

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

VINCENT RUTERBORIES and
LAVONA RUTERBORIES,

DEBTORS

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CASE NO. BK83-881

SUPPLEMENTAL MEMORANDUM OPINION

These two motions for relief from stay were consolidated for hearing on motion day, October 11, 1985. Warren Reimer appeared on behalf of Theresa Doran. Mary K. Prior appeared on behalf of Gregory D. O'Shea and Patricia L. O'Shea. Clifford Ruder appeared on behalf of First State Bank of Oakdale. Michael Heavey appeared on behalf of debtors.

Theresa Doran, a contract vendor of real property, and First State Bank of Oakdale, the holder of a mortgage on the same real property, filed motions for relief from the automatic stay alleging that the debtors had no equity in the real estate, that it was not necessary for an effective reorganization and that because of the declining value of the property and the increasing taxes, interest and penalty, the creditors were not adequately protected and that the relief should be granted for those reasons and for cause. Mr. and Mrs. O'Shea joined the motion filed by the bank. They are secured creditors whose priority apparently follows that of the bank.

Hearing was held on October 11, 1985, on affidavit evidence. Based upon the evidence, the Court found that the value of the real estate on the date of filing of the petition in bankruptcy, May 19, 1983, was \$400,000. The Court further found that the value of the real estate on the date of hearing was \$265,000. The debtors have no equity in the real estate. Since it is a dairy farm operation that the debtors are attempting to reorganize, the Court found that the property is necessary to an effective reorganization.

At the hearing, counsel were informed that no decision was going to be made on that day. The reason was that there were three parties seeking relief and from the numbers in the affidavits, it appeared possible that at least one of the parties was undersecured at the time of the filing of the petition and, therefore, would have no right to adequate protection. The Court, therefore, took the matter under advisement to determine the relative claims and whether or not cause existed for lifting the stay.

After review of the evidence, it appears that the value of the property on the date of filing was \$400,000. Pre-petition taxes in the amount of \$8,987 were a lien upon the property. The amount owed Theresa Doran in principal and pre-petition interest was \$233,208. Deducting the taxes and the Doran principal and interest from the value of the land leaves \$157,805. Therefore, there was equity at the time of the filing as far as the Doran claim is concerned. Pursuant to §506(b), the Doran claim can continue to accrue interest at the contract rate.

On the date of the filing of the petition, the Bank was owed \$132,533. There was still equity to cover its claim in the approximate amount of \$25,272. The bank interest could continue to accrue also.

On the date of filing, Mr. and Mrs. O'Shea were owed \$36,975. They were undersecured. They, therefore, have no right to the accrual of interest or to adequate protection.

Since the time of filing, the taxes have become liens against the property superior to the other creditors' claims. The 1983 and 1984 taxes amount to \$6,867.91.

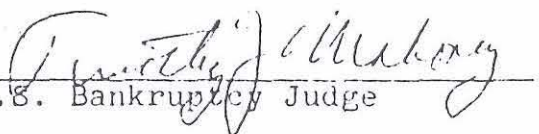
Since the date of filing, interest has accrued on the Doran claim in the amount of \$41,238, leaving a total obligation of principal and interest owed to Mrs. Doran in the amount of \$274,446.

At the date of hearing, the land was worth \$265,000. Therefore, the value of the land has declined since the date of filing to the extent that the Doran claim is now partially unsecured. In addition, the taxes have accrued which are liens ahead of all of the creditors. The addition of the accrual of interest on the Doran claim plus the post-petition taxes moves the bank from a pre-filing oversecured position to a position at the date of hearing which is partially, if not completely, undersecured.

Therefore, it is the conclusion of the Court that the claims of Doran and the bank are not adequately protected. Relief is granted as to Doran and the bank. Since O'Shea was undersecured at the time of the filing of the petition, there is no requirement that its claim be adequately protected under the Code. Therefore, the request for relief by O'Shea is denied.

DATED: October 16, 1985.

BY THE COURT:


U.S. Bankruptcy Judge