

In the United States Bankruptcy Court

for the Northern District of Iowa

BOCKES BROTHERS FARMS INC.
Debtor(s).

Bankruptcy No. 93-60881KW
Chapter 11

ORDER

ORDER

On June 14, 1994, the above captioned matter came on for hearing pursuant to assignment. The following parties appeared: Dan Childers for Debtor, Mike Vestle for Phelps Implement, Ray Terpstra for Margaret McBride and Conrad Coop, Irvin Ness for Cooperative Finance, Eric Lam for Ag Services, Tom McCuskey for the Unsecured Creditors Committee, Ana Maria Martel for CCC and IRS, Joe Pieffer for First State Bank, and Carroll Reasoner for Vera Martin.

1. Application for Interim Compensation of Accountant's Fees and Expenses

The Court was informed that the U.S. Trustee's objection to this application has been withdrawn. The applicant is directed to prepare a proposed order for the Court.

2. Motion for Order Setting Status Conference on Disclosure Statement

Debtor states that it has prepared amendments to its Disclosure Statement pursuant to order of the Court. However, it is reluctant to file the amendments given the changes in the circumstances in the case. Debtor asserts that significant negotiations are occurring with its major creditors which would require further amendments to the disclosure statement. Debtor requested a status conference for the Court to consider postponing filing the disclosure statement to accommodate further negotiations.

At hearing, Debtor requested additional time in which to complete negotiations with its creditors, specifically with Farmland Financial Services. The various parties presented arguments regarding Debtor's request. The Court concludes that Debtor should be granted a limited amount of time to proceed toward such settlement. Considering the complexity of the issues and the level of existing litigation, the Court concludes that approximately one month is not an unreasonable amount of time to allow Debtor to negotiate without unduly delaying the proceedings herein. Therefore, Debtor shall have until July 15, 1994, in which to complete settlement negotiations. A status conference will be set for that day to hear Debtor's report on negotiations.

3. Application re Debtor's Assumption of Executory Contract

On April 4, 1994, the Court ordered Debtor to assume or reject Vera Martin's real estate contract on or before May 4, 1994. Debtor filed a Notice of its assumption of Ms. Martin's contract on May 4, 1994. It states that it will satisfy the requirements of § 365 through terms of its Plan of Reorganization. Also relevant is the Court's order filed February 16, 1994 providing that the Debtor would pay Ms. Martin

certain CRP payments to be received from the ASCS office as adequate protection for her interest in the contract.

Ms. Martin filed this Application re Debtor's Assumption of Executory Contract requesting that the Court require Debtor to cure outstanding defaults and compensate for her actual pecuniary loss by immediate payment. She argues that Debtor's current Plan does not satisfy § 365 and that she should not be required to wait for cure while Debtor amends its Plan. Debtor has not yet received the promised CRP payments from the ASCS office which are to be turned over to Ms. Martin.

Section 365(b)(1)(A) states:

(b) (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee --

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default.

Congress has failed to define "promptly." Courts considering this section have held that the period of time that is considered "promptly" may vary in accordance with the circumstances on a case by case basis. In re Urbano, Inc., 122 B.R. 513, 519 (Bankr. W.D. Mich. 1991) (monthly installments six months later not prompt); In re Mako, Inc., 102 B.R. 814, 821 (Bankr. N.D. Okl. 1988); In re Phelia Assoc., Inc., 17 B.R. 66, 69 (Bankr. W.D. Ky. 1981) (noting that interpretation of "promptly cure" varies from 15 days to 10 months); see also Richard L. Epling, Contractual Cure in Bankruptcy, 61 Am. Bankr. L. J. 71, 74 (1987).

