

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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NORMAN D. ERICKSON and MARGARET L.  
ERICKSON

Bankruptcy No. X84-03068

Debtors.

Chapter 7

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FIRST AMERICAN STATE BANK

Adversary No. X88-0072F

Plaintiff

vs.

WILLIAM J. THATCHER

Defendant.

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### FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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The matter before the court is an adversary proceeding in which plaintiff, First American State Bank, seeks judgment against the trustee in the amount of \$37,899.89 or in the alternative, for an order requiring the trustee to turn over to plaintiff cash being held by the trustee in which plaintiff claims a security interest.

Trial was held on October 27, 1988.

The court now issues this ruling which shall constitute findings of fact and conclusions of law pursuant to Bankr. R. 7052.

This is a core proceeding under 28 U.S.C. 157(b)(2)(0).

### STIPULATED FINDINGS OF FACT

At the outset of the trial, plaintiff First American State Bank (BANK) and defendant-trustee William J. Thatcher (THATCHER) submitted to the court a stipulation of undisputed facts which this court now adopts verbatim as part of its findings:

1. Debtors filed Chapter 11 Petition in Bankruptcy Court April 18, 1984. The case was transferred to Chapter 7 by the Court February 25, 1985.
2. The Bankruptcy Court signed the Order Lifting the Automatic Stay upon Motion of First American State Bank, Fort Dodge, Iowa, authorizing the Bank to continue its foreclosure petition filed in the State Court in Hamilton County, Iowa, on January 9, 1984, prior to the filing of the Bankruptcy Petition on certain real estate and on the personal property contained in the Bank's security agreements that was part of that suit. The Debtors and the Trustee consented to the lifting of the Stay.
3. On October 5, 1985, Judge Dale E. Ruigh entered a Decree in the foreclosure suit.

4. The Decree provided that the Bank have an in rem judgment against the Debtors Norman D. Erickson and Margaret L. Erickson in the amount of \$929,089.65 plus interest. The Bank was in the fourth position as to the real estate and received no money for the sale of the same.
5. The Bank had a first position on the personal property including crops, crop proceeds, all livestock and livestock proceeds and farm machinery and equipment. After the sale of the personal property, there still remained an unpaid indebtedness under the Decree of over \$880,000.00.
6. The 1984 crops consisting of beans and corn were stored in the Stratford, Iowa, elevator and subsequently sold by the Trustee. The proceeds of the sale of said crop was \$37,899.89.
7. On April 27, 1984, the Debtors filed an Application to use cash collateral. In the Application Debtors stated that the First American State Bank, Fort Dodge, Iowa, was the holder of a security interest in all the Debtors' farm related personal property including hogs and feeder pigs and crops.
8. On May 31, 1984, the Bankruptcy Court entered an Order authorizing the use of cash collateral not to exceed \$10,000.00 and granted the Bank a replacement lien to the extent of the cash collateral used in Debtors 1984 crop.

#### ADDITIONAL FINDINGS OF FACT

The court now makes the following additional findings of fact which it believes relevant to the determination of this adversary proceeding:

9. Thatcher was appointed trustee in the Chapter 7 case. He was not named as a defendant in the Bank's state court foreclosure proceeding after the order terminating the stay.
10. From the monthly report exhibits introduced into evidence, it is determined that debtors had \$37,453.60 in farm income during the period June 11, 1984 through February 11, 1985 resulting from the sale of swine. In addition to the swine sales, debtors earned \$2,622.35 for the same period from the sale of crops which were raised in a prior year. The total livestock and pre-1983 crop sales were \$40,075.95.
11. During the same period, debtors paid expenses in the amount of \$38,287.82.
12. The following expenses taken from monthly reports for the period June 11, 1984 through February 11, 1985 were crop or crop related expenditures. They total \$12,286.83

<b>Report Covering</b>	<b>Item</b>	<b>Amount</b>
6-11-84 to 7-11-84	NHI (Chemical)	\$3,467.10
	Baling	492.00
7-11-84 to 8-11-84	Spraying	36.50
	NH3	264.16
	Soybean seed	224.00
	Seed corn	105.00
	Baling	139.21

8-11-84 to 9-11-84	Repairs	355.00
	Fuel	152.50
	Machine hire	139.25
9-11-84 to 10-11-84	Repairs	454.37
	Machine hire	123.00
	Fuel	710.24
10-11-84 to 11-11-84	Repairs	1,179.46
	Fuel	149.00
	Seed	750.00
11-11-84 to 12-11-84	Fuel	1,228.81
	Repairs	880.55
	Machine hire	125.00
12-11-84 to 1-11-85	Fuel	220.49
	Repairs	474.15
1-11-85 to 2-11-85	Fuel	161.00
	Repairs	456.04
<b>TOTAL</b>		<b>\$12,286.83</b>

