

In the United States Bankruptcy Court

for the Northern District of Iowa

BOCKES BROTHERS FARMS INC.
Debtor(s).

Bankruptcy No. 93-60881KW
Chapter 11 C#3522 C#3528

ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:	Chapter 11 Bankruptcy #.	Stay C.#	Cash Collateral C.#
BOCKES BROTHERS FARMS, INC.,	93-60881KW	3522	3528
ROGER VAN BOCKES and BETH ELAINE BOCKES,	93-60883KW	3523	3529
ROBERT DEAN BOCKES,	93-60884KW	3524	3530
RICHARD DALE BOCKES and MARY SUSAN BOCKES,	93-60885KW	3525	3531
SHAWN MICHAEL BOCKES,	93-60886KW	3526	3532
MARY MATILDA BOCKES,	93-60889KW	3527	3533

Debtors.

ORDER

On June 7, 1993, the above-captioned matter came on for hearing on various motions pending and scheduled for this date. Appearing were the following counsel of record: a) Attorney Dan Childers representing all listed Debtors except for Mary Bockes; b) Attorney Tom Hanson representing the interests of Debtor Mary Bockes; c) Attorney Rod Kubat representing the interests of Farmland Financial Services Company; d) Attorney Eric Lam representing the interests of Ag Services of America; e) Attorney Janet Reasoner of the U.S. Trustees Office; f) Attorney Ray Terpstra representing the interests of unsecured creditor Conrad Cooperative.

Four motions were before the Court.

MOTION TO LIFT STAY

Ag Services filed a Motion to Lift Stay relating to Uniform Commercial Code Continuation Statement filings. This motion asks the Court to lift the automatic stay under §362(d) to allow Ag Services to file continuation statements to preserve their UCC liens which are more than five years old. They assert that filing the continuation statements would not create new liens or otherwise adversely affect the Debtors property. Farmland has not affirmatively resisted this motion though they respond that the continuation statements are not required in order to protect the interests of Ag Services. They assert that Iowa Code §554.9403(2) allows that the security interest remain perfected until termination of any insolvency proceedings and for sixty days thereafter. Farmland states therefore that the relief from stay is unnecessary.

As the motion is not affirmatively resisted and as the motion does not increase or decrease any parties interest in this case, the Court finds that the motion should be granted.

MOTION FOR EXTENSION OF TIME

Debtors Robert, Richard, Roger, and Beth Bockes have filed a motion for extension of time within which to file schedules. The evidence establishes that all members of the family have been spending large amounts of time in planting this year's corn and bean crop. The individuals involved have been unable to compile and verify their schedules. The Court finds that good cause is shown for an extension of time and the above-named Debtors are granted an additional ten days from the date of hearing within which to file the appropriate schedules.

APPLICATION FOR FINAL HEARING ON FINANCING

The Debtors have filed an Application for Final Hearing authorizing the Debtors in possession to obtain post-petition 1993 crop financing on a secured basis under 11 U.S.C. §364(c).

The Debtors filed an initial emergency application for an interim order authorizing post-petition financing on May 19, 1993. That motion was scheduled for hearing on an expedited basis and was heard on May 24, 1993. The following day an interim order was entered authorizing the expenditure of \$600,000 in funds. These were allocated to certain uses and were approved in a separate interim order. On June 2, 1993, the Debtors filed the presently pending Application for a Final Hearing. They asked that it be scheduled for June 7, 1993. At the time of hearing, for reasons set forth in the record, the Court noted that Rule 4001(c) of the Bankruptcy Rule states that the final hearing shall be no earlier than 15 days after service of the motion for authority to obtain credit. The only motion regarding obtaining credit was the original motion filed May 19, 1993. The Debtors in the present motion were requesting a final order on an expedited basis, based on that original motion requesting total financing of \$1.2 million for the 1993 crop year. At hearing, the Court questioned whether it was appropriate to hold the final hearing on this date as opposed to at least 15 days after the filing of the application for final order. Additionally, the matter was originally scheduled for hearing on June 29, 1993 with appropriate notice. Based upon those concerns, the Court indicated to all counsel at the time of hearing that it would entertain a second motion for interim financing until June 29, 1993 but would not entertain this motion as a final hearing at this time. Additionally, the record does reflect that Farmland did object to holding a final hearing on this date for reasons fully set out in the record.

