

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

ERNEST JONATHAN HALL and
SHIRLEY ANN HALL,

DEBTORS

CASE NO. BK84-1848

MEMORANDUM OPINION

This matter came on for final hearing on the Motion for Relief from Automatic Stay filed by Lincoln Production Credit Association. The matter was heard by Timothy J. Mahoney, United States Bankruptcy Judge, at Lincoln, Nebraska, on August 13, 1985. Ward F. Hoppe appeared on behalf of the Lincoln Production Credit Association and Donald C. Sass appeared on behalf of the debtors and debtors-in-possession, Ernest and Shirley Hall.

Debtors-in-possession are farmers in Fillmore County, Nebraska. They filed their original petition under Chapter 11 of the United States Bankruptcy Code on September 21, 1984.

At the beginning of the evidentiary hearing on this motion, the parties offered into evidence plaintiff's Exhibit No. 1 which was a stipulation executed by the attorneys for the parties which basically included a list of creditors and the amount and value of the liens held by each creditor against the land owned by the debtors-in-possession. The liens include a first deed of trust held by Aetna Life Insurance Company on certain land owned by the debtors-in-possession. The amount due Aetna Life Insurance Company as of the beginning of this case was \$325,731.03. Certain other land is being purchased by the debtors-in-possession on land contract. The balance due on said contract on September 21, 1984, was \$97,200.00 and interest has accrued up to and including August 1st in the amount of \$6,453.90.

Both the Aetna claim and the interest of the contract seller on the property referred to above are superior to the claim of the Lincoln Production Credit Association which has a real estate mortgage lien on a portion of the real estate owned by the debtors-in-possession.

In addition to the deed of trust and contract interest which are superior to the claim of the Lincoln Production Credit Association, there are taxes due on all of the real estate owned by the debtors-in-possession with interest accruing on the tax account. The total

amount of the taxes, Aetna claim, contract interest and Lincoln Production Credit Association claim as of the date of hearing is, according to the stipulation of the parties, in excess of \$671,852.

The stipulation also provides that if the debtor Ernest Hall were called to testify he would state that the real estate upon which the Lincoln Production Credit Association claims a mortgage is necessary to an effective reorganization of the debtor.

Both parties called appraisers to testify concerning the value of the real estate during the spring of 1985. There seems to be a general agreement between the appraisers that land values in Fillmore County have declined since September of 1984 and have declined greatly since their peak value in 1980 or 1981. The appraiser called by the Lincoln Production Credit Association, Norm Green, testified that the land values in the Fillmore County area have decreased between 20 and 30% during the past twelve months.

The appraisers gave considerably different values for the land owned by the debtors-in-possession. Using the highest valuation which was provided by Donald Kimbrough, the appraiser for the debtors-in-possession, the total value of all of the land owned by the debtors-in-possession is \$659,350.00. This figure includes the value of land upon which the Lincoln Production Credit Association does not claim a mortgage.

Giving the debtors-in-possession the benefit of the appraised value provided by their own appraiser, \$659,350.00 and giving the debtors-in-possession the benefit of their stipulation values, it appears that the value of the claims against the land is in excess of the value of the land by more than \$12,000.00. No evidence was offered by the debtors concerning an offer of adequate protection.

Based upon the opportunity to view and listen to the expert witnesses called by both parties, I conclude as follows:

1. There is no equity in the land.
2. The land is necessary for an effective reorganization of the debtor.
3. The land values have declined by approximately 20% since the date of the original filing in this case.
4. There has been no offer of adequate protection to the Lincoln Production Credit Association.
5. The decline in value of real estate in the Fillmore County area is continuing.

6. The value of the Lincoln Production Credit Association claim has declined since September of 1984 and will continue to decline for the foreseeable future.

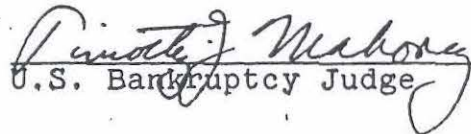
7. Interest is accruing on claims that are superior to that of the Lincoln Production Credit Association further reducing the value of its interest.

I, therefore, find that under Section 362(d)(1) the interest of the Lincoln Production Credit Association is not adequately protected and it should be granted relief from the automatic stay.

Separate order to follow.

DATED: August 21, 1985.

BY THE COURT:


U.S. Bankruptcy Judge

Copies to:

Ward Hoppe, Attorney, 1401 First National Bank Building, Lincoln, NE 6850

Donald C. Sass, Attorney, 401 Fifth Street, Fairbury, NE 68532