UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

In re:

ROLAND G. HUEBNER
WILLIAM L. HUEBNER
BEAR BLUFF FARMS
HUEBNER BROTHERS

Debtors

Case Number:

WF11-84-00376

ORDER

The court having this day entered its memorandum opinion, findings of fact, and conclusions of law;

IT IS HEREBY ORDERED that John Deere's motion seeking relief from the 11 U.S.C. § 362 automatic stay is hereby denied.

Dated: June 23, 1986.

BY THE COURT:

William H. Frawley
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

In re:

ROLAND G. HUEBNER
WILLIAM L. HUEBNER
BEAR BLUFF FARMS
HUEBNER BROTHERS

Debtors.

Case Number:

WF11-84-00376

MEMORANDUM OPINION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

John Deere Industrial Equipment Company (John Deere) by Jerome Lynch, has brought this motion pursuant to Bankruptcy Rule 4001 seeking relief from the 11 U.S.C. § 362 automatic stay. The debtors appear by Galen Pittman and Jeffrey Mochalski and contest the motion. A hearing was held on this matter on February 18, 1986, and an adjourned hearing was held on April 25, 1986. The parties have submitted the issues for determination by briefs.

There are two items of equipment that are the subject of this dispute. The first item is a Model AA-750 dozer. The fair market value of this piece of equipment has been stipulated to be $45,000.00. The second item of equipment is a Model AB-850 dozer. The fair market value of this second piece of equipment has been stipulated to be $62,500.00. Thus, the combined fair market value of both items of equipment is $107,500.00.

The debtors assert that the amount of the outstanding debt secured by the two dozers amounts to $58,675.42. John Deere

argues that the amount due on the debt secured by the Model AA-750 dozer is $15,484.66 and the amount owing on the debt secured by the Model AB-850 dozer is $47,190.34. Hence, John Deere asserts that the combined debt secured by these two items of equipment amounts to $62,675.00. Interest is accruing on the debt secured by the Model AA-750 dozer at a rate of 17.9%, and interest is accruing on the debt secured by the Model AB-850 dozer at a rate of 18.9%.

The debtors offered to make monthly payments as an offer of adequate protection in the amount of $488.96. John Deere declined the debtors' offer asserting that such payments should be larger. John Deere argues that it is entitled to relief from the § 362 automatic stay for cause because the debtors have failed to provide it with adequate protection. 11 U.S.C. § 362(d)(1). According to John Deere's figures, the debt owing to John Deere amounts to $62,675.00 and is secured by equipment that has a fair market value of $107,500.00. Therefore, there is an equity cushion in the amount of $44,825.00, or in other terms an equity cushion of approximately 71%. The debtors argue that this equity cushion constitutes adequate protection.

John Deere argues that this substantial equity cushion does not constitute adequate protection as required under § 361 and § 362 of the Bankruptcy Code. In addition, John Deere argues that due to depreciation of the assets involved and the very high interest rates that it charges, the equity cushion is rapidly eroding. John Deere asserts that it is entitled to payments in

an amount that will preserve the "status quo." Effectively, it is arguing that the debtors should be required to maintain a 71% equity cushion. The debtors argue that the 71% equity cushion constitutes adequate protection.

The court agrees with the debtors. An equity cushion may adequately protect a creditor's security interest. In re Orlando Coals, Inc., 6 B.R. 721, 724 (Bankr. S.D. W.Va. 1980).

> Although the existence of an equity cushion as a method of adequate protection is not specifically delineated in § 361, it is the classic form of protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court. The conclusion that an equity cushion created by the excess of security over debt can itself constitute adequate protection with nothing more has been widely accepted. (citations omitted)

Curtis v. Delaware Valley Savings & Loan Ass'n., 9 B.R. 110, 112 (Bankr. E.D. Pa. 1981). The adequacy of an equity cushion as constituting adequate protection must be evaluated on a case-by-case basis. Matter of Schaller, 27 B.R. 959, 962 (W.D. Wis. 1983). An equity cushion "provides adequate protection so long as the creditor may forclose upon the collateral and realize an amount sufficient to fully cover the balance due on the debt." In re 5-Leaf Clover Corp., 6 B.R. 463, 466 (Bankr. S.D. W.Va. 1980). "Until that point in time occurs no periodic cash payments should be required." In re Orlando Coals, Inc., 6 B.R. 721, 724 (Bankr. S.D. W.Va. 1980). A creditor is not precluded from "seeking relief from stay at a later time if it can demon-

strate that the equity cushion no longer affords it adequate protection." Id.

Adequate protection is a question of fact to be determined by the trial court. In re Martin, 761 F.2d 472 (8th Cir. 1985). It is the finding of this court that John Deere is adequately protected by a substantial equity cushion. At this point in time John Deere would have sufficient time to initiate and conduct a foreclosure sale and such sale would realize an amount more than enough to fully satisfy the balance due on the debt owed to John Deere by the debtor. It is the conclusion of the court that John Deere's motion seeking relief from stay should be denied.

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

Dated: June 23, 1986.

BY THE COURT:

William H. Frawley
U.S. Bankruptcy Judge