

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

ROBERT B. TEMME, )

DEBTOR )

CASE NO. BK78-L-244

MEMORANDUM AND ORDER

This matter came on for hearing upon the application to borrow money filed herein by the debtor-in-possession. Notice of the hearing was given to Packers National Bank and Tilden Fertilizer & Supply, Inc. At the hearing, the facts were presented by way of stipulation.

The stipulation between the parties is that if the debtor were called to testify, he would testify that he has on hand in his possession approximately 18,000 bushel of corn harvested during 1978. In addition, he would testify that he has need of the proceeds of the loan proposed with the ASCS on 2,000 bushel of corn to pay utility, fuel, taxes and subsistence. In addition, he would testify that in his opinion based upon current market values of the properties owned as reflected in the statement of affairs, he has a significant net worth. Exhibit 1, being a notice of fertilizer lien on crops, was received in evidence, foundation having been waived.

At the hearing, Packers National Bank agreed that it would not resist the application on the condition that its acquiescence in the application will not constitute any waiver of its rights to the remaining collateral which it claims nor shall it be an admission of any defect of the security agreement which it holds pertaining to the remaining collateral.

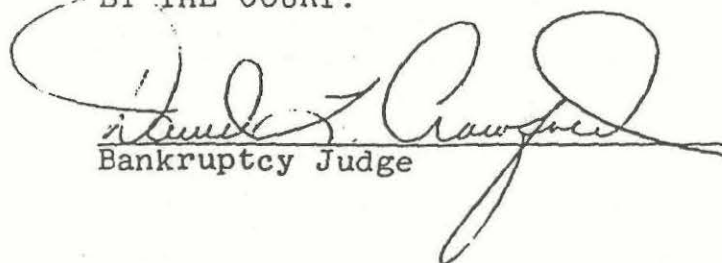
The evidence before me suggests that the notice of fertilizer lien on crops was filed August 17, 1978. The involuntary proceeding in this matter was filed May 16, 1978. The form of notice of fertilizer lien itself provides that the lien attaches as of the date of filing. A final trial on the merits is set for January 30, 1979. However, I view this matter as similar to a request for a temporary restraining order in which the test is the ultimate result which may flow from final litigation. It is difficult to conclude that the lien which was filed after the date of this proceeding being filed is valid. However, I reserve ruling on that matter until final litigation.

In view of the foregoing, it is

ORDERED that the application to borrow funds be, and the same hereby is, granted.

DATED: January 10, 1979.

BY THE COURT:

  
Bankruptcy Judge

Copies mailed to each of the following:

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