and $3,30) to be placed in the "debtor-in-possession account". Mr. Nelson described the turnover of checks as a "conspiracy" between his attorneys and the Bank's attorneys and violative of the Bankruptcy Code. Debtor-in-possession intimated that his relationship with Mr. Abrahamson, his attorney, deteriorated at that point.

Negotiations for a workout with the Bank terminated when the debtor-in-possession, against the advice of his counsel, Mr. Abrahamson, instituted a truth-in-lending suit against the Arcadia State Bank during the fall of 1984. Bruce Abrahamson filed for leave to withdraw as counsel on November 2, 1984, and no appearance of any other attorney has been filed since that time.

On or about January 14, 1986, the debtor filed a motion for reconsideration of claim and/or wrongful setoff alleging recovery of damages predicated upon the payment to Arcadia as an unsecured creditor which had failed to properly perfect its security interest. The Bankruptcy Court on or about March 22, 1986, informed the debtor that any such action to contest the validity of Arcadia State Bank's security agreement and financing statement must be brought before the Court by an adversary proceeding.

Thereafter on July 3, 1986, debtor filed his motion for an urgent expedited hearing on the use of cash collateral and his second motion for an urgent expedited hearing on a final determination of the validity of a security agreement. On July 16 Arcadia State Bank filed a resistance to the debtor's motion for an expedited hearing for the use of cash collateral and request for adequate protection and prohibition of the use of collateral and, a motion to dismiss the debtor's motion for expedited hearing for final determination of validity of security agreements and request for sanctions, the motion to appoint a trustee and a request for expedited hearing, and its second motion for relief in the case pending the outcome of the State Supreme Court appeal. All of these matters were consolidated for hearing at the July 31, [illegible]

At the hearing on July 31, 1986, the Arcadia State Bank presented, by affidavits, evidence of its various security agreements and of the debt owed to the Bank upon the filing of this case (December 5, 1983) in the amount of $103,174.81. Since the commencement of this case the Bank received $15,865.03 in payments ($4,724.90, $7,840.13 and $3,300) from the debtor. As of July 9, 1986, the debt due the Bank was $87,309.78.

The affidavit of the Bank's appraiser, Leo Wolf, (defendant's Exhibit #2) established that he had initially appraised the debtor's property on January 5, 1984, and again on July 9, 1986, and July 28, 1986. Mr. Wolf had been able to inspect on the later dates all of the original equipment except a John Deere 2010 gas tractor and loader (originally valued at $4,500) which debtor had sold. The appraiser indicated that there had been a 15% decline in value since January 5, 1984, and he anticipated a continued decline of 5% until the end of 1986. The average cost to conduct, clerk, and promote an auction of the personal property would be 5% of the sales price of the machinery and equipment and 3% of the sales price of the livestock. In the opinion of the Bank's appraiser, the total fair market value of the collateral in which the Bank had a security interest as of July 28, 1986, was $86,179. This amount is broken down as follows:

	January 5, 1984	July 28, 1986
machinery and equipment:	$62,875 (including John Deere tractor and loader $4,500)	$49,619 (excluding John Deere 2010 tractor and loader x 15% depreciation)
feed:	4,160	none listed
livestock:	36,155	36,560
total	$103,190	$86,179

Deducting the value of collateral from the debt in July, 1982, shows that the debtor has no equity in the collateral-- $1,130.78 ($87,309.78 - $86,179 = $1.130.78.) However, the debtor presented evidence that he is holding $4,794.88 in checks with the name of the Bank and the debtor as payees, which amounts represent proceeds from the sale of collateral in which the Bank claims a security interest. Adding this amount to the other assets means the debtor does have assets with a value in excess of the Bank's claim and, therefore, has equity in the assets.

Debtor-in-possession offered no appraisal evidence and did not dispute the Bank's figures. Debtor's position is that the Bank's security documents are defective and Bank is hence an unsecured creditor entitled to no adequate protection. Debtor chiefly complains that Bank's taking of the $15,865.03 cattle and tractor proceeds checks violated the Bankruptcy Code and should be given back to him as trustee in the interest of all creditors.

