

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

RALPH J. LUBECK,
MARTHA JEAN LUBECK,

DEBTORS

CASE NO. BK84-446

MEMORANDUM AND ORDER

The matter before the Court is Filing No. 45 "Objection to Notice of Intent to Lease Real Estate" by the United States of America, specifically the Farmers Home Administration. The pertinent facts are that the Farmers Home Administration has a security interest in real estate and rents arising therefrom pursuant to a real estate mortgage entered into February 18, 1978. The Farmers Home Administration objects to the proposed lease for the reasons that it has not consented to the lease and, further, for the reason that the Notices of Intent to Lease make no provision for disposition of rent proceeds.

It is the contention of the Farmers Home Administration that any lease of the property is without its consent, prohibited by the express terms of the mortgage, citing the language at Paragraph 12 of the document. "Neither the property nor any portion thereof of interest therein shall be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. . ." the land and rents was entered into pre-petition and that the United States is prohibited from enforcing the non-assignment clause post petition.

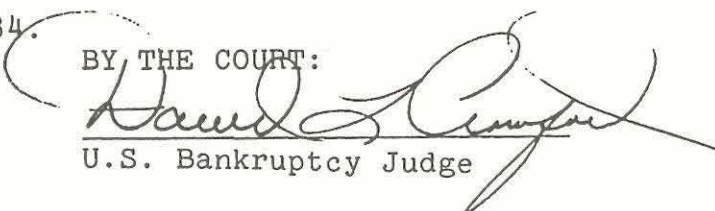
The governing section of the Bankruptcy Code is 11 U.S.C. §541(c)(1)(A) which reads in pertinent part, ". . .An interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision--that restricts or conditions transfer of such interest by the debtor." By its objection, the United States, acting through the Farmers Home Administration, seeks to restrict the debtor's capacity to lease and receive rents and profits from the subject property.

In accordance with the above it is hereby

ORDERED that the objection by the Farmers Home Administration to Notice of Intent to Lease Real Estate by the debtors' Lubeck be, and it hereby is, overruled.

DATED: August 16, 1984.

BY THE COURT:


U.S. Bankruptcy Judge