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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

WILLIAM J. LAUFENBERG
LINDA J. LAUFENBERG,

EF11-84-01345

Debtors.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER DENYING MOTION TO RECONSIDER

The Jackson County Bank, by Attorney Robert A. Olsher, having filed a Motion to Reconsider; and Debtors William J. and Linda J. Laufenberg, by Attorney Beth Benjamin, having filed a Response; and a hearing having been held; and the Movant appearing by counsel; and the Debtors appearing in person and by counsel; and the matter being submitted on briefs and oral argument; the Court, being fully advised in the premises, FINDS THAT:

1. On January 20, 1978, Debtors Linda J. and William J. Laufenberg granted the Jackson County Bank a security interest in, inter alia, "All livestock now owned or hereafter acquired . . .", "The following products of livestock . . .Milk", "All livestock feed now owned or hereafter acquired . . .", and "all proceeds of [such] property".

2. The security agreement also states that the Debtors grant the Bank a security interest in "All accounts and contract rights now owned or hereafter acquired by Debtor arising from the sale, lease or other disposition of the following farm products: [blank] which Debtor hereby assigns to Secured Party." There is no evidence of a separate milk check assignment.

3. On January 23, 1978, the Bank filed a financing statement covering "all farm equipment, all livestock and products, all feed, crops, supplies, and fixtures. Proceeds of collateral are covered. Products of collateral are covered . . ." A continuation statement was filed on December 8, 1982.

4. On January 30, 1982, the Bank issued a "Notice of Assignment of Milk Account" to the Debtors' creamery. The Notice provided, in part:

Under the [January 20, 1978, Security] Agreement Debtor assigned to Bank all Debtors' interest in accounts and contracts rights arising from Debtors' sale of milk to you. In accordance with the Agreement and pursuant to §409.318(3), Wis. Stats., Bank demands that you remit to it at the address provided below \$46,000.00 from . . . the amount you owe Debtor for each payment period . . . until otherwise notified in writing by Bank.

The Debtors signed the Notice below the following text:

"Debtor acknowledges Bank's interest in the accounts described and authorizes and directs payment in the manner set forth above."

5. On July 12, 1984, the Debtors filed for relief under Chapter 11 of the Bankruptcy Code.

6. On August 6, 1984, the Debtors filed an "Emergency Application Seeking Leave to Use Cash Collateral Claimed by Jackson County Bank" which provided, in part:

(7) That [the Debtors' creamery] has retained Debtors' 7/13/84 milk payment (hereinafter July milk payment) which was issued subsequent to the filing of Debtors' voluntary petition and will retain said check until receipt of written directive pursuant to Court Order..

(8) That the July milk payment constitutes proceeds from the sale of milk produced prior to the filing of the Chapter 11.

(13) That Debtors need to use said milk proceeds in order to purchase feed for their livestock herd, pay rent on farm land and to make necessary repairs to their equipment.

(14) That if Debtors are not permitted to use said proceeds to purchase feed for their dairy cows, milk production will decrease causing substantial detriment to this estate.

(15) That if Debtors are not permitted to use said proceeds to repair equipment, Debtors may be unable to continue their dairy operations resulting in substantial harm to the estate.

(16) That the Bank's pre-petition [sic] interest in the milk proceeds pursuant to the milk assignment is terminated pursuant to Section 552 of the U. S. Bankruptcy Code upon the filing of a voluntary petition by the Debtors.

(17) That in accordance with Section 552, the Bank has no secured interest in all subsequent milk payments.

(18) That as adequate protection for the pre-petition interest of the Bank in Debtors July milk payment and subsequent milk check for pre-petition milk proceeds the collateral for which is subject to depreciation, Debtors shall make payments to the Bank of \$1150.00 a month each month for each of the next 4 months. That Debtors shall make said payments as an assignment of milk proceeds to be deducted from Debtors milk check and paid directly to the Bank.

WHEREFORE, Debtors pray for an Order:

(a) Authorizing Debtors to use the milk proceeds from the July milk payment and to which the Bank claims an interest pursuant to Assignment of Proceeds of Dairy Products:

(b) Declaring that Bank has no security interest in Debtors' milk proceeds subsequent to the date of petition; or

(c) Authorizing Debtors to use the milk proceeds to which Bank claims an interest by virtue of the Assignment; and,

(d) Authorizing and directing Associated Milk Products, Inc. to terminate all payments to Bank except for the aforementioned monthly payments of \$1150.00 for each of the next four months, and

(e) Directing Associated Milk Products, Inc. to make said payments directly to Debtors rather than to Bank except for the aforementioned monthly payments of \$1150.00 for each of the next four months.

7. A hearing was held, the Application was granted from the bench, a written order was entered on August 17, 1984, and the Bank has filed a Motion to Reconsider.

8. The Bank is unsecured since the security agreement does not substitute for a formal milk assignment--there is no assignment of accounts because the space in the agreement is left blank, Paragraph 2 supra.

9. The Bank does not have a security interest in the milk check as an "account", Paragraph 2 supra, see In re Bindl, 13 B.R. 148, 32 U.C.C.Rep.Serv. 337 (Bankr.W.D.Wis. 1981) (interest in the sale of milk is an account).

10. The Bank does not have a valid assignment of the Debtors' milk sales accounts by virtue of its notice of milk assignment, Paragraphs 2 & 4 supra.

11. Since the Bank is unsecured, the Debtors-in-Possession need not provide adequate protection to the Bank, In re Liles and Raymond, 24 B.R. 627, 630, 35 U.C.C.Rep.Serv. 1258, 1262 (Bankr.M.D.Tenn. 1982), and may use property claimed by the Bank in the ordinary course of their business without notice or a hearing, 11 U.S.C. secs. 363(c)(1) & 1107.

12. Even if the Bank were secured as to the milk checks, and assuming that milk checks are the "proceeds, product, offspring, rents, or profits" of the livestock and feed within the meaning of 11 U.S.C. sec. 552(b), funds expended by the estate to produce post-petition milk balance the equities in favor of terminating the Bank's interest in the milk check, 11 U.S.C. 552.

13. Finally, even if the Bank had a security interest in the milk check which survived the filing of the bankruptcy petition, the Bank's secured status is adequately protected by the Debtors' use of cash collateral to continue dairy operations. See, 11 U.S.C. sec. 363 (use of cash collateral).

CONCLUSION OF LAW

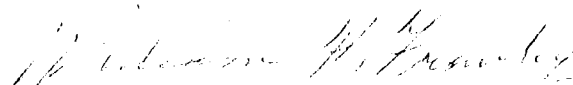
The motion to Reconsider should be denied.

ORDER

IT IS ORDERED THAT the Motion to Reconsider be, and the same hereby is, DENIED without costs.

Dated: December 3, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Court

cc: Attorney Robert A. Olsher
Attorney Beth Benjamin (Law Offices of Jeffrey P. White) *cc*