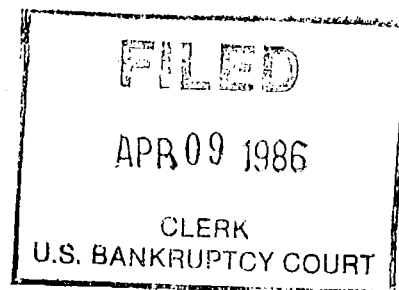


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

KENNETH BEGGS  
BETTY BEGGS,  
d/b/a Ken Beggs & Son Farms,

WF11-86-00636

Debtors.

OPINION AND ORDER

The debtors, by Terrence Byrne, have moved the court to permit the debtors to use cash collateral. This cash collateral is from potatoes held in storage and proceeds of potatoes. The First National Bank of Wisconsin Rapids (Bank) has a perfected security interest in the potatoes and proceeds of the potatoes. The Bank appears by Gregory Nettesheim and Nicholas Brazeau and objects to the debtors' motion. A hearing was held on this matter on March 27, 1986, and the issue has been submitted for determination by briefs.

The debtors owed the Bank approximately \$64,500 including added interest, as of April 1, 1986. As security for this debt the Bank holds a security interest on the debtors' potatoes in cold storage and proceeds therefrom. In addition, the Bank holds a second mortgage on the debtors' home. The first mortgage against the home is for approximately \$9,800. The 1985 real estate taxes against this property have not been paid and amount

to \$1,168. Both parties have submitted appraisals on this property. The debtors' appraisal lists the value of the home as \$70,000 and the Bank's appraisal values it at \$54,000.

The debtors seek to use the proceeds of the potatoes on which the Bank has a security interest to finance the planting of their 1986 crop. The potatoes that the Bank has a security interest on will yield a net price to the debtors of approximately \$59,500. The Bank's objection is not specifically based on any statutory reference but implicitly rests on the grounds that it is not adequately protected. 11 U.S.C. § 363(e). The methods of providing adequate protection can be found at 11 U.S.C. § 361.

The debtors offer to grant the Bank a security interest in their next year's (1986) potato crop as a replacement lien for the collateral that the debtors propose to use. The debtors intend to keep crop insurance on their next year's crops. The debtors propose to make (periodic) interest payments of \$4,000 to the Bank with the first payment to be due and payable on December 1, 1986. Finally the debtors point out that the Bank is secured by a second mortgage on the debtors' home. It is undisputed that there is over \$40,000 of equity in this home securing the debtors' obligation to the Bank.

The Bank argues that the offer of a replacement lien on crops to be grown is too speculative in nature to constitute adequate protection. The Bank's argument ignores a significant portion of the debtors' offer of adequate protection. The

debtors also offer to provide periodic payments and point to the equity in their home. It is true that when a debtor offers a replacement lien on crops to be grown the standard of adequate protection must be high. In re Berens, 41 B.R. 524 (Bankr. E.D. Ky. 1984). In order for the debtors to be granted their request to use this cash collateral there must be a "strong likelihood" that the Bank is protected. *Id.* at 528. It is the conclusion of the court that the debtors have met this high standard.

The debtors' average yield for their potato crops for the years 1981 through 1985 was about 429 cwt/acre. The average market price for potatoes for the years 1980 through 1984 was about \$4.77/cwt. It appears that the debtors will receive about \$2.91/cwt after rebate for their 1985 crops. This is the lowest market price of potatoes in modern history. The testimony at trial revealed that the debtors' yield in 1985 was 25,000 cwt. The Bank argues that the debtors should use a market price of \$2.91 with a yield of 19,000 cwt in calculating the value of the 1986 crop. Even using these extremely low figures it appears that the Bank is adequately protected. The minimal deficiency that these figures indicate would more than be completely covered by the mortgage held by the Bank on the debtors' home. The Bank admits that the deficiency would only amount to approximately \$6,210 while the equity secured by the mortgage is in excess of \$40,000. It is the conclusion of the court that the debtors' offer constitutes adequate protection for the use of the cash collateral on which the Bank holds a security interest.

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

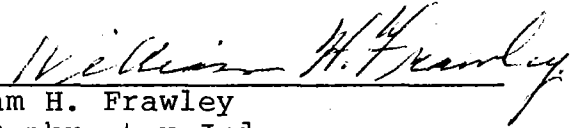
ORDER

NOW, THEREFORE, IT IS ORDERED THAT, the objection of the First National Bank of Wisconsin Rapids to the debtors' motion to permit the use of cash collateral is denied.

IT IS FURTHER ORDERED THAT, the debtors' motion to permit debtors to use cash collateral and to substitute collateral is hereby granted.

Dated: April 9, 1986.

BY THE COURT:

  
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William H. Frawley  
U.S. Bankruptcy Judge

cc: Attorney Terrence J. Byrne  
Attorney Gregory Nettesheim  
Attorney Nicholas Brazeau