UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
JOHN & OPAL TEPLEY, JR.,	)	CASE NO. BK88-669
	)	
DEBTORS	)	CH. 11

MEMORANDUM

Debtors propose the use of cash collateral to pay farming expenses to be incurred during 1988 and to purchase 150 replacement mixed calves. Debtors also request authority to grant a lien on the 1988 corn crop to a supplier. Appearing on behalf of the debtors was William Needler of Chicago, Illinois. Appearing on behalf of the Bank was Steven Turner of Omaha, Nebraska.

Trial was held on creditor's objections on June 7, 1988. This order contains the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 52.

I. Use of Cash Collateral.

In re Martin, 761 F.2d 472 (8th Cir. 1985) requires the Court, when considering requests for use of cash collateral and adequate protection proposals which offer liens on post-petition crops growing or to be grown, to determine the value of the creditor's security interest and the risk to that interest inherent in the proposed use.

The parties have stipulated, for this hearing, that the creditor's security interests are valid. Therefore, the creditor has a security interest in $40,162.13 representing the proceeds of the sale of hogs; $10,050 representing Government program payments for the 1988 program year resulting from the execution of the government contracts prepetition; $87,327 representing anticipated gross proceeds from the sale of cattle in 1988.

The total of proceeds which the debtor proposes to use is $139,489.13.

Debtors propose to use $89,000 for 1988 crop expenses. The balance would be used to purchase mixed calves at 400 lbs. to be placed on grass owned by the estate and sold in the fall.

As adequate protection for such use, debtors propose to grant creditor a second lien in the already planted 1988 corn crop. Debtor estimates the corn crop will generate available proceeds of $92,000. Debtors have proposed to grant a first lien on said crop in an amount not to exceed $77,000 to a supplier.

In Part II of this Memorandum, the first lien is authorized. Therefore, the remaining value is $15,000 for the benefit of this creditor.

In addition to the lien on the corn crop, debtors offer a lien on a bean crop to be planted and estimates its proceeds will be $43,000.

Corn and bean liens equal $58,000.

Finally, debtors offer a lien on wheat planted prepetition. Debtors claim the petition date value of the wheat to be $4,000 and the harvest value in July, 1988, to be $16,000. Assuming that the post-petition increase in value is available for adequate protection purposes, $12,000 of value can be pledged.

Therefore, the total adequate protection offer for cash collateral to be used on the crop and farm operations is $70,000.

Debtors want to use $89,000 and grant liens on 1988 crops to the extent of $70,000. Without evaluating the risk it is clear that debtors are $19,000 short of "adequate protection" under Section 363 and the "indubitable equivalent" requirement. See Martin at 477.

The risk to the creditor includes the market price of corn at harvest, which, the Court acknowledges, may be protected by some type of forward contract now. However, the other risks include the weather and the husbandry practices of the farmer and the risk of crop failure not covered by insurance.

The evidence is that the corn crop is covered by all risk/ multi-peril crop insurance. It is planted in numerous fields over a wide area. The farmer has never had a total crop wiped out by weather or other causes. The farmer has sufficient family and non-family experienced help to get the corn crop out. Therefore, the risk to value from the replacement lien on planted corn is minimal.

The bean crop is not in the ground. Insurance cannot be obtained at this late date. The farmer has limited experience with beans. Weather, both severe hail and potential lack of rain are significant risks. The budget doesn't have room for irrigation expense or chemicals which could protect and enhance the crop. The estimated yield is normal for experienced farmers with sufficient water and chemicals and good weather, but seems to this Court to be high under the circumstances presented here. No evidence was presented that bean prices can be locked in by forward contracts. But, assuming such a lock in is possible, the Court finds a more realistic bean proceed total to be calculated with a lower yield and lower price than estimated. One hundred forty acres at 30 bu. per acre at $8.00 per bu. equals $33,600 available as true adequate protection value.

This Court believes the Bankruptcy Code at Section 552 provides a prepetition creditor with a lien on growing crops (property) to continue to have a lien on the proceeds of the crops to the full extent of the value of the crops at harvest. Therefore, the lien of the creditor is valid on the harvest value of the wheat crop planted prepetition. However, the harvest value of the crop will be of very little value to the creditor if the crop is not cared for and properly harvested. The debtors propose to use cash collateral to care for and harvest the crop and, therefore, the lien on the post-petition value should be cut off pursuant to Section 552(b) to permit such value to be offered as adequate protection.

After the above analysis, the value of the adequate protection offer is:

second lien on corn	$12,000
first lien on beans	33,600
first lien on post-petition increase in value on wheat	12,000
Total	$57,600

Debtors may use $57,600 of cash collateral for the farming operation in 1988 and grant the appropriate liens.

Concerning the purchase of 150 mixed calves, debtors want to spend $66,000 and grant a lien in the calves. Accepting debtors' evidence in the best light, it can be summarized as follows: on grass the 400 lb. calf will gain 2.5 lbs. per day for 150 days or 375 lbs. while pastured. The calf will then be sold out of the pasture without spending a time on feed in a lot. It will weigh approximately 800 lbs. at sale. Debtors estimate a sale price of 75 cents per lb. yielding $600 per unit. One hundred fifty calves will be purchased at $440 each. The sale will provide net proceeds to debtors of $160 per unit or $24,000. On the other hand, the creditor's evidence is that the purchase price per unit, including veterinarian expenses, commissions and transportation will be $480. At best, the daily growth on grass would be 1.75 lbs. If the animals are on grass 150 days, their weight would rise to a maximum of 700 lbs. They should then be put on feed prior to sale. At 80 cents per lb. the animal would sell for $560. Deducting the purchase price of $480 leaves $80 per head gross profit. Total proceeds available to debtor would be $12,000.

In summary, the debtors propose to spend $66,000 of cash collateral for a potential return of between $12,000 and $24,000.

The risks to the creditor include:

1) The purchase price and associated expenses will be higher than anticipated;

2) the growth rate will be lower than anticipated;

3) additional sale expenses will be incurred, such as commissions, transportation, veterinarian, feed;

4) the price per pound will be below 75 cents;

5) there will be death or disease losses.

These risks are real. Using debtors' numbers, if the price per lb. declines by 10 cents, the profit declines to $12,000. If the price declines by 20 cents, all profit is gone. Similarly, if the growth rate is less than projected and there is a decline in market prices, the profit starts to disappear.

Although the debtor believes it is too late to rent the pasture to other livestock producers and that failure to pasture animals this year will cause irreparable damage to the pasture, the creditor's evidence is the opposite. If debtors could rent one-half their pasture for a 60 to 90-day period, income could be produced with no risk to creditor's collateral.

The Court finds the risk to the collateral to be greater than the potential benefit to the estate. The use of cash collateral for purchase of 150 head of mixed calves is denied.

In conclusion, $57,600 may be used. Since no new cattle will be cared for, some of the budgeted expenses may be reduced. The wheat crop will be harvested soon and debtors, creditor and the Court will be able to test debtors' yield and price projections. If debtors need additional funds for harvest, they may make a further request in the fall.

II. <u>Corn Crop Lien - Ag Services</u>.

Debtors will be able to obtain crop inputs and other cropping supplies from a specific supplier if permitted to grant a first lien on the 1988 corn crop. Debtors are authorized to grant such a lien in an amount not to exceed $77,000 including interest. New loan documents, granting a lien only in the corn crop and proceeds may be executed.

However, no lien may be granted until the supplier releases all financing statements and other security interest documentation which was executed without Court approval.

Separate Journal Entry shall be filed.

DATED: June 8, 1988.

BY THE COURT:

Timothy J. Mahoney

Chief Judge