After discussion on the record and discussion between counsel outside the presence of the Court, a stipulation as to interim financing was achieved. This stipulation was read into the record and was approved by the Court at that time. Counsel will provide the Court with a proposed order incorporating these terms which will be signed in a separate order. In very general terms, this order will approve an additional \$300,000 in spending. This money will be loaned to the Debtors by Ag

Services. It will be treated under identical terms as those approved in the first interim order and will be subject to any post-order motions filed by Farmland. Additionally, the Debtors agreed to pay approximately \$80,000 in cash collateral from the sale of hogs to Farmland.

The Court, after hearing the stipulation and considering its merits, approved the stipulation which is to be subsequently signed in a separate order.

MOTION TO PROHIBIT USE OF COLLATERAL

The final issue for the Court's determination is a Motion to Prohibit Use of Collateral and a Motion to Require the Debtor to Segregate Cash Collateral. This motion was filed by Farmland Financial Services on May 24, 1993. Substantial evidence was presented on this issue at the date of hearing. There appears to be no issue that this Court has jurisdiction of this matter under 28 U.S.C. §1334, 28 U.S.C. §157 and 11 U.S.C. §363(e). This matter is a core proceeding.

Farmland asserts that it has a security interest in the Debtor's collateral to the extent of \$1,492,174.12. The evidence establishes without any significant dispute that this is the value of Farmland's interest as a secured creditor. This value is determined on the basis of two large claims. The first is a claim in the amount of \$326,979.84. This claim arises out of a judgment entered in favor of Norwest Bank of Iowa against the various Debtors and others. This judgment was purchased by Farmland prior to the filing of the Petition. Farmland concedes that this claim is presently adequately protected. The second portion of the total claim is in the amount of \$1,165,194.28. This claim arises out of a judgment entered in Grundy County District Court in favor of Plaintiff Farmland Financial Services and against the various Debtors. It is this judgment and claim which Farmland asserts needs to be adequately protected. In addition to the judgment lien, Farmland asserts security interest in all of the Debtors' pre-petition assets including accounts, general intangibles, grain, livestock, farm products, farm machinery and equipment, mortgages against real property, commonly known as the soybean plant, the Conrad storage facility and bin site, as well as the judgment lien against all other real estate owned by the Debtors. Farmland asserts that the value of these assets is less than the amount of their claim.

More specifically, Farmland asserts that the Debtor has been using secured assets since May 19, 1993. Farmland asserts that Debtors have been using farm machinery and equipment in connection with the planting of the 1993 corn and soybean crop; they assert that they have been using fuel to operate the above machinery and equipment; they assert that they have been using the soybean plant to process and condition the seed under existing seed conditioning contracts; they assert that they have been using seed and fertilizer to plant the 1993 crops; they assert that they have been using feed and other food supplements with which to feed and care for the Debtors' livestock; and that they have been using the real estate owned by the Debtor on which to plant the 1993 crop.

As a second issue, Farmland asserts that Farmland is liquidating its livestock and is generating cash collateral to perform other functions in this operation. Finally, Farmland makes the general assertion that the Debtor has generated cash from the farming operations which constitute cash collateral which is used or is being threatened to be used by the Debtors for farming operations.

Evidence was presented, however, the expert testimony was limited largely to two appraisers who dealt with and addressed the value of the flat storage building, the bin site and the bean plant as well as the farm ground and associated buildings. There was no expert testimony, as such, on the value of the farm machinery other than the owners' opinions.

Initially, the Court will address the use of cash collateral. The Debtors have used the soybean plant to process and condition soybeans. Primarily the bean plant has been used to warehouse crop inputs for corn and soybeans for this calendar year since the filing of the petition. They have cleaned and bagged some soybeans for Dunn International. This was done under an oral agreement. They also have oral contracts with a company known as Sole Nuts, Pioneer Seed, and Growmart. These are all under oral contract. All appear to be for the purpose of cleaning and processing soybeans. There are no specific amounts specified in the contracts and no payments have been received, post-petition, for any of the work which has been done at the bean plant on a commercial basis. The Court does not find that there is any cash collateral generated out of this process at this time. Additionally, Farmland asserts that a cash collateral has been generated from the sale of hogs from the hog operation. It does appear that hogs have been sold, though at the time of hearing no cash has yet been received. Nevertheless, it appears that this issue is now moot as the parties in their agreement on interim financing stipulated that the cash collateral from the sale of the hogs would be turned over to Farmland. The Court has reviewed the record presented at the time of hearing and does not conclude that any cash collateral has been generated which has been utilized in violation of the bankruptcy rules. Absent the generation of cash collateral, it is the feeling of this Court that no further order need be entered as none of the Debtors have asked that they be allowed to use any cash collateral generated from this process up to this point.

Secondly, Farmland asserts that the Debtors have used fuel to run the machinery and equipment during the planning process. The evidence, however, contradicts this. It appears and the testimony supports the conclusion that all fuel used to run the farm machinery and equipment has been purchased from fuel suppliers, post-petition. This was purchased with funds approved in the initial interim financing order.

Third, Farmland asserts that seed and fertilizer have been used to plant the 1993 crop. The seed and fertilizer are all also post-petition purchases. These were purchased with financing made available in the initial interim financing order.

Finally, Farmland asserts that the Debtors have been using farm machinery and equipment in connection with the 1993 crop as well as the real estate owned by the Debtor on which to plant the 1993 crop. Farmland also asserts in this regard that the Debtors have been using the soybean plant, the flat storage building, and the bin site, post-petition. It is largely uncontested that the Debtors have continued to use the farm machinery and associated equipment in planting the 1993 corn and soybean crop. Obviously, they will be using the ground for the purposes of raising a crop. They have been using the flat storage building to the extent that it has been rented to a paper shredder corporation. The bin site has been used for grain storage. Most of the storage has been by the various individual Debtors with the small percentage of stored corn being that of a neighbor. Also, the Debtors have used the bean plant as previously described in this ruling.

Farmland asserts that Debtors are not using these assets in the ordinary course of business under 11 U.S.C. §363(b) (1). The Court has reviewed this record. It is the conclusion of this court that the Debtors in the case have been using the farm machinery and equipment as well as the land and associated business properties in the ordinary course of business. The use of these facilities, as well as equipment, is of a similar, if not identical, sort commonly used by farmers involved in these types of business arrangements. Also, the use of this equipment is in the ordinary course of business to the extent that these Debtors have been operating their business in this manner for an extended period of time. There is nothing out of the ordinary nor anything which is significantly different than the business operations which they have been conducting over the last years. Under either test, it is the conclusion of this Court that the Debtors are operating in the ordinary course of their business and are

not in violation of 11 U.S.C. 363(b) (1). See In Re: Roth American, Inc., 975 F.2d 949 (3rd Circ. 1992).

Substantial evidence was presented by the parties on the total net equity of the Debtors. The Court does not feel that an extensive analysis of this issue is necessary. It appears to this Court that the real issue for determination is the depreciation in value to these assets in which Farmland has an interest during the upcoming crop year because of use by the Debtors in the ordinary course of their business. To that extent, it appears that a determination of net equity is important only to the extent that there is a substantial equity cushion. If such a substantial cushion exists, then adequate protection exists and no further analysis is necessary. However, based upon the information provided, it is admittedly very difficult for the Court to determine, at this time, if a substantial equity cushion does exist. The numbers are in significant dispute on certain of the assets. An appraiser was presented to the Court as an expert by both Farmland as well as the Debtors. The analysis of both appraisers was incomplete and neither could certify that this was a certified appraisal in any recognized sense of the word. Additionally, there was no expert who testified about the value of the farm machinery and equipment. While a majority of the debts are in a sum certain, certain of the debts are subject to various interpretations and the valuations have fluctuated widely. Nevertheless, it does appear to this Court that the total assets of the Debtors exceeds the total liabilities of the Debtors. It is the feeling of this Court that upon careful analysis with accurate appraisals, there would be somewhat of an equity cushion though the amount may be small and is certainly uncertain as to the amount at this time based on the evidence presented. However, for the purpose of this ruling and the result which the Court arrives at, the Court does not feel that an absolutely accurate determination of net equity is presently required.

