

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In Re

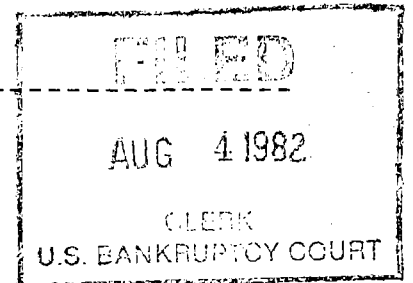
FITZGERALD FARMS, INC.

Debtor.

In Bankruptcy

No. EF11-82-00480

FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER



Production Credit Association of River Falls, Wisconsin, (PCA) having filed an application to lift the stay in the above proceedings; and the debtor having requested a hearing thereon; and the matter having come on for a pre-trial hearing before the court; Randall E. Morey of the firm of Whelan, Morey, Ricci, Chambers & Oesterreicher having appeared for the applicant, PCA, and Peter E. Grosskopf of the firm of Thornton, Black, Wachowski & Grosskopf having appeared for the debtor; and evidence having been taken, and arguments of counsel made, and counsel having filed briefs, and after a full consideration thereof and the court being fully advised in the premises, FINDS:

1. That the debtor, Fitzgerald Farms, Inc. is a corporation and has operated a beef farm in Buffalo and Pepin Counties near the city of Mondovi, Wisconsin, for approximately fifteen years on about 920 acres of land. Previously it had been a dairy farm operation in the Fitzgerald family for several generations.
2. That approximately 130 acres of the farm land and certain personal property is individually owned by Patrick Fitzgerald who is the president and sole stockholder of the debtor, Fitzgerald Farms, Inc.
3. That most of the debts and loans were incurred jointly by the corporation and Patrick Fitzgerald and his wife,

Connie, as individuals, and the corporate debt was secured by both the corporate property and the loans by the Fitzgeralds as individuals, and vice versa.

4. That on the 23rd day of March, 1982, the debtor, Fitzgerald Farms, Inc., filed a petition for relief under the provisions of 11 U.S.C., Chapter 11.

5. That as of June 25, 1982, counsel stipulated the indebtedness, as follows:

Federal Land Bank of St. Paul	
Corporate Property	\$186,486.54
Individual Property	\$ 13,138.26
American Bank - Alma	\$ 38,565.69
Northern Investment	\$ 66,468.12
PCA	\$246,147.08
Selma Fitzgerald	\$157,118.06
Buffalo County Treasurer	\$ 4,523.32
Pepin County Treasurer	
Corporate Property	\$ 5,746.63
Individual Property	\$ 1,217.74
Federal Tax Lien	\$ 4,337.82

6. That Production Credit Association commenced a foreclosure action in the Circuit Court of Buffalo County, Wisconsin, and that the one year redemption expired on March 23, 1982.

7. That by stipulation of counsel a statement of facts and a list of exhibits were submitted to the court and filed on June 28, 1982, and that in addition to the lengthy appraisals the exhibits attached pursuant to the stipulation are thirty-two in number.

8. That Glen L. Heit, an appraiser in the Durand area where the property is located, at the request of PCA, appraised the real estate in the sum of \$589,220.00 and the personal property in the sum of \$37,500.00.

9. That Peter Wolfley, at the request of the debtor, appraised the farm real estate at \$770,000.00 but did not appraise the personal property.

10. That prior to the filing of the petition herein the debtor had endeavored to sell the property with at least five different realtors or listings. All of the asking prices were substantially above the appraised values above stated.

11. That debtor contends the personal property to be worth \$66,850.00.

12. That the mortgage claimed by Selma Fitzgerald was not recorded at the time of the commencement of the foreclosure action and she was not a defendant in the foreclosure proceedings. She is the mother of Patrick Fitzgerald.

13. That from a careful consideration of the respective appraisals and examination of the exhibits and debtor's list, it appears that the indebtedness to consider in determining the equity of the debtor is as follows:

PCA Judgment	\$247,211.44
Taxes	\$ 15,825.51
Federal Land Bank Mortgage Liens	\$199,624.80
Northern Investment	\$ 66,468.12
American Bank of Alma	<u>\$ 38,565.69</u>
Total	\$567,695.56

I am not considering the mortgage lien of Selma Fitzgerald at this time.

14. That the total of the Heit appraisal would be \$626,720.00, including the real estate and personal property, which is over \$59,000.00 more than the indebtedness above stated, and the total of the Wolfley appraisal, including the personal property valuation claimed by the debtor, would be a total of \$836,850.00, or substantially more than the indebtedness with interest accruing at this time

15. That the debtor has an equity in the property.

16. That said property is so intertwined with liens and not subject to division as contended by applicant and also

by the debtor, and the whole property is necessary for working out the plan unless the parties can agree to split the liens.

17. That there is an adequate cushion for the applicant in these proceedings.

18. That the disclosure statement has been filed by the debtor and a hearing is scheduled for September 7, 1982. That debtor has also filed its Chapter 11 plan.

19. That the only acts left to be done under the foreclosure judgment if the stay would be lifted would be to advertise the property for sale by the sheriff of Buffalo County.

20. That said stay should not be lifted at this time.

CONCLUSIONS OF LAW

That an order be entered denying the application of Production Credit Association for the lifting of the stay at this time.

O R D E R

NOW, THEREFORE, IT IS ORDERED: That the application of Production Credit Association to lift the stay in the above entitled proceedings to permit proceedings on the foreclosure judgment in the Circuit Court of Buffalo County, Wisconsin, be and the same is hereby denied at this time without costs to either of the parties.

Dated: August 4, 1982.

BY THE COURT:


WILLIAM H. FRAWLEY
BANKRUPTCY JUDGE