UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
REINHOLD SCHWARTZ and CHARLENE SCHWARTZ,	)	CASE NO. BK85-2354
	)	
DEBTORS	)	A86-320
	)	
J. L. DEPEW,	)	Chapter 11
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
GERING NATIONAL BANK, (now Federal Deposit Insurance Corporation); SIMPLOT SOIL BUILDERS and PANHANDLE COOP ASSOCIATION, INC.,	)	
	)	
Defendant	)	

MEMORANDUM OPINION

Trial was held in North Platte, Nebraska, on January 29, 1988, on the Complaint filed by J. L. Depew, Plaintiff, against the various defendants requesting a determination of the extent and validity and priority of liens against the proceeds of the sale of the 1985 crop planted, cared for and harvested by the debtors in possession. J. L. Depew (Depew) of Littleton, Colorado, appeared pro se. The Federal Deposit Insurance Corporation (FDIC), successor to the Gering National Bank (Bank) appeared by T. Randall Wright and Jurene Wegner of Dixon and Dixon, P.C., Omaha, Nebraska. Simplot Soil Builders (Simplot) appeared by Randall Lippstreu of Harris & Lippstreu, Scottsbluff, Nebraska. Panhandle Coop Association appeared by Paul E. Hofmeister, Scottsbluff, Nebraska.

This Memorandum Opinion constitutes findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.

Prior to the date of the trial, plaintiff filed a motion for summary judgment alleging that there were no material facts in dispute and that the Court should rule in his favor as a matter of law. The parties filed briefs in support of their positions and

at the beginning of trial presented the Court with numerous stipulations and exhibits, including affidavits in support of their positions concerning the motion for summary judgment. The parties also agreed that if the motion for summary judgment were to be overruled, all of the exhibits admitted in support of such motion or against such motion should be considered for purposes of the trial, in addition to the live testimony which would be taken at the trial. The Court reserved ruling on the motion for summary judgment and heard testimony from one witness presented by the plaintiff concerning his case in chief. After the presentation of that evidence, the Court recessed and reviewed all of the exhibits presented in support of the motion for summary judgment and then, on the record, requested final argument both on the motion for summary judgment and on the actual case.

The Court has now had an opportunity to fully review all of the exhibits, stipulations, final argument and memoranda of law presented by the parties.

1. Motion for summary judgment.

The motion for summary judgment is overruled. Prior to listening to the testimony of plaintiff's witness in his case in chief, there were outstanding material issues of fact. Those issues of fact are the following:

> 1. Was the document filed on May 20, 1985, purporting to be a continuation statement or new financing statement so misleading that a third party when reviewing such document would more than likely determine that such document was actually a termination statement concerning the Bank's interest in the 1985 crops?
>
> 2. If such document was misleading, did plaintiff reasonably rely on his conclusion that the document was actually a "termination" of the interest of the Bank?
>
> 3. Did the Bankruptcy Court authorize the debtors in possession to obtain secured credit?
>
> 4. Assuming that the Bank/FDIC, Simplot and Panhandle had properly perfected security interests in the 1985 crop should Depew move ahead of all or any parties on the basis of fairness and equity?

5. What was the amount Depew loaned debtors which was used in the production of the 1985 crop?

6. What is the amount of the Bank/FDIC loan balance which should be considered subject to the Bank/FDIC security agreement and financing statement and, therefore, payable out of the 1985 crop?

7. What is the amount of the Panhandle claim which was incurred for the benefit of the 1985 crop?

8. Did Depew release his claim to the proceeds of the 1985 crop grown on the "Brown" property by his filing on May 12, 1986, of a "continuation, amendment, release"?

Since any or all of these factual issues are material to the success of the Depew claim, both in amount and in priority, summary judgment is not appropriate.

II. The trial.

Facts

The debtors are farmers in western Nebraska who, in 1985, raised beans, corn and hay on three different parcels of real estate. The parcels and the value of the proceeds of the crop from each parcel have been stipulated to by the parties.

Parcel A: NW 1/4 - 26-22-54 (Brown farm). Beans, corn and hay ($37,505.51).

Parcel B: S 1/2 NE 1/4 27-22-53 (home place). Corn, ($10,092.14)

Parcel C: NW 1/4 - 27-22-53; E 1/2 SE 1/4 - 34-22-53 (land contract property). Corn and hay ($28,999.03).

All real estate is in Scotts Bluff County, Nebraska.

The debtors and the Bank had a lending relationship at least from 1981 up to and including the harvest of the 1985 crop. That harvest began in late October, 1985, and was finished in mid-March of 1986.

In 1981, the Bank, in consideration for a loan of certain funds to the debtors took a security interest in all equipment, all farm products including but not limited to: crops, livestock and supplies used or produced in farming operations, all products

of crops or livestock now owned or after acquired, contract rights and accounts and the proceeds and the products of such collateral. The Bank perfected its security interest in such collateral by the appropriate filing and the financing statement which was filed included the real estate identified as Parcel C. That security interest continued to be perfected by the filing of a continuation statement in July of 1985.

On May 22, 1985, the Bank filed a copy of the original 1981 financing statement and filed a security agreement dated April 13, 1984, which included in the portion of the security agreement identified as "location of collateral", the real estate described as Parcel C and, in addition listed "Robert Brown farm, Scottsbluff, Nebraska" with no further location or legal description concerning the Robert Brown farm. The May 22, 1985, filing of the copy of the financing statement and the security agreement have generated most of this litigation and are responsible for most of the legal and factual disputes.

On July 22, 1985, Simplot filed a "notice of fertilizer and ag-chemical lien on crops" pursuant to Section 52-1101 Reissue Revised Statutes of Nebraska, 1943, (hereafter "R.R.S. 1943). Simplot's document was in proper form according to the requirements of the statute and described as real estate upon which the crops to which the lien should attach were growing, Parcel A, Parcel B and Parcel C. Simplot claims, pursuant to such filing, that it has a lien on crops to the extent of the value of the supplies it provided to the debtors in the amount of $19,110.50 plus statutory interest at 1.33 percent per month or 16 percent annually.

The Nebraska fertilizer lien statute at Section 52-1101 et seq. R.R.S. (1943) permit the supplier of fertilizer or agricultural chemical to have a lien for the agreed charges or the reasonable charges and costs upon crops produced within one year upon the land where such product was applied and such lien continues in the proceeds from the sale of the crops. The supplier, in order to perfect such lien, must file a notice of the lien with the county clerk in the county where the land is located and upon which the crops are growing. According to the statute the lien is valid against subsequent lienholders if it is filed within sixty days of the last date upon which the product was furnished. Such fertilizer lien has no priority over prior lienholders unless prior lienholders have agreed to the contract in writing. The lien attaches as of the date of filing and may be foreclosed pursuant to Article 9, Uniform Commercial Code.

On October 1, 1985, Panhandle filed a notice of a petroleum products lien in the appropriate office and in the appropriate form. The document that Panhandle filed claims a lien for agricultural products furnished and used in growing crops upon the

NW 1/4 of 27-22-53, which is a portion of Parcel C. In addition, Panhandle claims that its products were used in growing crops on Parcel A.

The petroleum products lien is authorized by Section 52-901 et seq. R.R.S. (1943). It provides that a supplier of petroleum products to be used in the production of crops shall be entitled to a lien upon such crops produced and such lien shall secure the payment of the purchase price of the petroleum products. To perfect such lien, a supplier must, within six months after the products has been furnished, file with the appropriate county clerk a verified notice of lien naming the parties and describing the transaction and the amount due. Foreclosure of the lien shall be as provided in Article 9 of the Uniform Commercial Code provided that such foreclosure is instituted within thirty days after the filing of the lien.

Pursuant to the Statute, Panhandle claims the amount of $3,936.21 plus statutory interests of 1.33 percent per month or 16 percent per year. Panhandle did not institute foreclosure proceedings prior to the date the bankruptcy was filed on October 15, 1985.

On October 7, 1985, Depew filed a Uniform Commercial Code financing statement listing as collateral crops grown in 1985 on Parcels A, B and C and claiming that proceeds of such collateral are also covered by the security interests. The Depew filing includes a legal description of the Robert Brown farm, Scottsbluff, Nebraska, as NW 1/4 Sec. 26 T22N R54W.

Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code on October 15, 1985.

On May 12, 1986, Depew filed a document with the appropriate county clerk which is in the form of a Uniform Commercial Code continuation statement. This statement, at Paragraph 4, refers to the Depew financing statement filed October 7, 1985. At Paragraph 5, Depew marked an "x" next to the word continuation. Following that word the document reads: "The original financing statement between the foregoing Debtor and Secured Party, bearing file number shown above, is still effective."

