

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

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In re:

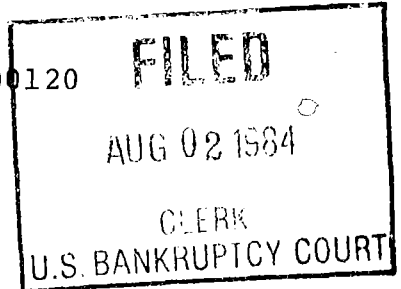
DENNIS L. BEEDLE  
SANDRA K. BEEDLE  
d/b/a Elm Crest Dairies,

Debtors.

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Case Number:

EF7-82-00120



DAIRY FARM LEASING COMPANY,

Plaintiff,

vs.

DENNIS L. BEEDLE and  
SANDRA K. BEEDLE,  
d/b/a Elm Crest Dairies,

Defendants.

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Adversary Number:

82-0137

FINDINGS OF FACT, CONCLUSION OF LAW  
AND  
ORDER DENYING MOTION TO DISMISS

Defendants Dennis L. and Sandra K. Beedle, by Attorney Peter F. Herrell of Jordan, Herrell & Thiel, having filed a motion to dismiss the above captioned adversary proceedings; and a hearing having been held; and the Defendants appearing by counsel; and Plaintiff Dairy Farm Leasing Company appearing by its house counsel, Attorney Val Silins; the Court, having con-

sidered the argument of counsel and the complete record and file herein, FINDS THAT:

1. On June 8, 1982, Plaintiff Dairy Farm Leasing Company commenced an adversary proceeding against Defendants Dennis L. and Sandra K. Beedle to determine the dischargeability of a debt.

2. On July 9, 1982, the Defendants filed a Motion to Dismiss a portion of the Plaintiff's Complaint for failure to state a claim upon which relief could be granted.

3. On August 23, 1982, this Court held an adjourned pre-trial conference in this matter and received oral argument on the Defendants' motion to dismiss.

4. On October 18, 1982, following the submission of written briefs by the parties, this Court denied the Defendants' Motion to Dismiss.

5. On October 28, 1982, the Defendants filed a Motion to Strike paragraph 8 of the Plaintiff's Complaint.

6. On October 29, 1982, the Defendants filed an Answer and Affirmative Defenses.

7. This Court's proceeding docket shows no other activity in this adversary case until June 5, 1984, when the Defendants filed a Motion to Dismiss the Plaintiff's Complaint with prejudice pursuant to Fed.R.Bankr.P. 7041.

8. There is no evidence that the delay in prosecuting this proceeding was the result of bad faith or intentionally contemptuous behavior on the part of the Plaintiff.

Discussion

9. Fed.R.Bankr.P. 7041, with exceptions not relevant here, is conterminous with Fed.R.Civ.P. 41.

10. "Rule 41(b) clearly places dismissal for failure to prosecute in the courts discretion." 2 J. Moore, A Vestal & P. Kurland, Moore's Manual sec. 19.08 [1] (1983).

11. A survey of cases which were dismissed for lack of prosecution demonstrates that said cases generally contain an element of bad faith or intentionally contemptuous behavior on the part of the Plaintiff. See id. (cases collected).

12. "[C]ourts have recognized that dismissal with prejudice is a harsh penalty and that often the ends of justice can be served by imposing a lesser sanction." Id.; see, e.g., Webber v. Eye Corp., 721 F.2d 1067, 1069 (7th Cir. 1983).

CONCLUSION OF LAW

That an order be entered denying Defendants' Motion.

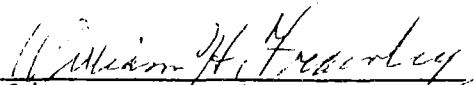
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ORDER

IT IS ORDERED THAT the Motion to Dismiss filed by Defendants Dennis L. and Sandra K. Beedle be, and the same hereby is, DENYED, without costs.

Dated: August 2, 1984.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge