

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

CARL L. JANSMA and JUDY L. JANSMA
Debtors.

Bankruptcy No. 93-51290XS
Chapter 11

ORDER RE: DEBTORS' MOTION TO INCUR SECURED DEBT WITH AG SERVICES OF CEDAR FALLS

The matter before the court is debtors' motion for permission to incur secured debt with Ag Services of Cedar Falls, Iowa. The motion was filed pursuant to 11 U.S.C. § 364 on March 15, 1994 (docket no. 210). Sioux County State Bank resists (docket no. 214). Debtors supplemented their motion on March 28 (docket no. 217). The case trustee, Wil L. Forker, filed his response on March 30 (docket no. 224) indicating he had no objection so long as the chapter 11 bankruptcy estate was not obligated to repay the debt and so long as estate assets were not encumbered.

Hearing was held by telephone on April 4, 1994. William L. Needler appeared for debtors. Wil L. Forker, the case trustee, appeared pro se. Jon P. Sullivan appeared on behalf of the Sioux County State Bank. Howard Kodam appeared as a member of the Unsecured Creditors Committee. John Schmillen appeared for the U. S. Trustee.

The debtors are not debtors-in-possession, a trustee having been appointed in this chapter 11 case. Debtors propose to borrow money so they can lease farm ground and plant a 1994 crop. They state that rather than farm the leased ground themselves, they will hire custom operators. They state that no estate assets will be used to farm the leased ground. However, they propose to plant 80 acres of ground which they own. This ground is property of the estate. Debtors propose to use the 1994 crop as security.

The court can find no legal prohibition to the debtors' borrowing or farming, so long as no assets of the estate are involved in debtors' post-petition operation. They may not, however, use the 80 acres absent permission of the trustee and compensation to the estate. Moreover, the lender can have no claim against assets of the estate in the chapter 11 case and can have no administrative claim. The court does not decide if the lender may share in the estate if its security proves insufficient and the case is converted to chapter 7.

IT IS ORDERED that debtors' motion to incur secured debt is DENIED as permission of the court is not necessary for debtors to farm post-petition and to borrow money to do so, so long as no assets of the estate are involved.

IT IS FURTHER ORDERED that debtors may not farm the 80 acres which are property of the estate without agreement with and compensation to the estate.

SO ORDERED ON THIS 4th DAY OF APRIL, 1994.

William L. Edmonds

Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order by U. S. mail to: William Needler, Roger Carter, Wil Forker, Jon Sullivan, U. S. Attorney, 2002 List, Howard Kodam, Jeff Henderson and U. S. Trustee.