

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: EMERGENCY MOTION AS TO PAYMENT OF PREMIUMS ON INSURANCE POLICIES

The matter before the court is debtors' emergency motion as to payment of life insurance premiums. The motion was filed by Carl and Judy Jansma on July 5, 1994. Debtors served it on all creditors and parties-in-interest. Hearing on the motion was held on July 11, 1994, in Sioux City, Iowa. William L. Needler appeared for the debtors. Jon P. Sullivan appeared for Sioux County State Bank. Wil L. Forker appeared as trustee.

Debtors ask that the trustee be permitted to make premium payments on two life insurance policies owned by one or both debtors on the life of Floyd Jansma, Carl's father. Approximately \$3,096.00 is due on a whole life policy issued by New York Life Insurance Co. The premiums are due by July 13, 1994, or the policy will lapse and may not be reinstated without evidence of the insured's satisfactory health. It is unlikely that such evidence could be submitted to the carrier. A second policy issued by Security Connecticut Life carries monthly premiums of \$638.00. The next is due August 1, 1994. Both policies have \$100,000.00 death benefits. The New York Life policy has a \$30,000.00 loan against it.

The trustee did not sign or submit the motion. He orally adopts it as his own as he would like to obtain use of funds to pay the policy premiums. Despite the failure of the trustee to file the motion, and the questionable standing of the filing debtors, the court will reach the motion on its merits.

Bank objects to the use of the funds and to the use of its cash collateral to pay the premiums. Debtors argue that there are three ways to permit the trustee's use of the money. First is by requiring payment by the Bank of an administrative claim for the debtors' work for the estate while they were debtors-in-possession from July through November, 1993. They ask \$1,500.00 per month, the same amount they have been paid monthly by the trustee since his appointment. Even if the court were to allow this method, the trustee would still have to obtain use of cash collateral, as he has no unencumbered assets which at present could be liquidated to pay the administrative claim of the debtors. The court finds there was insufficient evidence on which to support the claim for administrative payment to the debtors. Although there was some evidence as to the value of the service before the appointment of Forker, there was little evidence of offsetting benefits to the debtors during the same period.

Debtors' second argument is that Bank's collateral should be surcharged under 11 U.S.C. § 506(c). Debtors say the Bank should pay the trustee the reasonable costs of the trustee's preservation of

Bank's collateral. The court stated at the close of the hearing that there was insufficient evidence that the trustee's cost of preserving Bank's collateral had been borne by assets of the estate other than the Bank's collateral. The court cannot find in favor of the trustee or debtors on this argument.

The third method by which the trustee might find funds to pay the premiums is by use of cash collateral. The standards for determining such a motion are set out in In re Martin, 761 F.2d 472 (8th Cir. 1985). The court must determine the cash collateral sought to be used, the creditor's interest, the risk to that interest and whether protection of that interest is adequate. Id. at 476-77.

Although the debtors submit the motion on the critical basis of the use of the funds, with the source being secondary, the court views the motion in the opposite way. The trustee/ debtors want to perform an executory contract pending a decision to assume or reject. Normally that does not take court intervention. The true issue here is not the use of the funds, but the source of the money sought to be used. This motion is essentially a motion to use cash collateral.

The court may not hold final hearing on such a motion before 15 days after service of the motion on the Bank. Fed.R.Bankr.P. 4001(b)(2). That time has not expired. However, the court may grant interim relief to prevent irreparable harm. Fed.R.Bankr.P. 4001(b)(2). The court thus treats this hearing as preliminary.

Approximately \$4,000.00 would be necessary to pay the required premiums to keep the policies in force to the end of August, 1994. There is evidence that there is sufficient adequate protection offered to protect the Bank, if that much collateral is used. The trustee and debtors have agreed to grant certain protections to Bank so that the trustee may use \$4,000.00 of Bank's cash collateral from the sale of hogs or grain.

The trustee agrees to grant Bank a perfected security interest in the two insurance contracts, and in the trustee's interests in 1994 crops. Bank's lien will be subject to security interests of input lenders or providers. Carl and Judy Jansma agree to grant the Bank a perfected security interest in their interests in 1994 crops grown on approximately 75 acres of rented ground which is not property of the estate. Bank's lien will be subject to the security interest of the debtors' input lender or provider. Bank's lien against all of the above collateral is to the extent of \$4,000.00 in collateral. Bank, to the extent necessary, shall have the right to proceed against the collateral in any order, if not repaid. Debtors have agreed not to seek marshalling of assets.

The trustee may use the funds immediately as time is of the essence. The security interests shall be granted, and documents necessary to Bank's perfected interests shall be provided immediately. Should trustee or debtors fail to provide the necessary documents, further relief will be denied to the trustee and debtors on the motion. Accordingly,

IT IS ORDERED that the emergency motion is granted as follows. The trustee may use \$4,000.00 in cash collateral of Sioux County State Bank on the condition that trustee grant Bank perfected security interests in trustee's 1994 crops and in the life insurance policies on the life of Floyd Jansma, and on condition that Carl and Judy Jansma grant Bank a perfected security interest in debtors' 1994 crops. The use of \$4,000.00 is permitted pending final hearing on the motion which will come before the court at 9:30 a.m. on August 9, 1994, in Sioux City.

SO ORDERED ON THIS 19th DAY OF JULY, 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, 2002 List, Jeff Henderson and USTrustee.