

FILED

MAY 15 1986

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

RICHARD A SMELTZER
LEE M. SMELTZER,

EF11-82-02038

Debtors.

UNITED STATES, BY PRODUCTION
CREDIT ASSOCIATION OF
CHIPPEWA FALLS,

Plaintiff,

Adversary Number:

v.

85-0221-11

STATE SURETY COMPANY,

Defendant,

FARM SUPPLY COOPERATIVE,

Intervener.

OPINION AND ORDER

The plaintiff, Production Credit Association of Chippewa Falls, appears by Eugene La Fave and has initiated this adversary proceeding against the defendant, State Surety Company, as issuer of a bond guaranteeing the faithful performance of Rodney Smeltzer, as trustee for the bankruptcy estate of the debtors, in the primary bankruptcy proceeding. The plaintiff alleges that said trustee failed and refused to pay over to the plaintiff crop

proceeds and interest on crop proceeds contrary to and in violation of loan agreements and security agreements with the trustee.

The defendant appears by Peter Herrell and contests the plaintiff's motion. The defendant has sought discovery through the use of interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure. Bankruptcy Rules 7026 and 7033.

The plaintiff provided answers to several of the numbered interrogatories submitted by the defendant and has objected to providing answers to the remaining interrogatories. The defendant has filed this motion to compel discovery and requests sanctions including the cost of this motion pursuant to Rule 37 of the Federal Rules of Civil Procedure. Bankruptcy Rule 7037. The defendant subsequently withdrew its motion to compel discovery with respect to five of the numbered interrogatories. Seven of the numbered interrogatories still remain in dispute. The plaintiff argues that the information sought in the remaining interrogatories is not within the scope of discovery and, therefore, answers are not required. The plaintiff also asks to be awarded the expenses of this motion including reasonable attorney fees.

Rule 26 of the Federal Rules of Civil Procedure provides for the scope and limits of discovery.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privi-

leged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Bankruptcy Rule 7026. The court will address the specific interrogatories at issue in this dispute and the parties' respective arguments, in numerical order, and will determine whether each interrogatory is within the scope of discovery.

INTERROGATORY 34: Wasn't the 1984 loan made, in part, in order to increase the general recovery to PCA in the reorganization?

The plaintiff argues that this interrogatory is too indefinite, unclear, and vague to require an answer. This question merely asks whether the 1984 loan the plaintiff made to the defendant was given, partly motivated, because of the possibility of a greater recovery in the debtors' reorganization. The plaintiff should be able to answer this question either yes or no. It is the conclusion of the court that this interrogatory is sufficiently clear to require an answer.

INTERROGATORY 35: In 1984, how many loans did PCA make which were to be paid from crop proceeds, giving the number of the loans made and the total amount lent.

INTERROGATORY 36: Of the above loans how many were not repaid in full from the proceeds?

The plaintiff argues that the information requested by these interrogatories is not relevant to the complaint. The plaintiff also argues that this information constitutes private business records and is beyond the scope of discovery.

A court should generally award a broad and liberal treatment to the limits of relevancy in discovery matters. Hickman v. Taylor, 329 U.S. 495 (1947). Information that is not admissible at trial may still be properly subject to discovery. The information requested in these two interrogatories relates to the nature of the relationship between the plaintiff, the defendant, the trustee, and the debtor and is clearly relevant. The information requested by these interrogatories is not subject to any category of recognized privilege that would set it outside the scope of discovery. The fact that the information requested involves certain privacy interests does not set it outside the scope of discovery. The plaintiff has not been asked to reveal the particulars of any individual loan transaction. Instead, the request is very general and does not require disclosure of specific information about entities other than the plaintiff. It is the conclusion of the court that the information requested in these two interrogatories is within the scope of discovery and is sufficiently general that it does not require the protection of the court.

INTERROGATORY 38: Did PCA enter into any agreement with FS as to how the 1982 crop proceeds should be divided; if "yes", (a) what is that agreement; (b) when was it entered into; (c) is it in writing?

INTERROGATORY 39: Have PCA and FS entered into any other agreements as to the proceedings before in this matter, including but not limited to, (a) opposing confirmation of trustee's plan; (b) to indemnify either party for the costs of pursuing this action; (c) from PCA to FS on FS's motion to intervene?

The plaintiff argues that this information is not relevant to the issues of the complaint. The plaintiff also argues that the information sought constitutes legal tactics, strategy, and settlement negotiations that are protected from discovery. Finally, the plaintiff argues that the issue involved in interrogatory 38(a) is moot in view of the fact that the agreement between the plaintiff and FS to equally divide the 1982 crop sale proceeds is disclosed in paragraph 12 of the intervener's complaint dated November 21, 1985.

Initially, the court notes that the information requested in these two interrogatories is only marginally related to the issues involved in the complaint. This information does not fall within a recognized category of privileged information or constitute an attorney's work product that is not discoverable. However, the court has the authority to exercise appropriate control over the discovery process. Herbert v. Lando, 441 U.S. 153 (1979). With respect to these two interrogatories the poten-

tial for abuse of the discovery process by using discovery as a means of harrassment rather than to discover actual evidence, the privacy interests associated with counsel negotiations, and the limited relevance of the information requested all indicate that good cause exists for the court to refrain from compelling answers to interrogatories #38 and #39. New events may occur or transpire such that the court's protection as to this information no longer applies. At this time, however, it is the conclusion of the court that the plaintiff does not need to provide the information sought in these two interrogatories.

INTERROGATORY 41: Did PCA serve its May 9, 1985, motion to reopen the estate and restrain the trustee on any party other than the trustee's attorney; if so, on whom was it served and when?

The plaintiff objects to this request for information on the grounds of relevance and argues that such information constitutes procedural matters that are beyond the scope of discovery. The information requested in this interrogatory is relevant to this adversary proceeding. The fact that the request involves procedural matters does not set it outside the scope of relevance or place it into a recognized category of privileged information. There is no reason why this information should be granted the protections of this court. It is the conclusion of the court that the plaintiff should provide an answer to this interrogatory.

With respect to interrogatory #44, the defendant is not seeking to compel an answer to this interrogatory at this time and, therefore, the court will not compel an answer.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

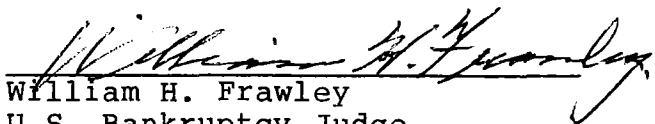
ORDER

NOW, THEREFORE, IT IS ORDERED THAT, the plaintiff, Production Credit Association of Chippewa Falls, shall provide answers to interrogatories #34, #35, #36, and #41 within 20 days.

IT IS FURTHER ORDERED THAT, the plaintiff does not need to provide answers to interrogatories #38, #39, and #44.

Dated: May 15, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney Eugene J. La Fave
Attorney Peter E. Grosskopf
Attorney Peter F. Herrell