Debtor has requested permission to use the sale proceeds listed above whether or not the Bank has a valid lien. In addition, the Bank convinced a sale barn to put its name on Check number 63349 dated April 16, 1986, from the Huss Platte Valley Auction Co., Inc., to Arcadia State Bank and Jerry Nelson in the amount of $4,967.01 (Exhibit H to Filing #160). Debtor claims he has permission to use the funds represented by the check and that the Bank has no valid lien on any property of Jerry Nelson. Debtor argued that he filed his emergency motion because he needed to use the checks he's holding to be able to irrigate and to buy bulls for his calf crop.

Debtor presented Exhibit K which was a search of the Valley County UCC record by the Clerk and showed that the Bank had no lien on Jerry Nelson's assets as of April 21, 1986. Debtor alleges that the Bank had no right to have its name put on his son's check. Debtor requests the Bankruptcy Court to require the Arcadia State Bank to endorse the checks and also have them taken off his son's check. Bank's counsel responded to questioning by the court that the Bank had its name put on the debtor's son's check because it wished to be adequately protected and didn't know whose cattle were sold. The Bank's actions were depicted as an attempt to monitor its collateral.

The evidence before the Court is that the Bank has no lien on assets of Jerry Nelson and has not proven the check represents proceeds of sale of collateral in which it has a lien. Therefore, it is ordered to endorse the check and the proceeds are to be delivered to Jerry Nelson.

In support of its motion to appoint a trustee, the Bank presented the affidavit of a brand inspector that on May 14, 1985, certain cattle had been sold under a brand that had been transferred from the debtor to his son, Jerry Nelson, in the spring of 1984. Further evidence from the Nebraska Brand Committee was that the transfer of the brand from Carl R. Nelson to Jerry E. Nelson had been reversed and the brand was now in the name of Carl R. Nelson. The debtor admitted that he returned one branding position to the Brand Board and claimed that the Brand Board sold that position over to Jerry Nelson.

The Court finds that debtor intentionally transferred the brand to his son, Jerry, without Court approval.

The Bank further presented the affidavit of an assistant loan officer of the Arcadia State Bank in support of its allegation that the debtor transferred grain stored on his property into a [illegible] trailer truck. [illegible]'s statement was that on [illegible], at approximately [illegible] P.M. he [illegible] check of the personal property located at the Carl Nelson farm by driving by on the public roadway. He observed a green hopper wagon located near the west grain bin on said farm with an unidentified person standing on the cart tire. The grain was being transferred from the bin into the hopper, and a white semi-trailer was also located in the yard. Mr. Gustafson further stated that he returned for another visual check on May 17, 1986, at approximately 10:30-10:50 A.M. and observed that the white semi-trailer had been removed from the premises. The debtor-in-possession responded that he has had no grain to transfer as all of the debtor's corn had been fed to the cattle.

The Court finds the evidence slim, but convincing that grain was removed from the premises.

The Bank further complained that this Court ordered the debtor-in-possession on June 18, 1986, to file certain detailed operating reports and the debtor's report filed on July 15, 1986, was less than sufficient. The debtor disputed this and felt his reports were sufficient.

The Court finds that the reports are not sufficiently detailed.

The Bank further presented the affidavit of one of its attorneys who had searched the records and found that debtor-in-possession had conveyed certain real estate without filing a notice of intent to sell and providing the appropriate notice to all parties in interest. Debtor-in-possession did not deny the transfer but related that he did so as an administrative trustee and that there was no monetary value for his appointment as trustee.

The Court finds that the debtor intentionally attempted to convey real property of the estate without authority of the Court.

Issues

1. Should the Bankruptcy Court determine if the Arcadia State Bank has a properly perfected security interest in the debtor's personal property when the issue has been raised by motion of debtor rather than by an adversarial complaint if the parties consent? Yes.

2. Does the Arcadia State Bank have a properly perfected security interest in the debtor's farm products, farm equipment and farm machinery? Yes.

3. Should relief be granted to the creditor? No.

4. Has the debtor met his burden of proof that the interest of Arcadia State Bank is adequately protected, and, therefore, the debtor is entitled to use cash collateral pursuant to the standards of <u>In re Martin</u>, 761 F.2d 472 (8th Cir. 1985)? No.

