

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
ISADORE JONAK,)	CASE NO. BK85-26
)	
DEBTOR)	A86-63
)	
SHERMAN COUNTY BANK,)	
)	
Plaintiff)	
)	
vs.)	
)	
MARILYN JONAK,)	
)	
Defendant)	

MEMORANDUM OPINION

This adversary proceeding was heard by the Court on June 25, 1986. Appearing on behalf of the plaintiff was Michael Washburn of Erickson & Sederstrom, P.C., Omaha, Nebraska. The defendant, Marilyn Jonak, appeared pro se. Appearing on behalf of the debtor, Isadore Jonak, was George Qualley of Qualley Law Office, Omaha, NE.

Introduction

This is an adversary proceeding brought by the Sherman County Bank against Marilyn Jonak, the non-debtor wife of debtor, Isadore Jonak. Mr. Jonak is presently involved in a Chapter 11 bankruptcy proceeding, but Mrs. Jonak is not. The Bank, in the form of an action for a declaratory judgment, has asked this Court to determine whether or not Mrs. Jonak has ownership interest in personal property in which the debtor granted a security interest to the plaintiff.

Decision

The defendant, wife of the debtor, has no ownership interest in the personal property in which the debtor granted a security interest to the plaintiff Bank.

Facts, Conclusions of Law and Discussion

On or about February 25, 1985, Isadore Jonak filed for protection under Chapter 11 of the Bankruptcy Code. He claimed in the Schedules accompanying his bankruptcy petition that he owned all of the personal property used in the farming operation and that the debt against such personal property was his alone.

Defendant, Marilyn Jonak, did not file a bankruptcy petition and is not a debtor under any chapter of the Bankruptcy Code.

The Sherman County Bank has made loans to Mr. Jonak over a number of years and as security for such loan has taken a security interest in grain, livestock, machinery and equipment. The security interest of the Bank has properly perfected by the appropriate filing of financing statements.

Mrs. Jonak has not signed any of the loan documents, nor has she signed any of the financing statements or security agreement.

Apparently, sometime early in 1986, it came to the attention of the Sherman County Bank that Mrs. Jonak claimed an undivided one-half interest in all of the personal property in which the Bank claimed a security interest. To stop Mrs. Jonak from taking possession of or transferring that personal property or any part of it, the Sherman County Bank sued Mrs. Jonak in the Bankruptcy Court, obtained a temporary restraining order, and asked for a declaratory judgment with regard to the ownership of the property.

In support of her position that she is a part owner of the personal property, Mrs. Jonak presented evidence that she had been married to the debtor for 29 years, had worked on the farm during all of that time, had, in addition to raising the children, participated in the operation of the farm, including being responsible for all of the dairy cattle and the dairy operation. She and the debtor had an understanding that she was a one-half owner of all of the non-titled personal property. In addition, she does have an ownership interest in the titled personal and real property. All of the vehicles are titled in both names; all of the real estate, except perhaps some of the real estate that Mr. Jonak inherited, is titled in both names; the tax returns were always signed by both parties; some equipment leases were signed by both names and some land leases were signed in both names. There is no documentary evidence that any person other than the debtor and Marilyn Jonak were aware of her ownership interest. She did not inform anyone outside of the family of her ownership interest, nor did anyone bother to ask her.

In support of its position that Mrs. Jonak was not an owner of the personal property, the Bank presented evidence that Mr. Jonak had consistently presented the Bank with financial statements alleging that he was the sole owner of all personal property; all of the ASCS payments were made directly to the

debtor, with no payments made to Marilyn Jonak; all of the government program contracts and agreements were entered into by Isadore Jonak without the signature of Mrs. Jonak; all of the deposits into and checks written upon the farm account were made or signed by Mr. Jonak; all of the leases and purchases involved in the operation of the farm were negotiated by Mr. Jonak; all of the dealings with the Bank and with the purchasers of farm products as well as dealings with sellers of farm supplies were performed by Mr. Jonak with none performed by Mrs. Jonak.

This Court concludes that the Bank's evidence on ownership is more plausible than the evidence presented by Mrs. Jonak. This Court concludes that the farm was not operated as the enterprise of Mr. and Mrs. Jonak, but was operated as if Mr. Jonak was the "farmer". All outside parties dealt with Mr. Jonak as the operator. He held himself out as the owner of all of the personal property to the Bank, to the purchasers of farm products and to the government agencies involved in the various government programs. He bought and sold supplies and products; he negotiated leases and purchases and sales of equipment; he performed all of the banking transactions, including the granting of security interests in the personal property. She was aware that he had granted such security interests in the personal property; she was aware that he had borrowed money for the farm operation; she was aware that he had entered into the government programs; she was aware that he received payments both of loan funds and government payments and deposited them to the farm account. At no time did she indicate to either the Bank, suppliers, purchasers of products, or the government agencies that she had any interest in the farming operation or ownership interest in any of the crops, livestock or machinery, other than that of a spouse of the operating individual, Mr. Jonak.

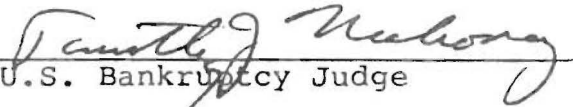
This Court, the District Court of the District of Nebraska and the Eighth Circuit have previously been faced with a similar issue in the case of In re Hansen, 702 F.2d 728 (8th Cir. 1983), 60 B.R. 359; and this Bankruptcy Court has previously decided a similar question in the case of In re Schulz, 63 B.R. 168 (Bankr. D. Neb. 1986); and In re Selden, 58 B.R. 667 (Bankr. D. Neb. 1986). The guidance from the District Court is that the question is a factual one. The issue truly is how was the business operated and how was anyone to know that the spouse of the individual signing the loan documents and granting the security interest claimed an interest in the property which was being conveyed? The answer under the factual situation presented to this Court is that the spouse claiming an ownership interest must let someone outside her own family know of that interest. Such an interest will not be implied and the facts must support her claim.

The facts in this case do not support her claim and, therefore, the decision of the Court is that all of the personal property in which the Sherman County Bank was granted a security interest by Isadore Jonak was owned by Isadore Jonak.

Separate journal entry to follow.

DATED: October 8, 1986.

BY THE COURT:


U.S. Bankruptcy Judge

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