UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	CASE NO. BK01-82975 A
RONALD & CAROL PATTERSON,	)	Chapter 12
Debtor(s).	)	

MEMORANDUM

Hearing was held on August 1, 2002, on the debtors' Objection to Claim of Gurtha Noell (Fil. #52). Appearances: W. Eric Wood for the debtors, and K.C. Engdahl for Gurtha Noell. This memorandum contains findings of fact and conclusions of law required by Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

Gurtha Noell is the aunt of Carol J. Patterson, one of the debtors. Since 1987, Ms. Noell and the debtors have had a business relationship of some sort. The question, as presented to this court with the objection to claim, and presented to the Sarpy County District Court in one or more lawsuits, concerns just what the business relationship was.

In 1987, the debtors were in a Chapter 11 bankruptcy in the District of Nebraska. They had a farming operation and raised cattle. Their lender, then known as Bank of Papillion, put pressure on them for a payment. Ms. Noell provided to the debtors the amount of $35,000 made payable to the debtors and to the bank to be applied on the bank debt.

The original agreement between the parties, as testified to in at least one Sarpy County District Court case by both the Pattersons and Ms. Noell, was that Ms. Noell purchased 60 head of cattle from the Pattersons. They initially agreed that the Pattersons would lease the cattle back from Ms. Noell, feed and care for the animals, and receive three-quarters of the calves born of the animals, with Ms. Noell receiving one-fourth of the calves. That purchase was evidenced by a bill of sale and, based upon that agreement and the payment of $35,000 to the bank, the bank released the 60 animals from its security interest.

Although the timing is not exactly clear, Ms. Noell and the debtors did discuss and reduce to writing a different agreement with regard to the business relationship. In it, the parties treated the $35,000 transaction as a loan from Ms. Noell to the

debtors. That loan was to be paid back in a specific time period. The loan was to be secured by a possessory security interest in a certificate of stock in Armbrust Acres, Inc., a family corporation. The parties executed the document reflecting the loan transaction and the Pattersons delivered the stock certificate to Ms. Noell. As mentioned, it is not clear from the evidence whether the "loan" agreement was entered into before or after the "purchase" agreement.

The timing of each transaction may or may not be significant. Because the debtors were in a Chapter 11 bankruptcy proceeding at the time of both transactions, the debtors, as debtors-in-possession, could borrow money on a secured basis only after having given notice to all parties in interest and having obtained approval of such a transaction. Mr. Patterson testified, both in a Sarpy County lawsuit and by affidavit submitted in support of the objection to claim of Ms. Noell, that after executing the "loan" agreement, he learned from his lawyers that such transaction would require court approval, but that the "purchase" transaction would not. He testified that the "loan" transaction was then abandoned and the parties proceeded with the "purchase" and leaseback agreement. His testimony is supported by evidence of the position taken by Ms. Noell in 1988. The Bank of Papillion, in the Pattersons' Chapter 11 case, obtained relief from the automatic stay and took possession of all of the cattle located on the Patterson farm. Ms. Noell vigorously objected and informed the bank, through its officers and attorneys, both orally and in writing, that she was the owner of 60 head of cattle. She also notified the county sheriff that the bank had illegally taken her cattle and demanded that the sheriff take criminal action against officers of the bank and their attorneys. Furthermore, she filed a lawsuit against the bank and obtained an order returning the cattle to her.

During that legal squabble with the Bank of Papillion, Ms. Noell incurred attorney fees which she has itemized as part of her claim.

Years have gone by since the original transaction. The debtors have been involved in a number of lawsuits with the bank, with one or more sets of attorneys who represented the debtors in various legal proceedings, and with Ms. Noell. In recent years, Ms. Noell has taken the position that the original transaction and all other advances she made to the debtors and

to her attorneys are part of the "loan" agreement which is secured by her possessory interest in the stock certificate.

In a lawsuit in Sarpy County District Court, she sued the debtors to enforce her rights and collect the "loan." One of their defenses was that the statute of limitations had run on any claim she had against them. Judge Thompson, District Court Judge for the Sarpy County District Court, held a trial on the limited issue of the applicability of the statute of limitations to her claim. He determined, in an interlocutory order, that the statute of limitations had not run and that the case could proceed, to be presided over by Judge Reagan of the same court. In his order, he made certain factual findings that the original transaction between the parties was a loan and that payments made by the Pattersons over the years tolled the statute of limitations. When the matter came before Judge Reagan at a later date, he entered an order which included a finding that the statute of limitations question was still an open one for the purpose of litigation before him. Therefore, it can be inferred from Judge Reagan's order that he did not believe Judge Thompson's findings of fact were binding upon him and were not, therefore, the law of the case.