As indicated, this Court has concluded that the various operations of the Debtors' business described in these proceedings is being conducted in the ordinary course of business. The determination critical for the Court is the diminution in value created by the use of this collateral post-petition. As a general proposition, there is no evidence to indicate that the Debtors are not careful and cautious with the use of their assets. They have insurance on all of the buildings as well as the farm machinery and equipment. The Debtors have provided in their accounting methods for periodic maintenance. They have set out a schedule whereby they expend approximately \$64,000 per year in maintenance costs for the farm machinery. Mr. Bockes testified that this amount was anticipated for this year and that it was included in the interim financing requested from the Court. The testimony establishes that while the bin site and the soybean plant are being used, they are being used in the ordinary course of business with periodic maintenance being provided as necessary to insure its' continued operation. In short, it appears that the Debtors are using adequate methods of operating their equipment and running their business to the extent that no unusual depreciation is occurring.

In analytical terms, little, if any, evidence was presented that would tend to show that the continued use of the farm machinery and equipment, assuming regular maintenance, would decrease in any significant way the value of the farm machinery and associated equipment. There is absolutely no evidence to establish that using the farm ground for this growing season for its intended use would in any manner depreciate its value, nor is there evidence in the record that the use of the flat storage building would depreciate its value. Finally, it appears that there is mechanical equipment and moving parts at the bin site as well as the soybean plant. This is similar to some extent to the use of the farm machinery. Again, the testimony establishes that periodic and regular maintenance is performed on the moving parts of these buildings to insure that they continue to operate effectively. There is little, if any, evidence to establish that their continued use over this growing season would significantly impair their value.

As such, it is the conclusion of this Court that it is difficult to identify any significant risk to Farmland's value in these assets resulting from the Debtors' continued use of the collateral. While there may be some depreciation in value because of the use of these assets during the upcoming growing season, there is little compelling evidence to establish that this decrease would be other than of minimal amount. The Court has already determined that there may be some equity cushion though the amount may ultimately be determined to be minimal.

In determining what is adequate protection under the present circumstances, the Court has attempted to make an individual determination of the somewhat unique nature of this extensive farm operation. In so doing, it is the ultimate conclusion of this Court, that based upon the evidence presented as of this time, an accurate determination of net equity is impossible though there are indications that there is net equity and though it will be ultimately determined to be of a limited dollar value. Secondly, it is also the conclusion of this Court that there may be some depreciation in value of these assets because of their use in the future, however, the evidence to the extent that it is relevant on this subject appears to establish that this decrease in value will not be extensive.

Based on the entire record, it is the feeling of this Court that adequate protection can be provided to Farmland without the necessity of preventing all use of these assets. This hearing was held to determine the loss of value arising from the use of the equipment. It does not seem appropriate to this Court to prohibit further use of the machinery at this juncture when adequate protection can be provided. Because of the speculative nature of the values provided, the Court determines that the best method of adequate protection, while allowing the continued use of these assets, is to direct that the Debtors continue to provide regular and periodic maintenance to all of the machinery and equipment which will be used in the upcoming crop year. Secondly, the Debtor will be required to maintain insurance on all of the insurable property of this estate which is subject to this adequate protection order. Third, there should be an appraisal now and upon completion of the harvest in the fall. Finally, Farmland will be granted a second lien on the 1993 crop to the extent that there is a decrease in the value of these assets caused by their use.

WHEREFORE, the Court enters the following order:

- 1) The Motion to Lift Stay filed by Ag Services is granted for the reason set forth in this ruling.
- 2) The Motion for Extension of Time filed by the Debtors is granted for the reasons and to the extent set forth in this ruling.
- 3) The Application for Final Hearing on Financing filed by the Debtors on an expedited basis is denied and is determined to be moot based upon the substituted interim financing agreement.
- 4) The Interim Financing Stipulation is approved and counsel shall present to the Court a proposed order to approve this interim financing pending final hearing.
- 5) The Motion to Prohibit Use of Collateral is granted to the extent consistent with this order. The Debtors will be allowed to continue to use the collateral subject to adequate protection to Farmland. Adequate protection shall consist of those matters set forth in the text of this order.

SO ORDERED this 10th day of June, 1993.

Paul J. Kilburg
Bankruptcy Judge, U.S. Bankruptcy Court

