

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

DWIGHT WILLIAM BRANDOW,  
MARJORIE KAY BRANDOW,

DEBTORS

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CASE NO. BK85-1064

MEMORANDUM OPINION

A hearing was held April 16, 1986, in this Chapter 13 case on a motion by Yankton Production Credit Association for determination of secured status. Appearing on behalf of the PCA was Douglas Stratton of the law firm of Domina & Gerrard, P.C. of Norfolk, Nebraska. Appearing on behalf of the debtors was Steven Wolf of Westergren, Hauptman, O'Brien, Wolf & Hadley, P.C., Omaha, Nebraska. Evidence was presented by the parties concerning values of the collateral on various dates, including values as of the approximate date of the petition, May 9, 1985. In addition, evidence was presented of the value of the collateral at other dates, including the purported "effective date of the plan" which would have been December, 1985.

The Court, after reviewing the evidence presented, was unable to make a final determination of values. The Court asked for supplementary evidence to be presented by the parties and it was. Once again the Court reviewed the evidence and although still having considerable difficulty understanding the position of the parties, the Court now renders its decision.

Issues

1. For the purposes of a Chapter 13 plan, should the value of the collateral be determined as of the petition date or some other date, possibly confirmation date?
2. What was the value of the collateral and, therefore, the allowed amount of the secured claim on the appropriate date?
3. Does the PCA have a valid security interest in the collateral?

Decision

1. The appropriate valuation date is the date of the petition.

2. The total value of the collateral on the petition date and, therefore, the value of the allowed amount of the secured claim is \$207,730. Since \$54,902 of that value is the amount of the first mortgage held by the FmHA, that amount must be subtracted from the total to determine the allowed amount of the secured claim of the PCA. After such subtraction, the allowed amount of the secured claim of the PCA and the value of the collateral for such purpose on the date of the petition is \$152,828.

#### Findings of Fact

On or about May 9, 1985, the debtors filed their Chapter 13 petition and schedules. On June 18, 1985, the creditor, PCA, filed a motion for determination of secured status pursuant to §506 of the Bankruptcy Code. After numerous delays caused by the Court schedule, the trial on such motion was held on April 16, 1986.

The PCA presented appraisal evidence of the value of the collateral on various dates, most of which approximated the date of the bankruptcy petition filing. The debtor argued that since much of the collateral was sold following the filing of the petition, the correct value to be used for the sold collateral is the value of the proceeds from that collateral and the appropriate value to use for the remaining collateral is the value as of the date of the hearing or as of the date the plan would have normally commenced, which was December of 1985.

The Court believes that the valuation date is a question of law and its reasoning concerning the choice of valuation date is contained in that section of this opinion entitled "Conclusions of Law." However, based upon such legal conclusion, the Court finds as a fact that the value of the collateral on the petition date is as follows:

<u>Asset</u>	<u>Date of Valuation</u> (Effective Date May 9, 1985)	<u>Valuation</u>
A. Livestock:		
1. Cattle:		
6 Heifers (Charolais)	June 20, 1985	\$ 2,400.00
1 Holstein Milk Cow	June 20, 1985	\$ 600.00
8 Charolais Bulls	June 20, 1985	<u>\$ 3,600.00</u>
	Subtotal:	\$ 6,600.00

2. Hogs:

7 Sows	June 20, 1985	\$ 8,400.00
15 Sows	June 20, 1985	\$ 2,400.00
10 Sows	June 20, 1985	\$ 1,500.00
8 Sows	June 20, 1985	\$ 1,200.00
24 Sows	June 20, 1985	\$ 3,840.00
130 Pigs (40-50 lbs.)	June 20, 1985	\$ 4,550.00
60 Pigs (30 lbs.)	June 20, 1985	\$ 1,500.00
64 Pigs (Baby)	June 20, 1985	\$ 640.00
3 Boars (600 lbs.)	June 20, 1985	\$ 450.00