At Paragraph No. 8 of the document Depew marked an "x" next to the word amendment. The sentence following the word amendment reads: "Financing statement bearing file number shown above is amended as set forth in Item 10".

At Paragraph No. 9 of the document Depew marked and "x" next to the word release. The sentence following the word release reads: "Secured party releases the collateral described in Item 10 from the financing statement bearing file number shown above."

The statement typed in the document at Paragraph No. 10 reads: "Under amendment description of collateral and location of collateral has changed. This is a release as to the Robert Brown farm on the original filing."

The document is signed by Reinhold Schwartz as debtor and J. L. Depew as secured party.

Numerous other documents are on file with the appropriate county clerk but are not applicable to the issues in this case. The filing documents referred to above are contained in the parties' joint Exhibit A which was admitted by agreement at the hearing on the motion for summary judgment and was agreed by the parties to be used as an exhibit in the trial.

Debtors, from 1981 through mid 1985 had borrowed approximately $900,000 from the Bank. The Bank had perfected security interests in real estate, equipment and, subject only to the determination in this matter, crops and the proceeds and products thereof. In 1984 a number of notes were renewed by the Bank with a due date of April 1, 1985. In addition, other loans were made in 1984 and 1985 represented by notes with varying maturity dates, the last of which was in the summer of 1985.

From mid summer of 1985 on, the Bank refused to advance more funds to the debtors and they were unable to harvest the 1985 crop without obtaining funds from some other source. Mr. Depew agreed to lend harvesting funds to the debtors and in early October, 1985, the debtors and Depew entered into a written agreement which provided that the debtors would grant a security interest to Depew in equipment and crops.

On October 7, 1985, Depew loaned debtors $9,800.

On October 15, 1985, debtors filed bankruptcy. On October 31, 1985, Depew loaned debtors $14,000.

In November of 1985 debtors agreed to reimburse Depew $425.25 for expenses incurred by Depew with regard to protecting his allegedly secured position in the bankruptcy case.

On March 6, 1986, Depew loaned debtors $5,000. On March 24, 1986, Depew loaned debtors $4,500. On April 26, 1986, Depew loaned debtors $13,000.

In May of 1986 debtors agreed to reimburse Depew $650 for a trip to Lincoln, Nebraska, and $485.33 for a trip to Omaha, Nebraska, which represented services rendered by Depew to protect his allegedly secured position in the bankruptcy proceeding.

In summary, although Mr. Depew originally brought this action claiming an interest of approximately $69,000, the evidence is that the debtors have agreed to pay him the amount of cash he actually loaned them plus reimburse him for certain expenses in the total amount of $47,860.58. Of that total, $9,800 was actually loaned to the debtors prior to the bankruptcy filing.

In the spring of 1985 Simplot provided fertilizer and agricultural chemicals to the debtors with a reasonable value of $17,927.44 which, with interest accruing to the date the lien was filed represented a total obligation of $19,110.50. If Simplot is an oversecured creditor by virtue of its claim and Section 506(b) of the Bankruptcy Code, its interest will continue to accrue and as of January 25, 1988, there would be due and owing from the debtors the total of $25,300.82 of which $17,927.44 represents outstanding principal and $7,373.38 represents accrued financing charges. The outstanding balance would continue to accrue finance and late charges at the rate of $7.86 until paid in full.

With regard to Simplot, there is no dispute that the product was provided, that the charges are reasonable or that the product was used upon all three parcels of real estate. There is a dispute concerning the priority of Simplot's lien with regard to Depew and with regard to FDIC. These matters will be discussed later in this opinion.

Panhandle provided petroleum products to the debtors according to ordinary business practices from October 24, 1984, to June 12, 1985. According to the itemized statement attached to the lien documentation, a considerable amount of the products provided were delivered between October 24, 1984, and February 28, 1985. Those products included gasoline products and liquid propane.

On March 27, 1985, the itemized statement shows that liquid propane was delivered to the debtors and the debtors were charged $160.29. On April 8, 1985, regular gas was provided and the charge was $245.87. No other products were provided until June. Between June 11 and June 12, $1,581.56 worth of products were provided and on June 15 Panhandle received payment of $1,581.56.

After reviewing the evidence presented in support of Panhandle's lien, this Court concludes that the only petroleum product provided to the debtors which could have been used in the production of the 1985 crops was the delivery on April 8, 1985, of regular gasoline with a charge of $245.87. The earlier charges were in 1984 and there is no credible evidence that the fuel provided was used in the production of crops in 1985. The evidence is insufficient for the Court to conclude that the LP gas provided on March 27, 1985, was used in the production of crops.