For the purposes of determining the amount and priority of Ms. Noell's claim in this bankruptcy case, the findings of Judge Thompson are not res judicata and the debtors are not collaterally estopped from rearguing their position that the business arrangement between Ms. Noell and the debtors was originally that of a "purchase" and not a "loan."

This bankruptcy case was filed shortly after Ms. Noell took action to foreclose upon the shares of stock in the family corporation represented by the stock certificate in her possession. She has now filed a claim in the bankruptcy case asserting that she is owed a minimum amount of $68,241 principal as of March 12, 2001, the date of Judge Thompson's order, plus accrued interest. She also claims interest has been accruing at either 14% per year simple or 14% compound. The total interest allegedly accrued on amounts due at 14% simple interest is $101,989.24 as of November 16, 2001, the date the claim was filed. The interest allegedly accrued on amounts due at 14% compound interest is $234,414.23 as of November 16, 2001.

The debtors have objected to the amount of the claim and the type of claim. As recited above, it is the position of the debtors that the original transaction was a purchase of

livestock with a leaseback. In addition to that transaction, they admit that they did borrow money from Ms. Noell over the years, including an $11,500 loan and an additional $4,000 loan. They argue that they are not responsible for her attorney fees or other miscellaneous costs involved in her various lawsuits. With regard to one $10,000 transaction which is asserted by Ms. Noell to be an additional loan on the same terms as the original "loan," the debtors take the position that such amount was paid not to them, but to the bank to purchase machinery and equipment needed to be used to care for the animals.

After full consideration of all of the evidence presented and the arguments made, I find as follows:

1. The original $35,000 transaction was a purchase by Ms. Noell of 60 head of cattle, with a lease arrangement.

2. Ms. Noell received payments over a number of years representing her share of the proceeds of the calf crop for each year.

3. The cattle which were the subject of the original transaction were eventually sold and Ms. Noell received the proceeds.

4. Ms. Noell's position that the original transaction was a loan, as represented by the loan agreement and stock transaction, is not consistent with the Pattersons' legal situation at the time of the execution of the loan document, and is not consistent with the very position Ms. Noell took in her dispute with the bank when the bank took possession of all of the animals. First, the Pattersons were in a Chapter 11 case and were considered to be debtors-in-possession in that case at the time of the "loan" transaction. For such loan transaction to be valid even as between the debtors-in-possession and Ms. Noell, it would have had to have been noticed to all parties in interest and approved by the court. It was not noticed and it was not approved. It, therefore, was not binding on the debtors-in-possession in the Chapter 11 case. Second, the record is replete with instances in which Ms. Noell took the position, both in and out of court proceedings, that she was the owner of the cattle, with no mention being made that she simply held a promissory note secured by shares of stock.

5. In separate transactions over the years, the debtors did borrow money from Ms. Noell. They acknowledged borrowing

$11,500 and $4,000. I find that the $10,000 which the debtors claim was for the purchase of machinery was also a loan. There is no evidence before me that Ms. Noell ever took possession of any machinery. There is no evidence that the debtors entered into any arrangement with Ms. Noell for the use of the machinery or rental for such use.

6. With regard to each of the loans, the parties dispute that they came to an agreement with regard to the interest rate. However, the record does reflect that, on more than one occasion, a rate of 8% was discussed and the Pattersons even offered to settle on the basis of an 8% simple interest rate. Without doing a detailed analysis of the national or local prime rates or any other interest rate index for the years from 1987 through 2002, I find that 8% represents at least a rate discussed by the parties, and a fair rate to be imposed upon each of them.

7. The debtors received a $20,000 payment in settlement of one of their lawsuits. They endorsed that check over to the benefit of Ms. Noell and should be given credit for such payment, first against accrued interest and then against principal.

8. Although the debtors have given up any argument with regard to the secured status of the claim, I find that the claim is not secured by animals or the stock certificate. The stock certificate is property of the bankruptcy estate. This order does not deal with the right to possession of the stock certificate.

A separate order will be entered.

DATED: September 20, 2002

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*W. Eric Wood
Richard K. Lydick, Chapter 12 Trustee
K. C. Engdahl, 10110 Nicholas St., #102, Omaha, NE 68114
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties not listed above if required by rule or statute.

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ORDER

This is not a final order. Because calculations are necessary, based upon the findings in the Memorandum entered this date, counsel for the debtors and counsel for Ms. Noell are directed to prepare a document which shows the loan amounts as found above, interest accruing at the rate of 8%, the payment of $20,000 as a credit against the loans, and a final amount remaining. Mr. Engdahl is not required to approve the numbers, but he is required to review them and make a determination that the arithmetic is correct.

That document should then be submitted to the court and a final order allowing the claim, based upon that document and this order, shall be entered. At that point in time, the matter will be final and appealable.

DATED: September 20, 2002

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

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