13. The court makes no finding as to whether repairs, machine hire or fuel covered in the report for July 11, 1984 through August 11, 1984 went toward crop inputs. The evidence in deposition form was insufficient to show that they were crop expenses rather than livestock expenses. This insufficiency did not occur as to subsequent reports.
14. Various 1984 crop inputs expended after the filing of the Chapter 11 case but which were not shown in the monthly reports were as follows:

Item	Amount
Herbicide (Amiben)	\$165.60
Herbicide (Amiben)	182.00
Herbicide (Amiben)	91.00
Treflan	714.00
Lorsban	662.50
Lorsban	536.00
Potash	278.16
Potash	368.93
Sutan and Bladex	1,768.50
Bladex	852.50
Sutan	1,112.50
Herbicide	442.13
Herbicide	544.00
Potash	146.40
Potash	342.58
Grass seed	192.00

Corn seed	1,252.00
Corn seed	366.00
Corn seed	1,822.00
Corn seed	408.00
<b>TOTAL</b>	<b>\$12,246.80</b>

15. The debtors, therefore, spent \$24,533.63 in 1984 crop expenses.
16. While Bank has shown cash collateral used to the extent of \$37,453.60, it is able to show only \$24,533.63 in crop inputs.
17. Also, there was evidence that money from another source, the debtor's brother Walden Erickson, was used for 1984 crop input expenses. One loan from Walden Erickson to the debtors was in the amount of \$6,500.00; a second was in the amount of \$600.00.
18. The cash proceeds of the crop exceeded the total input expenses.
19. The trustee is presently in possession of \$34,897.24. The trustee has disbursed funds for administrative expenses and the estate included assets in addition to the 1984 crop proceeds.

### DISCUSSION

Plaintiff raises essentially two issues. Trustee argues that because the automatic stay of 11 U.S.C. 362 was "lifted" permitting it to foreclose against its collateral, the Bankruptcy Court has lost jurisdiction over the property in question, the state court having entered a decree in foreclosure against the personalty.

The second argument is that even if the court still has jurisdiction over the crop proceeds, equity demands the turnover of the crop proceeds to the plaintiff because of the debtors' use of Bank's cash collateral in excess of the \$10,000.00 provided for by the Bankruptcy Court's order of May 31, 1984. Plaintiff argues that by denying bank access to the monies in trustee's possession, there is an injustice to Bank.

### CONCLUSIONS OF LAW

1. Since the 1984 crop was planted after the filing of the Chapter 11 petition, the bank's security interest in debtors' after-acquired crop was cut off pursuant to 11 U.S.C. 552(a).
2. The court's granting of relief to bank from the automatic stay of 11 U.S.C. 362 did not deprive the Bankruptcy Court of further jurisdiction over property that remained property of the estate.
3. While the Iowa District Court for Hamilton County in Equity No. 23024 obtained jurisdiction over debtors' pre-petition property as a result of the stay modification, that court did not obtain jurisdiction to foreclose the trustee's interest in the 1984 crop inasmuch as the trustee was not named as a defendant in the foreclosure proceeding.
4. Bank has a security interest in the 1984 crop to the extent of \$10,000.00 as provided by the Bankruptcy Court's cash collateral order entered May 31, 1984.

5. Bank has a security interest in the 1984 crop also to the extent that debtors exceeded the \$10,000.00 limit on their usage of cash collateral, but only to the extent that the excessive usage is traceable to the 1984 crop. Bank must show the 1984 crop is proceeds of the unauthorized use of cash collateral. First State Bank of Manchester v. Heims (In re Heims), 65 B.R. 112, 116 (Bankr. N.D. Iowa 1986).
6. Bank, therefore, has a security interest in the 1984 crop proceeds in the trustee's possession to the extent of \$24,533.63. 7. Bank is entitled to recover from trustee the sum of \$24,533.63.

### ORDER

First American State Bank, Fort Dodge, Iowa shall recover from William J. Thatcher, as trustee, the sum of \$24,533.63 plus the costs of this action. This order is without prejudice to bank's asserting an administrative claim. Judgment shall enter accordingly.

SO ORDERED ON THIS 4TH DAY OF NOVEMBER, 1988.

William L. Edmonds  
Bankruptcy Judge

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