Therefore, the Court finds as a fact that the only amount secured by the petroleum lien filed by Panhandle is $245.87 plus interest accruing from April 8, 1985, to October 15, 1985, the petition date. Additional accrual of interest is subject to Section 506(b) of the Bankruptcy Code and the conclusions of law contained later in this opinion.

The parties agree that the FDIC is owed, as of the petition date, approximately $800,000. The claim of the FDIC is undersecured.

Depew claims that the funds he has advanced to the debtors should be accorded priority treatment as against the other secured claims for a variety of reasons. With regard to the FDIC, Depew alleges that it has no security interest perfected on crops growing on Parcel A because of a defective legal description. The FDIC financing statement/security agreement describes Parcel A simply by using the words "Robert Brown farm, Scottsbluff, Nebraska." There is no other description and Depew argues that such description is vague and misleading and does not properly put third parties on notice of the claim of the FDIC/Bank regarding Parcel A. Depew is supported in his argument by Simplot. FDIC naturally argues that the description is sufficient as a matter of law. These issues will be discussed in the section of this opinion entitled Conclusions of Law.

Next, Depew claims that even if the FDIC security interest in crops growing on Parcel A is found to be duly perfected, he, as a third party potential creditor, was misled by the filing documents and, therefore, should have a priority ahead of the FDIC. The misleading factor concerns the copy of the financing statement that the Bank filed. It includes termination language and Depew, although, for purposes of trial conceding that both this Court and Magistrate Kopf in a separate proceeding have determined that the document was not a termination statement under the U.C.C., does argue that the termination language makes the document confusing and misleading. This Court finds as a fact that the document with the termination language was not sufficiently misleading to confuse Mr. Depew and he had no right to rely upon his confusion, if any, on determining the appropriateness of his lending policies and when estimating his priorities.

Finally, Mr. Depew claims that since without the money he loaned the debtors the 1985 crop would not have been harvested, he should take priority over all other secured claims. Although he acknowledges that his funds were the last to be advanced, he argues that his funds are the most important and, therefore, should receive the priority treatment. Without his funds, the crops would not be harvested and without the crops being harvested, neither the Bank, Simplot nor Panhandle would have the benefit of the proceeds of the crop to which their liens could attach. He calls upon the Court to exercise its equitable power

and let him jump ahead in priority of all other creditors who have duly perfected security interests under the appropriate statutory scheme.

This Court declines to do so. The Uniform Commercial Code provides a method by which a party desiring to advance funds and take a security interest in crops may perfect that interest. The Bank, at least to the property identified as Parcel C, has perfected its interest in crops long before Mr. Depew advanced any funds. Panhandle provided petroleum products to put the crop in and perfect its lien pursuant to Nebraska statutes before Mr. Depew advanced any funds to the debtors. Simplot provided fertilizer and agricultural chemicals and perfected its lien pursuant to Nebraska statutes prior to Mr. Depew advancing any funds to the debtor.

Mr. Depew has a degree in law and has practiced as a lawyer. According to the evidence he presented and that which was presented by the FDIC, Mr. Depew now maintains a financial consulting business. He is not an unsophisticated person with regard to financial and legal matters. He apparently has financial resources which permitted him in the fall of 1985 and the spring of 1986 to loan to the debtors more than $45,000. Evidence presented at trial is that since the spring of 1986 Mr. Depew has advanced to the debtors additional funds amounting to approximately $50,000 which are not subject to this proceeding.

There is no reason why this Court should exercise its equitable powers, if any, to permit a legally trained, financially astute business man to obtain some type of priority in the available proceeds over parties who complied with the appropriate Nebraska statutes and perfected their liens according to the statutes.

Conclusions of Law and Discussion

A. Validity of liens.

1. Panhandle. Depew urges the Court to find that the Panhandle lien has no priority for two reasons. First, it is avoidable as a preference because it was filed on October 1, 1985, and the bankruptcy case was filed on October 15, 1985. Second, Depew believes the lien is not valid because it has not been foreclosed upon pursuant to the Nebraska statutes in a timely manner.

The Court finds that the lien is validly perfected and is not a preference. The Bankruptcy Code at 11 U.S.C. Section 545 provides that the trustee may avoid the fixing of a statutory lien, which the petroleum lien is, only under certain circumstances which are not applicable here. This statutory lien

was perfected under Nebraska law prior to the date the bankruptcy petition was filed. Therefore, under Section 545 of the Bankruptcy Code, the trustee cannot avoid the lien.

Section 547 of the Bankruptcy Code at Section 547(c)(6) prohibits the trustee from avoiding a transfer that is the fixing of a statutory lien which is not avoidable under Section 545. Since the petroleum lien is a statutory lien and since it is not avoidable under Section 545, it is not avoidable as a preference under Section 547.

In addition to the above, Depew does not have standing to urge the avoidance powers under Section 545 of Section 547. Depew is either a secured or unsecured creditor and the avoidance powers are granted to the trustee or the debtor in possession, acting as trustee pursuant to Section 1107 of the Bankruptcy Code. The Eighth Circuit has recently had the opportunity to review the status of a creditor attempting to assume the avoiding powers of the trustee under Section 544 and concluded that an unsecured creditor does not have standing to assume such powers. See Saline State Bank v. Mahloch, 834 F.2d 690 (8th Cir. 1987). The same logic applies to the avoidance powers under Section 545 and Section 547.

Concerning the argument that the Panhandle lien is not effective because it was not foreclosed pursuant to the statute on a timely basis, this argument is rejected. Section 52-903 R.R.S. Neb. (1943) requires the foreclosure of such a lien to be instituted within thirty days after the filing of the lien. The lien was filed October 1, 1985. Bankruptcy intervened on October 15, 1985. The automatic stay of 11 U.S.C. Section 362 prohibited Panhandle from instituting a foreclosure action on or after October 15, 1985. Therefore, its right to eventually pursue such action is stayed and tolled pending the bankruptcy proceeding. the lien, therefore, has not expired as a matter of law.

2. Simplot. Depew also argues that the Simplot lien is a preference and should be set aside. For the reasons set forth in Paragraph No. 1 above concerning Panhandle's lien and the preference issue, the Court determines that the Simplot lien is not, for purposes of this hearing, to be treated as a preferential transfer and Depew gets no benefit from the trustee powers in Section 545 or Section 547 of the Code.

3. FDIC. The FDIC does not claim a lien on the proceeds of the crops grown on Parcel B. By virtue of the Bank's 1981 financing statement and its continuation, the FDIC has a perfected security interest in the proceeds of the crops grown on Parcel C.

The dispute between the parties revolves around the description contained in the Bank document filed in May of 1985 purportedly perfecting a security interest in crops growing on

Parcel A. During the trial all parties agreed that the security agreement filed by the Bank complies with the Nebraska statutory requirements to be treated as a financing statement. Therefore, the only question remaining is whether or not the Parcel A description is sufficient pursuant to the Nebraska Uniform Commercial Code. All statutory references in this portion of the opinion will be to the Nebraska Uniform Commercial Code which is officially abbreviated as U.C.C. Section 9-110 of the U.C.C. discusses sufficiency of description. It states: "For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described."

Section 9-203 specifies the requirements for attachment and enforceability of security interests. It reads, in pertinent part:

> "... a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless ... (a) ... the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown ... a description of the land concerned."

Section 9-402 of the Uniform Commmercial Code provides the requirements for a financing statement. The appropriate portion of that section which is of concern in this case is in 9-402(1) and reads:

> "... When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned."

The description of Parcel A contained in the security agreement dated April 13, 1984, which was filed as a financing statement on May 22, 1985, by the Bank is as follows:

"Location of collateral." Robert Brown Farm, Scottsbluff, Nebraska." Depew, Simplot and Panhandle argue that the description is seriously misleading.

Section 9-402(8) of the Nebraska U.C.C. states: "A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading." The FDIC claims that the description is sufficient to put third parties on notice that the Bank claimed a security interest in crops grown or growing on the Robert Brown Farm and that third parties who were interested could

have contacted either the Bank or the debtor to find out the specific location of the farm. The FDIC argues that the purpose of the financing statement filing and the real estate description is simply to put a third party in inquiry notice that an entity claims a security interest in certain personal property and that more must be done to determine the facts surrounding the claimed security interest. In support of its position, it quotes the 1972 official comments to Section 9-402. The official comments at Paragraph No. 2 contain the following information:

> "The notice itself indicates merely that the secured party who has filed may have a security interest in the collateral described. Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs."

As support for its position the FDIC cites several cases which interpreted the same sections of the Uniform Commercial Code. In each of the cases the Court made general statements that a specific metes and bounds description or legal description is not required. The Court found that less than perfect descriptions would be considered as complying with the statute, but in each case the description contained more than the name of the farm and a town, which is all that is contained on the Bank's security agreement. See First National Bank in Creston v. Francis, 342 N.W.2d 468 (Iowa 1984); U.S. v. Big Z Warehouse, 311 F.Supp. 283, 285, 7 U.C.C. Rep. 1061, 1064, (S.D. Ga. 1970); United States v. Newcomb, 682 F.2d 758, 33 U.C.C. Rep. 1748 (8th Cir. 1982); Bank of Danville v. Farmers National Bank, 602 S.W. 2d 160, 29 U.C.C. Rep. 1020 (Ky. 1980).

It is the FDIC position that the only purpose for the requirement that the real estate upon which crops were growing is put on the financing statement so interested parties may make further inquiry of either the debtor or the alleged secured creditor. Since in this case a third party would, upon checking the Uniform Commercial Code filing records at the appropriate county office, find a security agreement signed by the debtors granting the Bank a security interest in growing crops on "the Robert Brown farm, Scottsbluff, Nebraska," the interested third party could then call up the Bank or the debtor and find out the status of a security interest.

The document on file in the county clerk Uniform Commercial Code records is the security agreement. It contains all of and the only description of the real estate now known as Parcel A. A former Bank officer involved in the loan transactions with the debtors testified that he did not know Robert Brown. He did not know if there was more than one Robert Brown in the City of Scottsbluff. He did not know if there was more than one Robert Brown farm in the City of Scottsbluff. He is a resident of the

City of Scottsbluff and is aware that the manner in which the word "Scottsbluff" was spelled on the security agreement indicates the City of Scottsbluff, Nebraska. The county, in contrast, is spelled "Scotts Bluff."

Assuming for the moment that the FDIC is correct concerning the inquiry notice, it appears that a third party, upon calling the banker would have found no further information about the location of the Robert Brown farm. The banker did not know where it was and did not know anything more about it.

That would leave the third party with the opportunity to inquire of the debtor as to the location of the Robert Brown farm and the status of the security interest of the Bank.

There is no case cited by the FDIC which suggests that a description of land upon which crops are to be grown which is as limited as the description in this security agreement is satisfactory under any of the provisions of the Code. Under Section 9-110 the description does not reasonably identify the land upon which crops are to be grown. Under Section 9-203, the terminology "Robert Brown farm, Scottsbluff, Nebraska" is not a description of the land concerned. Under Section 9-402 the language of the security agreement is not a description of the "real estate concerned."

A third party looking at the language and the security agreement cannot find the Robert Brown farm. The third party cannot determine the location of the Robert Brown farm from a review of the security agreement. The third party cannot find the location of the Robert Brown farm by calling the banker. The third party can find the location of the Robert Brown farm in question by calling the debtor. However, the Uniform Commercial Code does not suggest that a third party has to telephone a debtor to find out the description of the real estate upon which crops are growing that another party apparently claims a security interest in.

The security interest-financing statement is seriously misleading and does not comply with the requirements of the various sections of the Uniform Commercial Code which are applicable. Therefore, the FDIC does not have a perfected security interest in the proceeds of the crops which were grown on Parcel A.

4. Depew. Mr. Depew took a security interest in growing crops on Parcels A, B and C. He perfected that security interest on October 7, 1985. He loaned the debtors $9,800 contemporaneously with taking of the security interest and its perfection prior to bankruptcy.

The bankruptcy petition was filed on October 15, 1985. Since October 15, 1985, neither the debtors, as debtors in possession, nor Mr. Depew, as a proposed lender, have requested the Court for authority for the debtors to incur secured debt. The Bankruptcy Code at 11 U.S.C. Section 364 permits a debtor in possession in its capacity as trustee to obtain credit on a secured basis if the Court approves and after notice and hearing. 11 U.S.C. Section 364(c); 'd). Mr. Depew had a perfected security interest prepetition and an agreement between himself and the debtors concerning the extension of credit and the granting of security interests in collateral owned by the debtors. However, on October 15, 1985, the status of the debtors changed from that of persons involved in business transactions outside the jurisdiction of the Bankruptcy Court to debtors in possession under the Bankruptcy Code. 11 U.S.C. Section 1101.

The prepetition security agreement and lending arrangement between the debtor and Mr. Depew is of no force and effect as to funds loaned the debtors post petition unless the Court authorizes the debtors in possession to incur secured debt after notice and hearing. 11 U.S.C. Section 364(c) and (d).

Mr. Depew and the debtors suggest to the Court, both through testimony presented under oath and through argument by Mr. Depew that neither the debtors in possession nor Mr. Depew realized they were required to obtain Court approval for the loan transactions or to enable Mr. Depew to be assured that his security interest would remain valid post petition. This Court does not find that such ignorance is excusable. The debtors in possession had an attorney at the beginning of this case. Although they claim that he did not advise them concerning the need for Court approval, there is no evidence in the record to suggest that they told him they were borrowing money and intended to grant a security interest to Mr. Depew in consideration for such loans. Even if there had been such evidence, the fact that the debtors in possession did not pursue the matter with the Court, whether on advice of counsel or not, does not excuse them from the provisions of Section 364. All other creditors have a right to know when a debtor in possession plans to incur financial obligations which may result in post petition claims having some type of priority over prepetition secured or unsecured claims. That is the reason for the statutory requirement and ignorance of it cannot be used to benefit a creditor who has not bothered to learn the requirements of the Code or seek legal advice concerning such requirements.

In addition, Mr. Depew is a trained lawyer. He does not practice as a lawyer, but he is aware of the fact that a debtor in possession has certain rights, powers, duties and obligations. He claims to have relied upon the advice or non-advice running from

counsel to the debtors in possession. He admits that he did not attempt to learn the requirements of the Bankruptcy Code and did not employ counsel to advise him.

This Court finds no reason to find that Mr. Depew has a security interest in property of this estate except to the extent that he gave value prior to the petition date. Prior to the petition date he loaned debtors $9,800. He has a security interest in crops and proceeds only to the extent of $9,800.

Another problem with the claim of security interest by Mr. Depew is the document he filed in May of 1986 which could be construed as a release of his claim to an interest in the crops grown on the Robert Brown farm. From a review of the evidence and the documents the Court finds as a matter of law that the document he filed on May 12, 1986, does not release his claim to a security interest in the crops or the proceeds of the crops grown on the Robert Brown farm in 1985. The document simply releases his claim to a security interest in future crops grown on the Robert Brown farm from and after May 12, 1986.

5. Priorities.

1. FDIC. The FDIC has a first lien position on the proceeds of the crop grown on Parcel C. The value of those proceeds is $28,999.03 plus interest accrued on that amount since the date the funds were deposited with the Clerk of the Bankruptcy Court.

2. Simplot. Simplot has a validly perfected first lien in the proceeds of the crop grown on Parcel B in the amount of $10,092.14 and has a first lien interest in the proceeds of the crop grown on Parcel A to the balance of its claim. The lien of Simplot to the proceeds of Parcel B extends to the interest earned on the funds while the funds have been on deposit with the Clerk of the Bankruptcy Court. The interest of Simplot in the proceeds of Parcel A extends to the amount of principal necessary to pay the balance of the claim including accruing interest of Simplot. In other words, the Parcel B proceeds plus accrued interest should be exhausted in payment of the Simplot claim before the Simplot claim begins to use up the principal and interest from Parcel A.

3. Panhandle. Panhandle has a validly perfected lien, second in priority, to the proceeds from Parcel A. The lien extends to the principal amount of $245.87 plus accrued interest from April 8, 1985, at the statutory rate.

4. Depew. Mr. Depew has a perfected security interest with third priority in the proceeds from Parcel A. His security interest extends to the amount of $9,800, which was loaned prior to bankruptcy plus interest thereon, if any, was provided for in the notes representing the $9,800 loan.

5. Debtors in possession. If any funds are left from the proceeds of Parcel A after payment of all of the priority security interests, the balance is payable to the debtors in possession, for the benefit of the estate.

On this date judgment will be entered by separate journal entry on the basis of this opinion. Such judgment entry is a final appealable order.

Counsel for Simplot is to prepare a proposed order specifying the principal and interest amounts for each party. The order to be prepared by counsel for Simplot is to aid the Court and the Clerk of the Bankruptcy Court in a determination of the exact amount to be paid out to each party. No party will receive any payment until the specific order is filed with the Clerk of the Bankruptcy Court specifying the exact amount of the payments as of a particular date.

DATED: February 17, 1988.

BY THE COURT:

U.S. Bankruptcy Judge

Copies to each of the following:

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