

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
RODEWALD RANCH CORP.,) CASE NO. BK88-162
)
DEBTOR) Chapter 12

MEMORANDUM

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Relief filed by Farm Credit Bank of Omaha (Filing No. 46) heard December 7, 1988.

APPEARANCES

Betty Schroeder, Stockholder of Rodewald Ranch, HC 2, Box 9C, Stapleton, Nebraska 69163
David Pederson, Attorney for Farm Credit Bank, P.O. Box 38, North Platte, NE 69103-0038
Rodewald Ranch Corp, not appearing

Farm Credit Bank (FCB) is a creditor and has moved for relief for cause under 11 U.S.C. § 362(d) (1) and because debtor, a corporation, has no equity in the collateral and cannot reorganize, therefore, does not need the collateral for an effective reorganization under 11 U.S.C. § 362(d) (2).

Debtor is a corporation which was represented by an attorney at the commencement of the case on January 29, 1988. The attorney filed a plan on its behalf, appeared at the initial hearing on confirmation and was then terminated just prior to a final evidentiary hearing scheduled for September 14, 1988. Debtor, by Mrs. Schroeder, its shareholder, requested a continuance which was granted and the Court ordered debtor to employ counsel within thirty days.

Debtor, purporting to be represented by shareholder Mrs. Schroeder, then objected to the order requiring counsel. The Court, at Filing Number 43, overruled the objection and cited authority that a corporation may be represented only by an attorney.

Mrs. Schroeder, as president of the debtor, then attempted to appear on behalf of debtor and filed one or more motions which were

FILED
DISTRICT OF NEBRASKA
AT _____ M
DEC - 9 1988
Judith M. Napier
Clerk, U.S. Bankruptcy Court
By _____ Deputy

On November 3, 1988, FCB filed the motion for relief requesting that the Section 362 automatic stay be lifted to enable FCB to "reclaim the collateral," to enable the FCB to proceed with foreclosure, replevin or reclamation actions and to permit FCB to notify debtor of any potential rights it might have with respect to the Agricultural Credit Act of 1987.

Hearing on the motion was held in Court in North Platte, Nebraska, on December 7, 1988. Mrs. Schroeder appeared, allegedly on behalf of debtor. The Court informed her that she could not appear on behalf of debtor but let her make a record. As part of the record she offered debtor's affidavit, Exhibit 1. FCB objected to its admission on various grounds and the Court reserved ruling on its admissibility.

FCB Exhibit 1 was admitted over objection of Mrs. Schroeder. The Court has now reviewed the pleading, the exhibits and finds:

1. Debtor is a corporation unrepresented by counsel and in default for failure to appear at the hearing on FCB motion for relief.

2. Mrs. Schroeder may appear not on behalf of debtor but as an interested party and may present evidence even though she is not the target of the motion for relief. Her Exhibit 1, which the Court will consider offered on her behalf as an interested party, is not admitted. It contains extensive material not directed at the motion. It contains slanderous or libelous material about FCB, counsel for FCB and a judge of this Court. It contains argument, not facts which are within affiant's knowledge, except for a limited number of sentences spread here and there on various pages in unnumbered paragraphs.

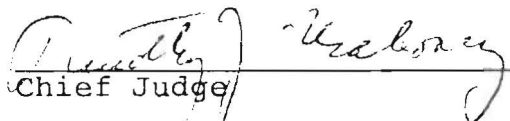
3. FCB shall be granted limited relief from stay. It is granted relief to inform debtor of its rights under the Agricultural Credit Act of 1987 and to participate in restructuring opportunities under the Act.

4. The remainder of FCB motion is overruled. This Court ruled in the case of In re Dilsaver, 86 Bankr. 1010 (Bankr. D. Neb. 1988) that no relief would be granted FCB to continue a foreclosure until the provisions of the Agricultural Credit Act of 1987 were complied with. Foreclosure, replevin and reclamation are "foreclosures" for purposes of the Act.

Separate journal entry shall be filed.

DATED: December 7, 1988.

BY THE COURT:


Chief Judge