5. Is there cause and is it in the best interest of creditors to appoint a trustee? Yes.

<u>Conclusion</u>

I. <u>Jurisdiction.</u>

Although Bankruptcy Rule 7001(2) provides that an action to determine the validity, priority or extent of a lien other than a proceeding under Rule 4003(d) must be commenced by an adversary proceeding and governed by Part 7 of the Rules of Bankruptcy Procedure, the Bankruptcy statutes do not so require this. The debtor-in-possession raised the issue and has requested relief in the form of a motion because he didn't have the time to wait. The Arcadia State Bank in its brief (Filing #214) and orally at the hearing waived its initial resistance so the matter could be resolved once and for all. In addition, the Bank filed a motion for relief and the Court must determine the validity and extent of the security interest before determination of relief should be granted. For these reasons, the Court should decide the issue.

II. <u>Validity of Security Interest.</u>

The debtor-in-possession disputed the Bank's perfected security interest because the security agreement lacks a legal description and the description of the collateral in the security agreement lacks specificity. Debtor's Exhibit D, a combination financing statement and security agreement, dated April 20, 1981, does contain a legal description. Debtor's Exhibit C, dated March 6, 1978, does not.

Even assuming that the only security agreement was the one dated March 6, 1978, a requirement of a legal description only applies to growing crops and does not apply to the crops harvested or to remaining items of personal collateral set forth in the security agreement dated March 6, 1978. <u>In re Roberts</u>, 38 B.R. 128, 37 U.C.C. Rep. Ser. 1721 (Bankr. D. Kan. 1984); <u>Genoa National Bank vs. Sorenson</u>, 309 N.W.2d 659 (Neb. 1981).

The debtor further states that Arcadia's descriptions in its security agreement as to livestock, farm machinery and equipment are not specific and therefore the security agreement is unenforceable. This is clearly not the law. In the case of <u>United States vs. Pirnie</u> 339 F.Supp. 702 (D. Neb. 1972), <u>aff'd.</u> 472 F.2d 712 (8th Cir. 1983), the United States Court of Appeals for the Eighth Circuit (the "Eighth Circuit") held that the description of the collateral as "all livestock now owned or hereafter acquired by the debtor together with all increases, replacements, substitutions and additions thereto was sufficient under U.C.C. §9-110 to give the Farmers Home Administration a security interest in all the livestock owned by the debtor. In the case of United States vs. First National Bank in Ogallala, Nebraska, 470 F.2d 944 (8th Cir. 1973), the Eighth Circuit held that a description of collateral as "all farm and other equipment now owned and hereafter acquired by debtor, together with all replacements, substitutions, additions and accessions thereto" made possible the reasonable identification of the after-acquired irrigation equipment in which the Farmers Home Administration claimed a security interest. The Eighth Circuit further concluded that was all that was required under U.C.C. §§9-110 and 9-203 to create a security interest in the irrigation equipment. The debtor's arguments that the blanket description in the security agreement fails to reasonably identify the farm machinery, equipment and livestock intended to be secured are not well founded.

March 10, 1978, Arcadia filed a financing statement between Carl Nelson as debtor and Arcadia State Bank as secured party in the Office of the County Clerk of Valley County, Nebraska, as No. 4259 which was continued in the Office of the County Clerk of Valley County, Nebraska, on March 4, 1983, ("Financing Statement #4259"), describing farm equipment, farm products, crops, livestock, contract rights and accounts with a legal description set forth therein. Financing Statement No. 4259 was continued March 4, 1983, within the five-year period by continuation statement filed with the County Clerk, Valley County, Nebraska, pursuant to Neb. Rev. Stat. U.C.C. §9-412. Since the debtor filed bankruptcy on December 5, 1983, Financing Statement No. 4259 will remain effective until the termination of the bankruptcy case and thereafter for a period of sixty (60) days or until expiration of the five-year period whichever occurred later, pursuant to Neb. Rev. Stat. U.C.C. §9-403(2). A separate security agreement covering all equipment, farm products, crops, livestock, supplies used in the farming operations, contract rights and accounts now and hereafter acquired was executed by Carl Nelson on or about March 6, 1978.

