IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RODNEY M. ERICKSON, et al.,	)	CV88-L-232
	)	
Appellants,	)	
	)	MEMORANDUM ON MOTION
vs.	)	TO DISMISS APPEAL
	)	
FEDERAL LAND BANK OF OMAHA,	)	
	)	
Appellee.	)	

The Federal Land Bank of Omaha has moved for dismissal of the appeal for the reason that the order appealed from is an interlocutory order.

Title 28, U.S.C. § 158 governs the ability of the district judge to take appeals from the bankruptcy court. It provides:

> "The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with the leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. ..."

The order appealed from, according to the notice of appeal, is the order by the bankruptcy judge of March 23, 1988, denying the debtors' motion to reconsider. The motion to reconsider asked for a reversal of the bankruptcy judge's order of March 10, 1988, which (1) sustained a motion by the Federal Land Bank excusing the receivership under 11 U.S.C. § 543(d)(1), (2) sustained in part a motion to sequester rents and profits and for adequate protection, and (3) denied the motion of the debtor for leave to sign up for an A.S.C.S. program.

Each of the features of the March 10, 1988, order, is interlocutory in nature, as is the ruling on the motion to reconsider that order. In In Re Olson, 730 F.2d 1109 (8th Cir. 1984), the court said:

> "In [In re Alan H.] Bestmann, [720 F.2d 484 (8th Cir. 1983)], and [In re Reuben F.] Leimer [724 F.2d 744 (8th Cir. 1984)], we considered three factors in determining whether a bankruptcy order is final: (1) the extent to which the order leaves the Bankruptcy Court nothing to do but to execute the order, ... (2) the extent to which delay in obtaining

review would prevent the aggrieved party from obtaining effective relief, ... and (3) the extent to which a later reversal on that issue would require recommencement of the entire proceeding. ... We are aware that this standard is more liberal than that generally applied in determining the finality of orders in non-bankruptcy proceedings, but we believe, as Judge Breyer pointed out in In Re Saco Local Development Corp., 711 F.2d 441, 444-46 (1st Cir. 1983), that a more liberal standard is to be applied in reviewing bankruptcy orders ..."

That the order appealed from does not conclude the bankruptcy proceeding is obvious. Furthermore, it does not conclude any segment of it. The disputed matter is between the debtor and a creditor and neither the bankruptcy court's decision about it or this court's decision about it would terminate any dispute. Whether the property remains in the hands of the receiver or in the debtor, whether the creditor has adequate protection and should have or should not have sequestration of rents and whether the debtor should be permitted to participate in A.S.C.S. programs are simply on-going, continuing features of the bankruptcy proceeding. They are in large measure matters of fact, mixed, of course, with questions of law, and whether the bankruptcy judge should have reconsidered them involves a matter of considerable discretion.

Reviewability of an interlocutory order is generally discouraged. In Re Radtke, 411 F.Supp. 105 (E.D. Wis. 1976). Ordinarily, district judges will consider (1) whether the order involves a controlling question of law as to which there is substantial ground for difference of opinion and (2) whether immediate appeal would materially advance the termination of the litigation. Thomas v. Marvin E. Jewell and Co., CV87-L-577 (U.S.D.C. Neb. 1988). I see no indication that the order appealed from involves a controlling question of law as to which there is substantial ground for difference of opinion. Factually, there no doubt is a good deal of difference of opinion, based upon the assertions of the debtors' motion to reconsider. But that is not a reason for a district court's taking jurisdiction of an appeal on an interlocutory matter. Furthermore, I see no way that an immediate appeal would materially advance the termination of the litigation. It would, at most, change the course of the litigation, but not advance its termination.

For the foregoing purposes, I do not consider the issues that the debtors have sought to raise by the "second motion to amend issues on appeal." That motion was filed on June 7, 1988, whereas Rule 8006 of the bankruptcy rules requires the filing of a statement of the issues to be presented within ten days after the filing of notice of appeal. The notice of

appeal was filed in the bankruptcy court on April 4, 1988, and in the district court on April 25, 1988. There was no statement of issues filed, other than the one declared in the notice of appeal, which had to do only with the debtors' motion to reconsider the bankruptcy judge's order of March 23, 1988.

Dated June 14, 1988.

BY THE COURT

United States District Judge

I certify this to be a true copy of the original record in my custody.
WILLIAM L. OLSON, CLERK
By _____
Deputy Clerk