United States Bankruptcy Court
Western District of Wisconsin

Cite as: [Unpublished]

In re Gerald A. Pleckham and Judith A. Pleckham,
d/b/a Sunrise Dairy Farms, Debtors
Bankruptcy Case No. 91-52170-11

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

December 20, 1991

Terrence J. Byrne, for the debtors.
Jeffrey W. Guettinger, for John Deere Company.
Stewart L. Etten, for M & I Bank.

Thomas S. Utschig, United States Bankruptcy Judge.

MEMORANDUM OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

This matter comes before the Court on a motion of John Deere Company, Division of Deere & Company, Inc., (John Deere) for relief from stay. The debtors, Gerald and Judith Pleckham, and M & I Central Bank & Trust (M & I Bank) filed objections to the motion. John Deere is represented by Jeffrey W. Guettinger, the debtors by Terrence J. Byrne, and M & I Bank by Stewart L. Etten.

The relevant facts can be briefly summarized. John Deere seeks relief from stay to foreclose on its security interest in certain equipment held by the debtors. The specific items of collateral at issue are a John Deere Model 7720 combine, serial number 511316; and a John Deere Model 220 flexible platform, serial number 543901. On July 13, 1987, John Deere financed the debtors' purchase of the combine and platform. As security for its financing, John Deere took a security interest in both pieces of equipment and perfected its interest by filing a U.C.C. financing statement in Cook County, Illinois. At all times relevant to this proceeding the debtors have maintained a residence in Matteson, Illinois.

Gerald Pleckham testified at a hearing in Wausau, Wisconsin, on October 16, 1991, that he bought a farm in Wood County, Wisconsin, sometime in early 1990. He further testified that he ceased farming in Illinois in late 1990 and moved the combine to Wisconsin in September of that year, intending to keep it there permanently. Mr. Pleckham also thought that he had informed William Harrington, a collection manager for John Deere, in July, 1990, of his intention to move the combine to Wisconsin. Mr. Harrington testified that it was not until sometime in June of 1991 that John Deere learned that the debtors had moved the combine to Wisconsin. John Deere filed a financing statement covering the combine in Wood County, Wisconsin, on August 23, 1991. As to the flexible platform, it remained at the debtors' Illinois residence at all

times relevant to this proceeding.

John Deere alleges its purchase-money security interest in the combine has priority and it is therefore entitled to relief from stay. It further asserts as grounds for its motion that the debtors have no equity in the collateral, the collateral continues to depreciate in value, no adequate protection has been offered, and finally, that the debtors have no reasonable prospect for reorganization. As of July 3, 1991, the debtors were indebted to John Deere for the sum of $19,609.17.

M & I Bank, in its objection, alleges that it has priority in the combine pursuant to its general farm security agreement with the debtor dated April 9, 1990. It alleges that John Deere lost its priority by failing to timely file a financing statement in Wisconsin. As of July 3, 1991, the debtors were indebted to M & I Bank in the amount of $297,436.77.

The debtors filed a Chapter 11 bankruptcy on June 20, 1991. In their objection, the debtors deny that John Deere has a valid perfected security interest in either the combine or the flexible platform. The debtors further deny that there is no equity in the collateral and they tendered an offer of adequate protection to compensate for the collateral's depreciation.

The central issue before the Court and the one upon which the parties focused at the hearing and in their written memoranda is that of priority as to the competing security interests in the combine. The Court has examined the documents submitted by the parties and finds that both John Deere and M & I Bank have a security interest in the combine and the flexible platform. John Deere obtained its security interest by virtue of the "Variable Rate Loan Contract and Security Agreement" signed by the debtor Gerald Pleckham on June 29, 1987, and accepted by John Deere on July 13, 1987. The loan contract and security agreement clearly lists the combine and the platform as collateral. John Deere perfected its security interest in the two items of machinery by filing a financing statement in Cook County, Illinois, on July 9, 1987.

M & I Bank has a valid security interest in the two items of farm machinery pursuant to a farm security agreement executed by the debtors on April 9, 1990. The description of collateral on this document includes the language "[a]ll equipment . . . ," which would include the combine and platform at issue. M & I Bank perfected its security interest by filing a financing statement with the Wisconsin Secretary of State and the Register of Deeds for Wood County, Wisconsin, on April 19, 1990.

Having determined that both John Deere and M & I Bank originally had perfected security interests in the collateral at issue, the Court must next determine whether John Deere lost its perfected status (and thereby its first priority) as to the combine.

The applicable Wisconsin statute is WIS. STAT. § 409.103. That provision is titled "[p]erfection of security interests in multiple state transactions" and provides in relevant part:

> (1) Documents, instruments and ordinary goods. (a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in sub. (2), mobile goods described in sub. (3), and minerals described in sub. (5).
>
> . . .
>
> (d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the

collateral was removed, the security interest remains perfected, but if action is required by ss. 409.301 to 409.318 to perfect the security interest:

> 1. If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of 4 months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;
>
> 2. If the action is taken before the expiration of the period specified in subd. 1, the security interest continues perfected thereafter;
>
> . . .

WIS. STAT. ANN. § 409.103(1) (West Supp. 1991). Since the debtor moved the combine to Wisconsin in early 1990 and John Deere did not file a financing statement there until August of 1991, M & I Bank argues, John Deere lost its perfected status as to the combine.

