UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
LONNIE EDWARD WILKINS,	)	CASE NO. BK87-2161
	)	
DEBTOR	)	

MEMORANDUM OPINION

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion to avoid and set aside sale (#26). Hearing was held October 28, 1987, in North Platte, Nebraska.

APPEARANCES

Douglas Quinn, Attorney, 1100 One Central Park Plaza, Omaha, NE 68102

Don Swanson, Attorney, 1800 First Nat'l. Center, Omaha, NE 68102

IT IS ORDERED:

Shortly after filing, debtor sold cattle in which Bank had security interest. Debtor then contracted to feed the cattle for the purchaser. The effect of this action was to fix the value of the Bank's claim re the cattle value and to create post petition income from the contract, free and clear of the Bank lien. The Bank claims this is unfair because - a) the sale was not in the ordinary course of debtor's business and b) the Bank was harmed by being unable to share in the increase in value of the cattle from date of sale to the ordinary date when debtor would have sold the collateral. The Court finds that the sale of cattle was for fair market value. Debtors in Chapter 12 frequently make radical changes in their operations, including liquidating herds or real estate. The timing is up to the debtor, not the creditor. Creditor seems to suggest the debtor should have known prices would be considerably higher several months later, or that debtor should have forward contracted to lock in a price that would have benefited creditor.

The creditor's position is fascinating. Frequently creditors claim all increase in value of cattle, even if the debtor is required to use its labor, supplies, feed and pasture to help the cattle increase in size and value. Then the creditor suggests the debtor cannot use the proceeds of the sale of such cattle, nor "surcharge" creditor for labor and management expenses.

Under Chapter 12, creditor can't have it both ways. Debtor, by statute, operates the business. Debtor makes the business decisions, including timing of sales. This sale created a fixed liquidated value with no further risk to creditor's collateral. To complain that debtor "could have done better for the bank" is a complaint that falls on deaf ears. The debtor is reorganizing for its benefit and, as long as no statutes are violated, may make business decisions. This sale is in the ordinary course of this debtor's post petition business.

Motion overruled.

DATED: November 3, 1987.

BY THE COURT:

Timothy J. Mahoney

U.S. Bankruptcy Judge