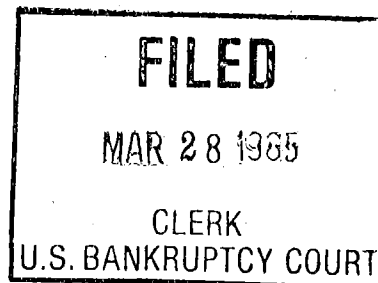


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

MARVIN GORDEN,

LM11-83-00173

Debtor.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER DENYING OBJECTION

Commodity Credit Corporation (CCC), by Attorney Sheree L. Gowey, having filed an objection to distribution of proceeds; and a hearing having been held; and CCC appearing by counsel; and Production Credit Association of Sparta (PCA) appearing by Attorney Michael J. McAlpine; the Court, being fully advised in the premises, FINDS THAT:

1. This dispute is the conclusion of a series of transactions between Debtor Marvin Gorden, Production Credit Association of Sparta (PCA), which holds a first lien on the Debtor's corn crop, and Commodity Credit Corporation (CCC).

2. Each transaction involved loans from CCC to the Debtor¹ which, in turn, were applied to reduce obligations

¹ The parties do not agree upon the total amount of the CCC debt. In view of the Court's disposition of this matter, the question need not be resolved.

to PCA.² In return, PCA would subordinate its security interest "in the commodity with respect to which the loan . . . is made", i.e., the Debtor's corn, to CCC.

3. The extent of the collateral available for the CCC loans was determined by CCC measurement of the Debtor's corn inventory.

4. On February 4, 1983, Debtor-in-Possession Marvin Gorden filed for relief under Chapter 11 of the Bankruptcy Code.

5. By June of 1983, PCA had been subordinated to CCC in respect to at least 50,602 bushels of the Debtor's corn³ and, presumably, PCA had received payment from the Debtor in consideration of that subordination.

6. On June 13, 1983, Commodity Credit Corporation (CCC) measured the Debtor's 1981 and 1982 corn inventory to determine the amount of collateral available in the event that additional funds were loaned to the Debtor to reduce his PCA debt.

7. According to the CCC measurement, approximately 108,216 bushels were on hand.

8. No further loan was made and, in June, 1984, it appeared that PCA's interest in the Debtor's corn inventory consisted of a subordinated first lien on 50,602 bushels and an unsubordinated first lien on the balance of 57,614 bushels.

² The pre-printed "Lienholder's Subordination Agreement" between CCC and PCA contains the following typewritten notation: "PCA will agree to this as long as all checks are always made out jointly."

³ At some time in 1983 CCC released its interest in an additional 22,636 bushels. PCA is now in the position of the primary lienholder as to those bushels.

9. On June 18, 1984, during negotiation of the Debtor's plan of reorganization, the Debtor and PCA agreed to reduce the Debtor's obligation to PCA from over \$400,000 to \$275,000--\$180,000 of which was to be paid before August 1, 1984.

10. On July 16, 1984, the Debtor asked this Court for authority to sell "approximately 100,000 bushels of corn" and distribute the first \$180,000 of the proceeds to PCA, then \$.20 per bushel to the Debtor (for hauling costs) and the balance to CCC.

11. On July 26, 1984, this Court (Martin, J.)--over the objection of CCC--approved the sale and authorized distribution⁴ subject to objection by any party within 20 days of receipt of the Debtor's accounting, i.e., copies of the buyer's invoices. The July 31, 1984, signed order provided, in part:

5. Production Credit Association and Commodity Credit Corporation have twenty (20) days after receipt of the invoices from the debtor in possession (Cargill Elevator invoices) to object to the division of the proceeds between said parties and their respective rights to security therein relating to the transferred corn. If objections are filed by either party, the Court will then schedule a hearing thereon with notice to all parties.

⁴ The July 31, 1984, signed order provided for distribution of the first \$10,000 to the Debtor, the next \$180,000 to PCA, the next \$11,643.20 to the Debtor (the balance of the \$21,643.20 cost of hauling 108,216 bushels), the next \$139,452.56 "plus accrued interest on that amount to the date of payment (approximate amount of \$152,000)" to CCC and the balance, if any, to the Debtor.

12. 99,175 bushels were sold at \$3.51/bu. yielding \$348,541.⁵ Of this total, \$180,000 was distributed to PCA, \$21,643 to the Debtor and \$146,898 to CCC. Thus, after deduction of handling costs, CCC received payment on account of 44,566 bushels and PCA received payment on account of 54,609 bushels.

13. On September 4, 1984, the Debtor submitted an amended plan of reorganization. The amended plan contained no reference to the sale of the Debtor's corn inventory or to the distribution of the proceeds of said sale.

14. On September 20, 1984, CCC objected to the distribution of the proceeds of the sale of the Debtor's corn. To PCA arguments that the objection was not filed within 20 days of CCC receipt of the Debtor's accounting, CCC states that "its objection was timely filed. The objection was put in the mail, for filing, within the 20-day time limit. CCC believes that that is all that is required." Brief of the United States (filed Mar. 12, 1985).

15. On the same day, CCC objected to the amended plan on several grounds, including: "[t]he plan fails to provide for payment of the unsecured claim of the United States. The outstanding balance on the corn loan to Commodity Credit Corporation is in the amount of \$22,061.21."

⁵ These are approximate figures.

16. At the September 26, 1984, confirmation hearing the Court was informed that CCC had settled its dispute with the Debtor prior to the confirmation hearing.

17. On November 1, 1984, this Court approved the Debtor's amended plan.

CONCLUSION OF LAW

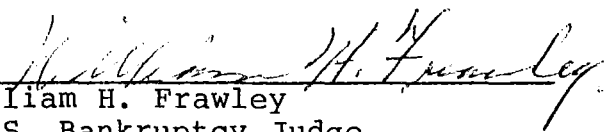
CCC's objection was not timely filed. See In re Gullickson, 39 B.R. 922, 923 (Bankr.W.D.Wis. 1984) (objection to exemption mailed day before deadline and received by court day after deadline was untimely), In re Doty, Adv. 84-320-7 (Bankr.W.D.Wis. Feb. 8, 1985) (answer mailed day before deadline, postmarked day of deadline and received three days after deadline was untimely).

ORDER

IT IS ORDERED THAT the objection of Commodity Credit Corporation to the distribution of the proceeds of the sale of the Debtor's corn be, and the same hereby is, DENIED, without costs.

Dated: March 28, 1985.

BY THE COURT:


William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Michael J. McAlpine
Attorney Sheree L. Gowey
Attorney Galen W. Pittman