Adequate assurance of prompt cure requires a foundation that is nonspeculative and sufficiently substantive to assure the creditor will receive the amount in default. In re World Skating Center, Inc., 100 B.R. 147, 148 (Bankr. D. Conn. 1989). A showing that the debtor has a realistic possibility of an effective reorganization which provides for cure under § 365 can constitute the adequate assurance necessary to support assumption of an executory contract. In re Shelco, Inc., 107 B.R. 483, 487 (Bankr. D. Del. 1989). Allowing for adequate assurance of prompt cure rather than requiring immediate payment "is more consistent with the underlying tenets of modern bankruptcy law which encourage the rehabilitation of a Chapter 11 entity." In re Robinson Truck Line, Inc., 47 B.R. 631, 638 (Bankr. N.D. Miss. 1985). Courts have deferred their decision on sufficiency of the offer of adequate assurance to allow the debtors to submit a specific proposal for prompt cure. Id., Phelia Assoc., 17 B.R. at 69 (allowing debtor 30 days to submit plan for providing prompt cure).

The Court concludes that Debtor should be required to provide specifics regarding its proposal for providing adequate assurance of prompt cure. Turnover of the CRP payments, when received, does provide for some protection for Ms. Martin. However, it is unknown when ASCS will make these payments to Debtor. In the interests of encouraging rehabilitation, the Court concludes that Debtor should at least be allowed to complete its settlement negotiations as provided above before being required to cure Ms. Martin's contract. Therefore, Debtor is given until July 29, 1994 to file a proposal providing for cure or adequate assurance of prompt cure pursuant to § 365(b)(1)(A). Hearing shall be held on that date for consideration of Debtor's proposal.

4. Motion to Compel Acceptance or Rejection of Executory Contract (filed by Margaret McBride, Marc McBride, Karen McBride and Marcia Brooks)

The McBrides have a real estate contract similar to Ms. Martin's. They seek an order compelling Debtor to assume or reject. The Court's order compelling Debtor to assume or reject Ms. Martin's real estate contract was based in part on Debtor's acknowledgement on the record as to Ms. Martin's special circumstances entitling her to assumption or rejection prior to the time of confirmation of a Plan of Reorganization. Specifically, Ms. Martin has a compelling need for the real estate contract payments to provide for her day-to-day needs. Such special circumstances have not been shown regarding the McBride contract. Therefore, the Court concludes that Debtor's should not be compelled to assume or reject the McBride real estate contract prior to confirmation of a Plan of Reorganization.

5. Debtor's Objection to Proof of Claims Filed by Farmland Financial Services Co.

Debtor states that Farmland overstates its total claims and makes incorrect claims of interest and attorney fees. Debtor also asserts that it holds claims in the nature of lender liability against Farmland to offset against Farmland's claims. Preliminary hearing is set for today. Cooperative Finance Association ("CFA") filed a response. It states that Farmland transferred its claims against Debtor to CFA. It complains, among other things, that Debtor has not provided sufficient particularity in its Objection and has provided no real basis for disallowing the claim. Both parties request that the court establish a specific schedule to address the issues raised.

The parties are directed to submit in writing a proposed order setting out a schedule to address their respective positions as they indicated on the record.

WHEREFORE, Applicant Meriwether, Wilson & Co. is directed to submit a proposed order regarding Application for Interim Compensation of Accountant's Fees and Expenses

FURTHER, Debtor shall have until July 15, 1994, in which to complete settlement negotiations. A status conference will be set for that day, by separate order, to hear Debtor's report on negotiations.

FURTHER, Vera Martin's Application re Debtor's Assumption of Executory Contract is GRANTED. Debtor is given until July 29, 1994 to file a proposal providing for cure or adequate assurance of prompt cure pursuant to § 365(b)(1)(A) regarding Vera Martin's real estate contract. Hearing shall be set by separate order for consideration of Debtor's proposal on that date.

FURTHER, Motion to Compel Acceptance or Rejection of Executory Contract, filed by Margaret McBride, Marc McBride, Karen McBride and Marcia Brooks, is DENIED.

FURTHER, Debtor and Cooperative Finance Association are directed to submit a proposed order with a schedule for Debtor's Objection to Farmland's Proof of Claims.

SO ORDERED this 17th day of June, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge