

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

LLOYD EUGENE OLSON
DORIS JEAN OLSON,

DEBTORS

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CASE NO. BK86-307

MEMORANDUM OPINION

This matter came on for hearing on May 20, 1987, upon the objection of the debtors to the claim of the Commodity Credit Corporation (CCC). Appearing on behalf of the debtors was Michael Helms of Omaha, Nebraska. Appearing on behalf of the CCC was Douglas Semisch, Deputy United States Attorney.

Evidence adduced at trial was that the debtor, Lloyd Olson, entered into a farm storage note and security agreement with the CCC. With regard to losses, the agreement provided in part that the CCC would assume certain losses if the producer could prove to the satisfaction of the CCC that the loss was in fact caused by theft and occurred without negligence on the part of the producer or any other person having control of the storage structure. Debtor sealed grain in certain bins, in which bins other persons also sealed grain. The evidence also showed that the debtor did not monitor the bin, and that the bin was not physically protected from theft. In July of 1984, the debtor discovered that there was a significant shortage of grain in the bin. Debtor filed a theft report with the County Sheriff and notified his insurance agent of the shortage. During the course of an investigation by the Office of the Inspector General (OIG), debtor took a lie detector test, the results of which indicated that the debtor was not responsible for conversion of the grain.

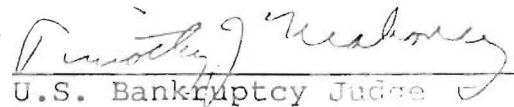
CCC has filed a claim equivalent to the amount of the shortage. The debtor has objected to the claim, alleging that he neither stole the grain nor was negligent with regard to its loss, and, therefore, that the Government should cover the loss as if it were insured for such loss.

The Court finds as a matter of fact that the debtor did not steal nor convert the grain, but it cannot find that the debtor has proved that he was free of negligence. Debtor has admitted that third persons known to him had access to the bins for the purpose of depositing and withdrawing grain. He further admitted that he failed to monitor the use of the bins by these other

persons and failed to check the amount and condition of grain in the bin for several months preceding the discovery of the loss. Under the terms of the contract between the debtor and the CCC, the CCC is not required to assume responsibility for the loss of the grain unless the producer establishes to its satisfaction that the loss was in fact caused by theft and occurred without negligence on the part of the producer or any other person having control of the storage structure. The debtor in the instant case has tried to prove by circumstantial evidence that some third party stole the grain. The Nebraska Supreme Court has held that, in such a case, the person attempting to establish a theory of a cause of damage or loss solely by circumstantial evidence must refute all theories of the cause of damage except the one established solely by circumstantial evidence. Ditloff v. State Farm, 225 Neb. 375, 406 N.W.2d 101 (1987). The debtor here has not met that burden, as he has not refuted all other possible theories for the loss of the grain and he has not proven that the theft, if it did occur, was not the result of his own negligence. Therefore, the Court finds in favor of the CCC, and the debtor's objection is overruled.

DATED: August 10, 1987.

BY THE COURT:


U.S. Bankruptcy Judge

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