

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

FILED
OCT 03 1984
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U.S. BANKRUPTCY COURT

In re:

FRANCIS C. DUMS
LORI A. DUMS

Case Number:

WF7-83-02089

Debtors.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER DENYING MOTION TO HAVE PAYMENTS
DECLARED A PART OF THE ESTATE

Attorney Edward F. Zappen, Trustee, having filed a Motion to have Milk Diversion Program payments declared a part of the estate and a hearing having been held; and the Trustee appearing on his own behalf; and the Debtors appearing in person and by Attorney Gene C. Krug; and the matter being submitted on briefs; the Court, being fully advised in the premises, FINDS THAT:

1. On December 23, 1983, Francis C. and Lori A. Dums filed for relief under Chapter 7 of the Bankruptcy Code.

2. Among the Debtor Francis Dums' assets was a dairy herd. The Debtors' schedules reveal that the Farmers Home Administration (FmHA) was an under-secured lender with a security interest in, inter alia, Mr. Dums' dairy herd. Mr. Dums claimed the dairy herd as exempt property under Wis. Stat. 815.16(6).

3. On January 31, 1984, Mr. Dums and the United States Department of Agriculture Commodity Credit Corporation (CCC)

entered into a "Contract to Participate in the Milk Diversion Program". Under the contract Mr. Dums agreed to reduce the amount of milk he marketed for commercial use and CCC agreed to make certain future cash payments to Mr. Dums.

4. Only those who were actively engaged in the production of milk on November 29, 1983, and who could provide evidence of milk production during the 1982 calendar year were eligible for the Milk Diversion Program (the Program). The Trustee has not disputed the Debtors' summary of "the numerous obligations and conditions" placed upon Mr. Dums under the Program, to-wit:

-Debtors must complete certain paperwork at the start of the contract, during the term of the contract, and at the end of the term after March 31, 1985.

-Debtors agree to not market milk in excess of reduced limits throughout the term and to not sell cows except in limited ways and to not permit their farm unit or others they are affiliated with to conduct dairy farming in violation of the marketing restrictions set forth.

-Debtors do not earn the contract payments until it is determined as of March 31, 1985, that Debtors have complied with all requirements throughout the term of the contract. If they have not complied they receive no further payments and must repay any amounts previously advanced to them and may be assessed penalties.

Addendum to Debtors Brief in Response to Motion of Trustee 2 (filed Sept. 21, 1984).

5. On February 1, 1984, the first meeting of creditors was held pursuant to Fed.R.Bankr.P. 2003(a). To date, no objection

to the list of property claimed as exempt has been filed (cf. Fed.R.Bankr.P. 4003(b) (objections must be filed within 30 days after the first meeting of creditors) & 11 U.S.C. sec. 522(1) (unless party objects, property listed is exempt)).

6. On April 1, 1984, with the consent of FmHA, Mr. Dums sold his dairy herd.

7. The Trustee predicates his claim to the Program payments upon 11 U.S.C. sec. 541(a)(7) (property of the estate includes "[a]ny interest in property that the estate acquires after the commencement of the case").

8. "An example of the application of section 541(a)(7) would be if the Trustee entered into a contract after commencement of the case." 4 L. King, Collier on Bankruptcy, para. 541.20 (15th ed. 1984) (emphasis added). Cf. 11 U.S.C. sec. 541(a)(6) (earnings from services performed by an individual debtor after the commencement of the case are not property of the estate); In re Hammond, 35 B.R. 219 (Bankr.W.D.Okla. 1983) (payments due under anti-competition agreement are not property of the estate).

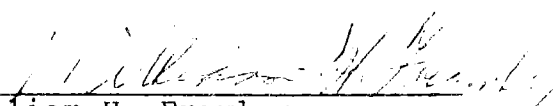
CONCLUSION OF LAW

The Program payments are not a part of the above-captioned bankruptcy estate.

ORDER

IT IS ORDERED THAT the Trustee's Motion to have Milk Diversion Program payments declared a part of the above-captioned bankruptcy estate be, and the same hereby is, DENIED, without costs.

Dated: October 3, 1984.



William H. Frawley
U. S. Bankruptcy Judge