

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
LARRY & SHIRLEY BROOKS,)	CASE NO. BK00-81225
)	
DEBTOR)	CH. 11

MEMORANDUM

Hearing was held on Motion to Set Aside Agister's Lien. Appearances: Barry Hemmerling for the debtors; David Fisher for Ag Services of America, Inc. & Ag Acceptance Corp.; Keith Harvat and Kevin Gaughan for Barbara Sydow. This memorandum contains findings of fact and conclusions of law required by Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(K).

Introduction

This matter is before the court on the Debtors' Motion to Set Aside an Agister's Lien and an Objection by Barbara Sydow. The debtors filed a Petition for Relief under Chapter 11 of the Bankruptcy Code on May 24, 2000.

Facts

On May 1, 2000, Debtors entered into a rental agreement with Barbara Sydow ("Sydow") for certain pasture land for their cattle to graze upon. The pasture rent agreement provides for the rental of 315 acres for \$4,725.00 to be paid in two installments. The first installment of \$2,362.50 was to be paid on May 1, 2000, and the second installment of \$2,362.50 was due on October 1, 2000. The agreement further provides that Sydow would have the fences in good repair before the cattle were moved onto the land and, that the debtors would maintain the fences during the term of the agreement. The rental agreement does not state that a contract for the feed and care of the livestock exists.

During the summer of 2000, the debtors removed their cattle from the pasture and stopped making rental payments. While the cattle were being moved from the land, a bull escaped. A neighbor captured and returned the bull to Sydow. Despite Debtors' request to return the bull, Sydow refuses to return the bull until the debtors pay the balance of the rent

due under the rental agreement. Sydow now claims an agister's lien for the feed and care of the bull.

Issue

Does Barbara Sydow have a legitimate claim for an agister's lien, in accordance with Neb. Rev. Stat. § 54-201, for the feed and care of the debtors' bull?

Law

An agister is defined as a person who takes and pastures grazing animals for a fee. Black's Law Dictionary 67 (7th ed. 1999). Nebraska law provides protection for agisters. Section 54-201 states in relevant part:

When any person . . . shall procure, contract with, or hire any other person to feed and take care of any kind of livestock, the person so procured, contracted with, or hired shall have a first, paramount, and prior lien upon such livestock for the feed and care bestowed by him or her upon the same for the contract price agreed upon or . . . for the reasonable value of such feed and care[.]

Neb. Rev. Stat. § 54-201 (Reissue 1998).

The plain language of the statute requires that the parties enter into a "contract" for the feed and care of the livestock. The statute itself does not state whether the contract must be express or implied. However, the Nebraska Supreme Court cases interpreting Neb. Rev. Stat. § 54-201 pertain only to situations where there was an express agreement for the care and feeding of the animals. See Graff v. Burnett, 226 Neb. 710, 414 N.W.2d 271 (1987); Washington County Bank v. Red Socks Stables, Inc., 221 Neb. 300, 376 N.W.2d 782 (1985); Kroll v. Ernst, 34 Neb. 482, 51 N.W. 1032 (1892); Gates v. Parrott, 31 Neb. 581, 48 N.W. 387 (1891); Hale v. Wigton, 20 Neb. 83, 29 N.W. 177 (1886).

Sydow, in effect, claims that she impliedly entered into a contract with the debtors to feed and care for the debtors' bull. However, there is no evidence that, simply by putting the cattle on the pasture land, Debtors entered into an express or implied contract with Sydow to care for them.

Rather, the parties entered into a real estate rental agreement. This agreement stated that Debtors retained control over the livestock and were responsible for keeping the fences in good repair once the cattle had been put on the land. There is no evidence that Debtors at any point requested that Sydow feed or care for the cattle or, in particular, the bull. Sydow does not have a contractual obligation to feed or care for the bull, but is doing so only because she will not allow the debtors to remove the bull from her land. She is simply keeping the bull in an attempt to force the debtors to pay the balance due under the rental agreement.

Decision

For one party to be granted an agister's lien, the statute expressly requires that the parties enter into a contract for care of animals. In this case, there is no evidence supporting the contention that a contract for the feed and care of the bull existed. On the facts of this case, the creation of an agister's lien is not appropriate. Therefore, Debtors' motion to set aside, or, in language used by the Bankruptcy Code, to avoid, the agister's lien is granted. The bull shall be made available to Debtors within ten days. If Sydow desires this court to consider a claim for administrative expenses for care of the bull, such a request may be filed within thirty days and served on all parties in interest.

Separate journal entry to be filed.

DATED: April 3, 2001

BY THE COURT:

/s/Timothy J. Mahoney

Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

WAITE, TERRANCE/HARVAT, KEITH/GAUGHAN, KEVIN	31
HEMMERLING, BARRY	44
FISHER, DAVID	402-463-0602

Copies mailed by the Court to:
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
LARRY & SHIRLEY BROOKS,)	CASE NO. BK00-81225
)	A
<u>DEBTOR(S)</u>)	
)	CH. 11
)	Filing No. 154, 171, 173
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	
)	DATE: April 3, 2001
<u>Defendant(s)</u>)	HEARING DATE: March 12, 2001

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion to Set Aside Agister's Lien by Debtors; Statement in Support of Motion by Ag Services of America, Inc., and Ag Acceptance Corporation; and Objection by Barbara Sydow.

APPEARANCES

Barry Hemmerling, Attorney for Debtors
David Fisher, Attorney for Ag Services of America, Inc., and Ag Acceptance Corp.
Keith Harvat and Kevin Gaughan, Attorneys for Barbara Sydow

IT IS ORDERED:

The statute expressly requires that the parties enter into a contract. In this case, there is no evidence supporting the contention that a contract for the feed and care of the bull existed. On the facts of this case, the creation of an agister's lien is not appropriate. Therefore, Debtors' motion to set aside, or avoid, the agister's lien is granted. The bull shall be made available to Debtors within ten days. If Sydow desires this court to consider a claim for administrative expenses for care of the bull, such a request may be filed within thirty days and served on all parties in interest. See Memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

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