

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

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U.S. BANKRUPTCY COURT

In re:

Case Number:

ORVILLE F. SCHAAR, JR.
GLORIA E. SCHAAR,

EF7-84-00216

Debtors

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER FOR EVIDENTIARY HEARING

Peter F. Herrell, Trustee and Attorney for Trustee, having filed an Objection to Claim; and a hearing having been held; and the Trustee appearing on his own behalf; and Bank of Osceola appearing by Attorney Barry Cohen; and the matter being submitted on briefs; the Court, being fully advised in the premises, FINDS THAT:

1. On October 2, 1979, Debtors Gloria E. Schaar and Orville F. Schaar, Jr., signed a "Consumer Farm Security Agreement (use if amount financed is \$25,000 or less)" which appears to grant the Bank of Osceola a security in all farm personal property (except growing crops) "acquired by Debtor". The security agreement secures "all Debtor's . . . obligations . . . to Secured Party, arising out of . . . credit granted by Secured Party to Debtor, to Debtor and another, or to another guaranteed or indorsed by Debtor . . . " (emphasis added).

2. On October 3, 1979, the Bank filed a financing statement covering all Debtor "livestock, machinery, equipment, feed, grain now owned or hereafter acquired" and the products and proceeds of said collateral.

3. On July 29, 1983, Mr. Schaar signed one "Agricultural Universal Note - 365 Day Basis" in favor of the Bank in the amount of \$143,253.13 and another in the amount of \$1,437.19.

4. On February 8, 1984, the Debtors filed for relief under Chapter 7 of the Bankruptcy Code.

5. On April 4, 1984, the Bank filed a proof of claim for \$144,524.41. Attached to the claim were copies of the October 3, 1979, financing statement and the July 29, 1983, notes.

6. Debtor farm machinery, equipment and livestock has been sold by the Trustee for approximately \$48,000.

7. The Bank's proof of claim meets the standard of substantial compliance with Official Form No. 19, Fed.R.Bank.P. 3001(a).

8. Ms. Schaar has no obligation to the Bank; accordingly, by the terms of the Security Agreements the Bank's interest in the property sold by the Trustee is limited to Mr. Schaar's interest in that property.

9. The parties' dispute regarding Mr. Schaar's interest in the farm property raises questions of material fact which "cannot

be decided upon motion, and an evidentiary hearing is required." In re Flake, 32 B.R. 360, 364 (Bankr.W.D.Wis. 1983).¹

10. Whether the terms of the security agreement limit the Bank's security interest to \$25,000 of Mr. Schaar's interest need be considered only in the event that Mr. Schaar's interest is found to exceed said amount.

CONCLUSION OF LAW

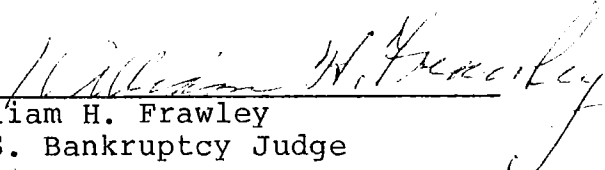
That an evidentiary hearing should be held to determine Mr. Schaar's interest in the property sold by the Trustee.

ORDER

IT IS ORDERED THAT an evidentiary hearing be held to determine the interest of Orville F. Schaar, Jr., in farm personal property sold by the Trustee of the above-captioned bankruptcy estate.

Dated: November 13, 1984.

BY THE COURT



William H. Frawley
U. S. Bankruptcy Judge

¹ Judge Martin's decision regarding the evidence presented at the Flake evidentiary hearing is reported at In re Flake, 33 B.R. 275 (Bankr.W.D.Wis. 1983).