On or about April 23, 1981, Arcadia State Bank filed the Combination Security Agreement and Financing Statement #59-25 referred to above in the offices set forth above which were the appropriate offices for filing of financing statement under the laws of the State of Nebraska in 1981. Since the debtor filed bankruptcy, Financing Statement #59-25 will remain effective until the termination of the bankruptcy case and thereafter for a period of sixty (60) days or until the expiration of the five-year period, whichever occurs later, pursuant to Neb. Rev. Stat. U.C.C. §9-403(2).

Since Financing Statement #4259 and Financing Statement #59-25 were properly filed and are still in effect, the debtor's arguments that Arcadia does not have a properly perfected security interest in the debtor's farm products, farm equipment and farm machinery is unfounded.

The debtor makes a reference that Title 15 U.S.C. §1691(d) requires that all signatures of husband and wife are necessary "to a valid instrument". Section 1691(d) of Title 15 is a provision of the Equal Credit Opportunity Laws concerning consumer credit. The provision of the debtor cites to simply states that a request for the signature of both parties to a marriage for the purpose of creating a valid lien shall not constitute discrimination. Nowhere in Section 1691(d) is there a specific mandate that a husband and wife must both sign any instrument for validity.

III. Sufficiency of Adequate Protection.

Consideration of both the debtor-in-possession's motion to use cash collateral and of the Bank's motion for relief require a determination that the debtor-in-possession can provide Arcadia State Bank with adequate protection.

The evidence was that the debtor-in-possession did not make any offers of adequate protection other than the assertion that if he can keep his operation going all creditors will be benefited.

The debtor-in-possession's motion for urgent expedited hearing on use of cash collateral should be overruled and the Arcadia State Bank's motion for relief should be overruled.

The Martin case referred to above requires the Court to determine the value of the collateral and the risks to creditor's interest in that collateral if the debtor is to use it. The collateral which the debtor desires to use is cash and the debtor presented no evidence that the value of the cash will be protected by additional liens, increases in the value of livestock or anything else. No protection having been offered, no use of the collateral is authorized.

The value of the collateral exceeds the amount of the debt. Without granting debtor the authority to use the collateral, the Bank's interest is adequately protected, the debtor has equity in the collateral and relief shall not be granted.

IV. Appointment of Trustee.

The creditor has presented sufficient evidence to convince the Court that a trustee should be appointed. Bankruptcy Code §1104 authorizes the Court to appoint a trustee for cause, including fraud, dishonesty, incompetence or gross mismanagement of the affairs of the debtor. By its terms the section does not limit "cause" to the specific reasons listed above. This Court believes the following actions of the debtor are cause for the appointment of a trustee:

1) debtor's attempt to transfer a brand owned by the estate to his son;

2) debtor's attempt to convey real property of the estate without Court approval;

3) debtor's failure to explain the apparent disappearance of grain;

4) debtor's use of collateral i.e. prepetition grain, to feed livestock without Court approval or agreement of the secured creditor;

5) debtor's refusal to cash checks or negotiate the deposit of those checks, dated in May of 1985, because he disputed the lien interest of the Bank. The estate has been harmed by the fact no interest has been earned on the proceeds of the checks. The debtor waited almost a year to ask for Court guidance on the appropriate disposition of the checks;

6) debtor's failure to adequately report to the Court the actual disposition of collateral and the location of such collateral.

All of the above make it clear to the Court that this estate needs to be administered by a person who understands the Code and Rules and who has an interest that is not totally adverse to the interest of the creditors.

Therefore, it is the order of the Court:

1) Debtor's request to use cash collateral is overruled.

2) Creditor's motion for relief is overruled.

3) Creditor is to pay over to Jerry Nelson any check it is holding with his name as payee. If such check has been delivered to the Clerk of the Bankruptcy Court, creditor is to inform the Clerk by October 1, 1986, that such check or its proceeds may be delivered to Jerry Nelson.

4) A trustee shall be appointed from the panel of trustees to administer this case.

A separate Journal Entry will be entered this date.

DATED: September 17, 1986.

BY THE COURT:

U.S. Bankruptcy Judge

Copies mailed to:

Judith Spindler, Attorney, 1900 First Nat'l. Center, Omaha, NE 68102

Carl Nelson, Box 17, RR 2, Arcadia, NE 31175