

FILED

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

OCT 5 1984

CLERK  
U.S. BANKRUPTCY COURT

---

In re: Case Number:  
FITZGERALD FARMS, INC. EF11-82-00480  
Debtor.

---

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND  
ORDER REGARDING DISTRIBUTION OF PROCEEDS

Motions having been made regarding the distribution of proceeds from the sale of certain parcels of the Debtor's real property; and the Debtor being represented by Attorney Peter E. Grosskopf; and Creditor Production Credit Association of River Falls being represented by Attorney Peter F. Herrell; and Creditor Northern Investment Company being represented by Attorney Bruce J. Kostner; and hearings having been held from time to time; and briefs having been submitted; the Court, being fully advised in the premises, FINDS THAT:

1. Some or all of the Debtor's real property has been sold at auction for approximately \$411,000. The land was divided into parcels for the sale. The sale was conducted by James W. Heike of Heike Realty.<sup>1</sup> The terms of the sale provided that

---

<sup>1</sup> With the exception of so much of the realtor's fee as was assigned to Production Credit Association of River Falls, the Court has been advised that Mr. Heike has received his commissions from the sale proceeds.

Mr. Heike would receive a 1/2 of 1% commission for any parcel sold to a secured creditor of the Debtor and a 6% commission for sales to a third party.

2. Two of the parcels were sold as a single unit to Creditor Production Credit Association of River Falls (PCA) for \$210,000. (PCA, in turn, sold the parcels to Mr. Heike for \$235,000.) After the sale, Mr. Heike assigned "realtor's fees . . . arising from the sale of a certain parcel of the debtor's real estate to [PCA] . . . in full and complete satisfaction of a certain debt from James Heike to PCA . . ."

3. The land is located in two Wisconsin counties: Buffalo and Pepin.

4. So much of the land as is located in Buffalo County is subject to a third lien of Creditor Northern Investment Company (NIC). So much of the land as is located in Pepin County is subject to a third lien of PCA. Approximately \$256,000 has been distributed and senior liens have been satisfied. Both NIC (owed over \$95,000) and PCA (owed over \$286,000) are undersecured.

5. The Court has the benefit of two appraisals of the auction value of the Debtor's Buffalo County land:

- (A) James W. Heike (the ultimate purchaser), on behalf of PCA, found the land to have a value of \$152,400 before he bought it.
- (B) LaVerne L. Stewart, on behalf of NIC, found the land to have a value of \$175,000.

6. Both appraisers are respected, qualified and competent.

7. The Buffalo County land accounted for \$170,000 (41.369%) of the \$411,000 sales price.

8. Equity does not permit this Court to apportion the proceeds of the sale of the Debtor's mortgaged property on the basis of the size of the lien holders' debt.

CONCLUSIONS OF LAW

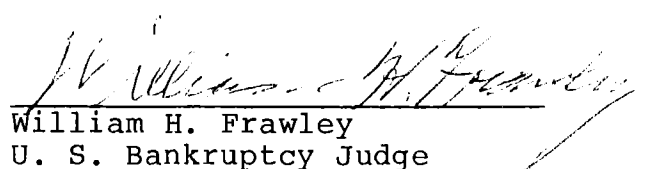
1. PCA, as Mr. Heike's assignee, is entitled to an administrative distribution of 1/2 of 1% of \$210,000--i.e., \$1,050-- plus 58.63% of the remaining proceeds.

2. NIC is entitled to 41.37% of the proceeds remaining after PCA's \$1,050 administrative expense distribution.

ORDER

IT IS ORDERED THAT the proceeds from the sale of certain parcels of the Debtor's real property be distributed as set forth above.

Dated: October 5, 1984.

  
William H. Frawley  
U. S. Bankruptcy Judge