

IN THE UNITED STATES DISTRICT COURT FOR
DISTRICT OF NEBRASKA

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William L. Olson, Clerk	
By _____	Deputy

IN THE MATTER OF)
)
MERRILL & DEANNA DOWNEY,)
)
Debtors.)
)
FEDERAL LAND BANK OF OMAHA,)
)
Plaintiff,)
)
v.)
)
MERRILL & DEANNA DOWNEY, et al.,)
)
Defendants.)
)

CV. 85-0-261

BK. 82-1776

ORDER

This matter is presently before the Court on appeal from an order of the United States Bankruptcy Court for the District of Nebraska entered March 1, 1985. The appellant, First National Bank and Trust Company of Kearney (FNBK) appeals from the bankruptcy court's ruling that Mr. and Mrs. Downey's rights to two hundred forty shares of stock in the Federal Land Bank of Omaha were superior to the rights of FNBK. After careful consideration of the record on appeal and the briefs submitted by the parties, this Court finds the bankruptcy court properly ruled in favor of the debtors.

The undisputed facts are these. On January 25, 1977, the debtors executed a security agreement and financing statement with FNBK. The financing statement was filed for record with the Custer County Clerk on January 26, 1977. A continuation statement was later filed on December 18, 1981. The Downeys also entered into a loan agreement with the Federal Land Bank in

January, 1977. The purchase of two hundred forty shares of stock in the Federal Land Bank Association of Broken Bow was made a condition for obtaining the loan. The Broken Bow branch's obligations were subsequently assumed by the Federal Land Bank of Omaha. The purchase and sale of the stock was accomplished through a Federal Land Bank book entry; no actual stock certificate was issued. Since the loan was paid in full, the Federal Land Bank no longer has nor makes any claim to the stock or its proceeds. This action was brought to determine the true owner of the stock or its proceeds.

On October 12, 1982, Mr. and Mrs. Downey jointly filed a bankruptcy petition pursuant to Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101, et seq. After FNBK sought and obtained relief from the automatic stay imposed pursuant to 11 U.S.C. § 362, debtors and the bank entered into the post-petition agreement which is the focus of this appeal. In accordance with the August 16, 1983, agreement, FNBK deposited \$19,000 in the Downey's farm operating account. The money was used to assist the debtor's farm operations and to provide for an orderly liquidation of their bankruptcy estates.

In consideration for the \$19,000 loan, the debtors executed with FNBK an agreement which included the following provision at Article III, Par. (A)(1):

A. To secure all obligations of Downey to Bank, Downey grants Bank:

1. A continuing security interest in certain real and personal property including but not limited to all personal property being more particularly described as all farm products, including

but not limited to all livestock, crops, grain, hay, seed, feed, fertilizer, supplies, and products of crops and livestock; together with all equipment, including but not limited to all farm equipment, tractors, non-titled vehicles, machinery, implements, tools, irrigation systems, dairying systems, and all goods owned or used for preparing land or for planting, cultivating, fertilizing, irrigation, harvesting, moving, drying, storing, marketing, or processing of crops, products of crops, grain, seed or feed or for raising, feeding, handling, breeding, marketing or caring for livestock; and specifically including, but not limited to, all of Downey's livestock, the products and proceeds thereof; and further together with all growing crops and crops to be grown obtained by Downey subsequent to October 12, 1982; and (2) and continuing security interest in any increase in value of any collateral held by Bank on or before October 12, 1982; and (3) an assignment of any P.I.K. and/or diversion or similar benefits to which Downey may be entitled.

Paragraph B of Article III reads:

B. Downey shall execute contemporaneously herewith any and all additional documents necessary to effectuate the grant of the security set forth at Article III Paragraph A, including but not limited to a Security Agreement and Financing Statement in form the same as Exhibit C attached hereto.

Pursuant to Paragraph B, the parties executed and filed with the Custer County Clerk a document which included the following description of the collateral securing the indebtedness:

All farm products or inventory, including but not limited to all livestock, crops, grain, hay, seed, feed, fertilizer, supplies, and products of crops and of livestock; together with all equipment including but not limited to all farm equipment, tractors, non-titled vehicles, machinery, implements, tools, irrigation systems, including but not limited to

power units, wells, gearheads, pumps and alternators, dairying systems, all goods owned or used for preparing land or for planting, cultivating, fertilizing, irrigation, harvesting, moving, drying, storing, marketing, or processing of crops, products of crops, grain, seed or feed or for raising, feeding, handling, breeding, marketing or caring for livestock; all accounts and general intangibles and debtor's interest in any minerals, including oil and gas. Such security interest shall cover warehouse receipts or other documents of title which evidence storage or possession of crops or products of crops, livestock or products of livestock, or inventory. A carbon, photographic or other reproduction of the signed Security Agreement or Financing Statement may be used as a Financing Statement.

On July 27, 1984, the Federal Land Bank of Omaha filed with the Bankruptcy Court a complaint to compel interpleader. The Downeys and FNBK were named as potential claimants to proceeds from the liquidation of two hundred forty shares of Federal Land Bank stock. Each party filed a claim for the proceeds, and after an evidentiary hearing, Bankruptcy Judge David L. Crawford held in favor of the debtors.

The Bankruptcy Judge in his ruling made findings of fact and conclusions of law, which the Court has reviewed, together with the record submitted with this appeal.

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 also Bankruptcy Rule of Procedure 8013. Nebraska law controls the substantive issues in this appeal since the agreement was executed in Nebraska by residents of the state. Under the law of Nebraska, the proper construction of an unambiguous contract is a question of law for the Court. *Swanson v. Baker Industries, Inc.*, 615 F.2d 479 (8th Cir. 1980); *Meyers v. Frohm Holdings, Inc.*, 211 Neb. 329, 318 N.W.2d 716 (1982). If the terms of a contract are found to be ambiguous, however, evidence relating to ambiguities and contradictory provisions in a written contract is for a finder of fact to discern. *Olds v. Jamison*, 195 Neb. 388, 238 N.W.2d 459 (1976).

With these standards in mind, this Court must now determine whether the Bankruptcy Court erred in finding the Downeys' interest in the stock proceeds was superior to the bank's interest. FNBK contends Article III, Paragraph A, clearly provides for a security interest in all of the debtors' personal property. Next, the bank asserts that even if the agreement did not allow for a security interest in all of the Downeys' personal property, the document filed pursuant to Paragraph B with the Custer County Clerk gave the bank a security interest in the debtors' general intangibles. And since the proceeds from the stock would be classified as a general intangible under the Nebraska Uniform Commercial Code, the bank's interest therein was superior to the debtors' interest.

At the outset, this Court finds the agreement, including the document filed with the County Clerk, to be ambiguous as a matter of law. Even if the Court were able to determine what collateral was given as security pursuant to Article III, Paragraph A, this Court cannot, upon merely reading the documents, determine which collateral description was intended by the parties to define the collateral to be secured. The description found in the agreement seems to only grant a security interest in farm products, while the other description seems to grant a security interest in accounts receivable and general intangibles, as well as farm products. Accordingly, the Bankruptcy Court's findings with respect to these contradictory provisions will be upheld unless clearly erroneous.

Upon review of the record and Judge Crawford's findings, this Court fails to find his factual determinations to be clearly erroneous. The Bankruptcy Court reasonably found that Article III, Paragraph A, allowed for a security interest in farm products alone. Moreover, Judge Crawford appears to have correctly held that Paragraph A was controlling over the description of collateral on the County Clerk filing. Accordingly,

IT IS HEREBY ORDERED that the Bankruptcy Court's ruling should be and is affirmed in all respects.

IT IS FURTHER ORDERED that appellant's motion for stay pending appeal (Filing No. 2) should be and is denied as being moot.

DATED this 14th day of April, 1986.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Lyle E. Strom", written over a horizontal line.

LYLE E. STROM
UNITED STATES DISTRICT JUDGE