John Deere asserts that its security interest remained perfected in spite of its failure to file a U.C.C. financing statement in Wood County, Wisconsin, within the four-month grace period provided for in § 409.103(1)(d) of the Wisconsin statutes. John Deere bases this assertion on § 409.103(3). That provision provides in relevant part:

> (3) Accounts, general intangibles and mobile goods. (a) This subsection applies to accounts other than an account described in sub. (5) on minerals and general intangibles, other than uncertificated securities, and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in sub. (2).
>
> . . .
>
> (d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence . . . .
>
> (e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

WIS. STAT. ANN. § 409.103(3) (West Supp. 1991).

Since the debtors maintained a residence in Illinois at all times relevant to this proceeding, John Deere argues, there was no "change of the debtor's location to another jurisdiction" for purposes of WIS. STAT. § 409.103(3)(e). The four-month

grace period for filing a financing statement in the second jurisdiction to maintain perfected status would therefore not apply. Since the debtors maintained the Illinois residence and John Deere had filed and was perfected in Illinois, the argument continues, John Deere still has a perfected security interest in the combine at issue.

In order for § 409.103(3) to apply, however, the combine must fall within the definition of a "mobile good" contained in subsection (a) of that provision. John Deere argues that a combine is a "mobile good" for purposes of that provision and cites several cases in support of that contention.

The Court has examined both the statutory language and the judicial precedent cited by John Deere and has considered the written and oral arguments made by the parties. The Court holds that the combine at issue here is not a "mobile good" for purposes of § 409.103(3)(a). Closer examination of the statute reveals that, in order for a good to constitute a "mobile good," four requirements must be fulfilled. The goods must be:

1) mobile;

2) of a type normally used in more than one jurisdiction;

3) a) equipment or

b) inventory leased or held for lease by the debtor toothers;

4) not covered by a certificate of title described in WIS. STAT. § 409.103(2).

See WIS. STAT. ANN. § 409.103(3)(a) (West Supp. 1991).

Requirements 1 and 4 are met, since a combine is "mobile" and it is not covered by a certificate of title. M & I Bank, by selective citation of the statute, attempted to raise an issue as to requirement 3. The Court finds, however, that a combine constitutes "equipment" and thus that requirement is fulfilled. The key issue here is requirement 2 -- whether the combine constitutes "[goods] of a type normally used in more than one jurisdiction." John Deere makes much of the fact that the combine was used by the debtors in both Illinois and Wisconsin. The Court finds this fact to be of minimal relevance. The statute does not require the item at issue in each case to actually have been used in more than one jurisdiction; rather it requires that it be "[o]f a type normally used in more than one jurisdiction . . . ." See WIS. STAT. ANN. § 409.103(3)(a) (West Supp. 1991) (emphasis added). This phrase is further modified by the language "[s]uch as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like . . . ." See id. (emphasis added). Although a combine falls under "harvesting machinery," the debtor testified that he has never been engaged in the commercial harvesting business. Commercial harvesting machinery is typically transported across numerous state lines at harvest time to assist in the harvesting of crops. Harvesting machinery of the typical farmer, however, usually remains in one place -- at his farm. Such machinery is usually not used in more than one jurisdiction. This is undoubtedly the reason why the drafters of the Uniform Commercial Code used commercial harvesting machinery as an example of a good which is normally used in more than one jurisdiction.

Nor does any of the judicial precedent cited by John Deere in support of its assertion convince this Court that a combine constitutes a "mobile good" for purposes of WIS. STAT. § 409.103(3)(a). The case most closely on point, Konkel v. Golden Plains Credit Union, 9 U.C.C. Rep. Serv. (Callaghan) 278 (Colo. 1989),

involved a debtor who was a custom cutter and regularly harvested crops in four different states. Farino v. Ford Motor Credit Corp. (In re Farino), 9 B.R. 726 (Bankr. D. Me. 1981), involved a tractor owned by the operator of a golf course which straddled the Maine/New Hampshire border. The Farino court made no direct finding as to a tractor being a "mobile good" and did not analyze the aforementioned four requirements as they applied to the tractor at issue.[(1)] The parts of U.C.C. Section 9-103(3) quoted by the Farino court, moreover, indicate that the court considered the tractor to be construction machinery -- one of the specific examples of "mobile goods" contained in the U.C.C. provision. The other cases cited by John Deere involved construction machinery, horses or a yacht and they are therefore factually distinguishable from this case.

John Deere also raises several arguments based on equity and cites a commentator for the proposition that "mobile goods" in U.C.C. Section 9 should be interpreted expansively. The Court has considered these points but finds they do not outweigh the clear statutory language examined previously. The debtor here testified that he moved the combine to Wisconsin with the intention that it would remain there permanently. He was not engaged in the business of commercial harvesting. The testimony as to whether the debtor notified one of John Deere's representatives that he had moved the combine to Wisconsin is unclear. Four months was a reasonable length of time within which John Deere could have ascertained that its collateral had been moved. Equity considerations, therefore, do not sway the Court to reach a different result than the one it reaches here.

Because John Deere did not file a financing statement in Wisconsin for the combine within four months of its arrival in the state, it lost its perfected status as to that combine pursuant to WIS. STAT. § 409.103(d)(1). Since M & I Bank perfected its security interest in the combine by filing a financing statement in Wisconsin on April 19, 1990, its security interest has priority. Accordingly, John Deere's motion for relief from stay as to the combine is denied.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.

END NOTE:

1. The Court's finding in this regard was merely implicit - in that it held that U.S.C. Section 9-103(3) was applicable to the facts of that case. See In re Farino, 9 B.R. at 729.