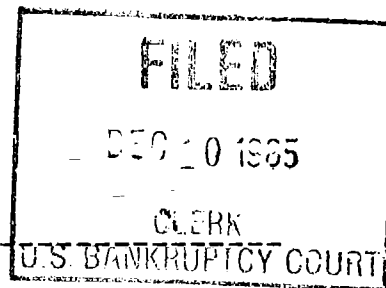


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

DWIGHT H. BECKER
IRENE E. BECKER

EF11-84-00413

Debtors.

OPINION AND ORDER DENYING MOTION FOR VALUATION
OF CLAIM AND TERMINATION OF MILK ASSIGNMENT

Debtors Dwight H. and Irene E. Becker have filed a motion requesting the court to value the Bank of Barron's claim and to terminate the milk assignment to the bank. This motion was heard on October 28, 1985. Debtors appeared by Attorney Peter F. Herrell and the bank by Attorney Gregory Jennings. The parties have subsequently submitted briefs on this matter.

The parties are in agreement that the bank possesses a valid, perfected security interest in a mobile home, feed and a 25% dairy assignment. The debtors seek a determination that the value of the bank's security interest in the mobile home and feed is \$13,000. They have also requested that the court terminate the bank's security interest in the milk assignment based on the equities of this case as allowed by 11 U.S.C. § 552(b). Debtors have paid \$23,546.13 to the bank under the milk assignment since filing their bankruptcy petition. Assuming success on their valuation and termination requests, debtors finally move for a

court order directing the bank to refund approximately \$6,000 to debtors as an overpayment on the bank's secured claim.

The court shall initially consider whether the milk assignment should be terminated. A conclusion that the bank continues to possess a valid security interest in the 25% dairy assignment would render consideration of debtors' other requests unnecessary.

Sec. 552 of the Code provides:

§ 552. Postpetition effect of security interest

(a) Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

(b) Except as provided in sections 363, 506(c), 522, 544, 545, 547 and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, product, offspring, rents, or profits of such property, then such security interest extends to such proceeds, product, offspring, rents, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable non-bankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

Pursuant to sec. 552(b), a party's valid security interest in a milk assignment, such as the bank's, remains effective beyond commencement of the case. See In re Johnson, 47 B.R. 204 (Bankr. W.D.Wis. 1985); In re Johnson, EF11-82-00630 (Bankr.W.D.Wis. November 12, 1982). Debtors concede this fact but argue that based on the equities of the case this court should terminate the 25% dairy assignment.

The latter Johnson case contains a helpful discussion of what constitutes sufficient equity to terminate a milk assignment. Johnson 47 B.R. 204, 207. The court there noted that since the proceeds from the sale of milk are cash collateral as defined in sec. 363, adequate protection must be provided. 'Id.' at 208. In determining whether adequate protection existed the court considered the factors that would be involved in a consideration of equity. Id. at 207. It stated that the test of whether a creditor's cash collateral is adequately protected is whether the debtor has provided a method of ultimately giving creditors the value of their cash collateral. Id. at 209. The court was of the opinion that much of the decrease in the creditors' protection caused by the use of milk proceeds was offset by an increase in the protection of the creditors' security interests in livestock. Id. at 208. The value of the cows would decline drastically if they were not cared for and milked regularly.

The debtors in the present case cannot offer similar additional protection. The bank does not hold a security interest in any other collateral which will be definitely and concretely enhanced by the termination of the milk assignment. Nor has the bank been offered a substitute lien. Debtors assert that if this reorganization does not succeed the bank will cease to receive proceeds. This may be the case; however, this does not constitute sufficient equity to terminate the assignment. It may be that the reorganization will fail with or without termination of

the milk assignment. A creditor should not be deprived of a valid security interest without a more definite benefit in return for such termination. To hold otherwise would upset the balance established by sec. 552. Seemingly innumerable farm-debtors would be able to obtain termination of valid milk assignments merely by showing a need for reorganization capital.

This court cannot conclude that the equities of this case justify terminating the bank's security interest in the 25% dairy assignment. Therefore, a consideration of debtors' other requests is unnecessary.

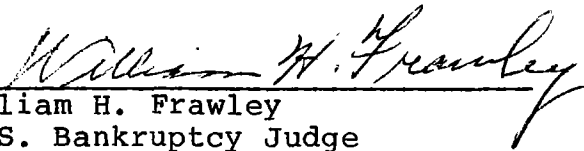
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT debtors' motion for valuation of claim and termination of milk assignment is denied.

Dated: December 10, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Peter F. Herrell
Attorney Gregory Jennings