Subtotal: \$ 24,480.00

B. Grain:

1. Corn:

2,500 Bushels June 20, 1985 \$ 6,250.00

2. Oats:

1,000 Bushels June 20, 1985 \$ 1,500.00

3. Beans:

1,700 Bushels June 20, 1985 \$ 9,180.00

4. Hay:

10 Ton June 20, 1985 \$ 300.00

Subtotal \$ 17,230.00

C. Debtor In Possession

Account: June 20, 1985 \$ 13,000.00

(Represents proceeds from  
sale of 1,700 bushels of  
soybeans and 15 head of  
cattle)

D. Machinery and Equipment: June 20, 1985 \$ 50,420.00

E. Real Estate:

The East Half of the June 28, 1986 \$ 96,000.00  
Northwest Quarter (E 1/2 NW 1/4  
of Section Fifteen (15),  
and the West Half of the  
Northeast Quarter (W 1/2 NE 1/4)  
of Section Fifteen (15),  
Township Twenty-nine North  
(29N), Range One East (1E)  
in Cedar County, Nebraska.

TOTAL \$207,730.00

From this amount must be deducted the FmHA first mortgage lien amount of \$54,902.00 which gives a value of collateral securing creditor's claim as of the petition date of \$152,828.00

The debtor has injected some issue with regard to the validity of the security interest and real estate mortgage interest held by the creditor. This Court finds that the creditor received appropriately executed security instruments, including security agreements, financing statement and real estate mortgages from the debtors contemporaneously with the granting of credit to the debtors and that the liens claimed pursuant to such instruments are valid and perfected.

#### Conclusions of Law

The debtor desires the Court to value the collateral as of the date the plan would have normally commenced had there been no litigation concerning the plan. The plan would have normally commenced in December of 1985. The language of the Bankruptcy Code relied upon by the debtors is §1325(a)(5) which reads:

"Except as provided in subsection (b), the court shall confirm a plan if--

"(5) with respect to each allowed secured claim provided for by the plan--(B)(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; . . ."

Both the Eighth Circuit and the Bankruptcy Court for the District of Nebraska have previously interpreted the meaning of the term "effective date of the plan" as it is used at a companion subsection of §1325. Those cases are Hollytex Carpet Mills v. Tedford, 691 F.2d 392, 7 C.B.C.2d 551, 9 B.C.D. 1087 (8th Cir. 1982), and In the Matter of Statmore, unreported slip opinion of the Bankruptcy Court of the District of Nebraska, filed July 28, 1982.

In each of those cases the debtor argued that it should be able to use certain exemptions or value property as of the date the plan would actually commence, rather than the date the petition was filed. Debtors in both of those cases argued that the term "effective date of the plan" meant the date the plan payments to the creditors would commence rather than the date the petition was filed. The Code section that was interpreted by both the Eighth Circuit and by Judge Crawford in the District of Nebraska was Bankruptcy Code §1325(a)(4) which provides that the court should confirm a plan if:

". . . the value as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7 of this Title on such date."

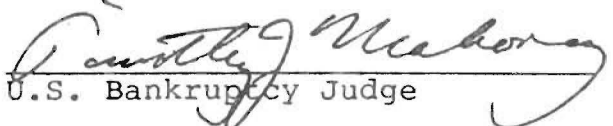
Judge Crawford decided that the issue before the Court was to which date the statutory language "on such date" referred. He concluded, as did the Eighth Circuit, in Tedford, that date of the filing of the petition in bankruptcy is the significant date for defining rights of the debtor and creditors. Trustee's avoiding powers generally arise on that date and the debtor's rights in exempt property are defined on that date.

This Court finds that the date to be used for valuation of collateral for determining the allowed amount of the creditor's secured claim is the petition date.

Separate journal entry shall issue consistent with this opinion.

DATED: September 29, 1986.

BY THE COURT:

  
Dorothy M. Mahoney  
U.S. Bankruptcy Judge

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