

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

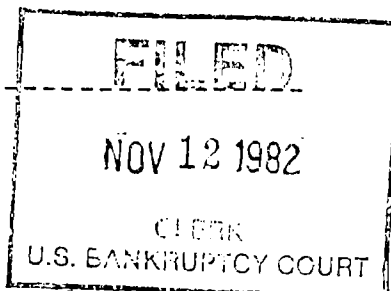
In the Matter of

ROBERT J. JOHNSON and  
MARY T. JOHNSON

Bankruptcy No.  
EF11-82-00630

Debtors.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW and ORDER



The debtors above named having duly moved the court for an order setting aside milk check assignments they had given to several creditors prior to the filing of the Chapter 11 proceedings, and the matter having come on for hearing before the court, and counsel having stated their relative positions and having filed briefs, and the court having duly considered the stipulated facts, the arguments and briefs of counsel, and being fully advised in the premises, FINDS:

1. That said debtors filed a Chapter 11 proceedings on the 16th day of April, 1982. That prior to said time they had signed and executed in the usual manner milk check assignments to the Farmers Home Administration, Eau Claire Citizens Loan, Production Credit Association, Bank of New Richmond and Thorp Finance Corporation.

2. That counsel for debtors contends that milk assignments should be treated in the same manner as wage assignments which may be terminated upon the filing of the bankruptcy proceedings. See In Re Taylor, 7 B.R. 506 (1980); In Re Shepherd, 12 B.R. 151 (1981); In Re Matter of Huebner, 18 B.R. 193 (1982). This court cannot agree with that interpretation.

3. A debtor in possession has most of the powers of a trustee in bankruptcy. 11 U.S.C. §1107. If the creditor's milk check assignments are unperfected they may be avoided by

the debtor in possession pursuant to 11 U.S.C. §544. See In Re Bindl (Decision by Judge Robert D. Martin, Western District of Wisconsin.)

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4. That Farmers Home Administration, Eau Claire Citizens Loan and Thorp Finance Corporation have not filed briefs relative to the wage assignment question.

5. That Production Credit Association and the Bank of New Richmond have each filed a financing statement with the proper county register, and which claim for the milk assignment validity is based on "products of collateral are covered unless checked."

6. That a financing statement alone does not create a secured lien in the milk accounts. See In Re Schreiber, 7 U.C.C. Reporting Service.

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7. That as Judge Bessman mentioned in the Schreiber decision, the financing statement cannot make up for an omission in the security agreement.

8. That from an examination of the submitted loan agreements, the Production Credit Association loan agreement, supplemental loan agreement and security agreement dated March 4, 1980, referred to the security on twenty-three head of holstein cows and provides for collateral for the loan on all equipment, all livestock and young of such livestock, and under the following products of livestock, "milk." The supplemental loan agreement provides for twenty percent of all proceeds from each sale of milk.

9. The security agreement note and the farm security agreement of the Bank of New Richmond provided collateral in all farm equipment and all livestock. The provision for the products of livestock now owned or hereafter acquired was not checked in the farm security agreement of the bank and was therefore not included in its collateral agreement.

10. The security agreements of Farmers Home Administration covered crops, livestock, machinery, supplies and

inventory; the Eau Claire Citizens Loan - household goods, guns and 1980 Ford truck; and Thorp Finance - colored TV, Kirby vacuum and wedding rings.

11. That the milk check assignments to the Farmers Home Administration, Eau Claire Citizens Loan, Bank of New Richmond and Thorp Finance Corporation may properly be terminated for the reason that they do not have perfected milk assignment provisions in said agreements and financing statements.

12. That the security agreement of Production Credit Association complies with the requirements of the various laws and filing provisions, and said milk assignments may not be terminated relative to it.

CONCLUSIONS OF LAW

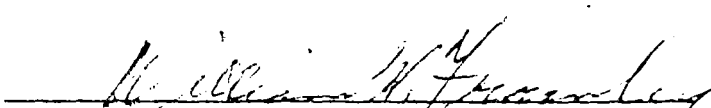
That an order be entered terminating the milk assignments to Farmers Home Administration, Eau Claire Citizens Loan, Bank of New Richmond and Thorp Finance Corporation, and denying the termination of the milk assignments to Production Credit Association.

O R D E R

NOW, THEREFORE, IT IS ORDERED: That the application of the debtors in the above entitled matter to terminate the milk check assignments given by them prior to the filing of the petition herein be denied as to Production Credit Association and allowed and granted as to the Farmers Home Administration, Eau Claire Citizens Loan, Bank of New Richmond and Thorp Finance Corporation without costs to any of the parties.

Dated: November 12, 1982.

BY THE COURT:

  
WILLIAM H. FRAWLEY  
BANKRUPTCY JUDGE