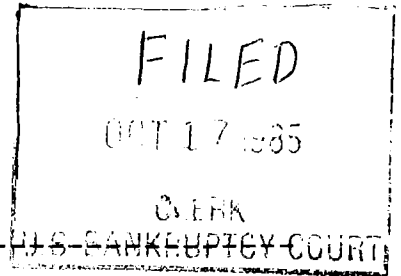


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

EDDIE CROSS  
a/k/a Harry E. Cross  
d/b/a Eddie Cross Used Farm  
Machinery,

EF11-84-00789

Debtor.

OPINION AND ORDER DENYING MOTION FOR APPROVAL OF ASSIGNMENT

O and R Equipment has moved this court for an order approving an assignment issued to it by debtor Eddie Cross. O & R alleges that the proposed payments are necessary to adequately protect its interest in debtor's combine.

A hearing on this motion was held on July 22, 1985. O & R Equipment appeared by Attorney Warren W. Wood. Attorney Steven R. Cray on behalf of creditor Max E. Schwartz & Sons, Inc., and Attorney Randi L. Osberg on behalf of creditor Dairyland State Bank appeared in opposition to the O & R motion. The debtor was represented by Attorney Kevin S. McElhenny. Briefs on this matter have been submitted to the court.

The debtor and O & R have stipulated to a present payment of \$4000, in addition to monthly payments of \$400 for four months. Under debtor's reorganization plan, O & R is to receive \$8000 in December, 1985, and \$300 a month in subsequent monthly payments. The stipulated amount of \$5600 is in addition to the reorganiza-

tion plan payments. O & R claims it is entitled to this amount based on the fact that its secured claim is in excess of \$45,000 while the combine operating as security has an assessed value of \$28,000.

Under 11 U.S.C. § 506(a), O & R possesses a secured claim in the amount of \$28,000 which is the appraised value of the secured combine. The remaining amount of their claim is unsecured. The purpose of adequate protection is to preserve the creditor's interest in property of the debtor. In this instance, O & R is entitled to adequate protection of its interest in debtor's combine. The amount by which its claim exceeds the value of the combine is not entitled to adequate protection

Sec. 361(1) specifically states that adequate protection may be provided by a cash payment or periodic cash payments. Between the proposed adequate protection payments and the December, 1985 plan payment, O & R is scheduled to receive \$13,600. The court concludes that it would be inequitable to other creditors to allow O & R this amount on its debt. The proposed payments under the assignment are far in excess of any amount needed to adequately protect O & R's interest in debtor's property.

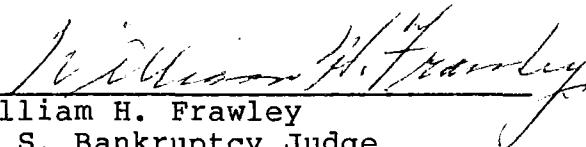
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT O & R Equipment's motion for approval of debtor's cash assignment is denied.

Dated: October 17, 1985.

BY THE COURT:

  
\_\_\_\_\_  
William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney Warren W. Wood  
Attorney Steven R. Cray  
Attorney Randi L. Osberg  
Attorney Kevin S. McElhenny *ca*