

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

VAN'S POULTRY FARM, INC.
f/k/a Country Lane, Inc.

Bankruptcy No. 93-51037XS

Debtor.

Chapter 11

ORDER RE: MOTION TO COMPROMISE WITH PEOPLES BANK & TRUST

The matter before the court is debtor's motion to compromise Adversary No. 93-5121XS as to Peoples Bank & Trust, Trustee for the Richard and Phyllis Van Regenmorter Unitrust (PEOPLES). Hearing was held November 8, 1994, in Sioux City. Donald H. Molstad appeared for Van's Poultry, Farm, Inc. (DEBTOR); Richard Moeller appeared for Peoples; Steven Jensen appeared for First National Bank of Sioux Center (FNB); Roger Bindner appeared for Boyden Co-op, Alton OC Co-op, Pella Co-op, and Sanborn Cooperative (collectively "Co-ops"); and Tracy Martinez appeared for the United States on behalf of the Internal Revenue Service (IRS).

Debtor brought Adversary No. 93-5121XS in order to determine the validity and priority of secured claims of various creditors in assets of the estate and to determine the values of the secured claims. Debtor has settled with three of the defendants without objection of the others. They are Yoder, Inc., Land O'Lakes, Inc., and Land O'Lakes Finance.

Peoples claims a first security interest in debtor's accounts, inventory, livestock and farm products. FNB claims a security interest in real estate, accounts, motor vehicles, and machinery and equipment. The Co-ops each claim security interests in accounts, farm products, equipment, and egg inventories. The IRS claims a security interest in all of debtor's assets by virtue of a filed tax lien.

Debtor wants to settle its dispute with Peoples. The settlement agreement proposes that debtor recognize the amount of Peoples' claim as \$377,035.05. Debtor proposes immediately to pay Peoples \$45,000.00 from the post-petition sale of eggs as compensation for the use of chickens since the filing of the case. Peoples claims an interest in debtor's livestock, and debtor and Peoples contend that the value of the livestock at filing was \$45,000.00 but that since filing, the birds were used for the production of eggs, that they declined in value and were sold for a nominal sum. Debtor proposes also to assign all remaining accounts receivable to Peoples for collection. Any amounts collected by Peoples would be applied to its claim. The accounts totaled approximately \$180,000.00 to \$190,000.00 at filing, but debtor contends that they are now of questionable, if any, value. After the payment of the \$45,000.00, Peoples' unsecured claim would be \$332,035.05, subject to reduction by the collection of accounts.

The IRS and FNB object to the settlement. FNB objects to the settlement on the grounds that its claim is secured by accounts existing at the time of filing and also that to the extent that the \$45,000.00 is the proceeds of its collateral, its claim takes precedence over Peoples' claim. FNB perfected its interest in accounts after Peoples, but FNB argues that because of various factual and legal issues, Peoples may have no claim at all to livestock and accounts. Included in these issues is whether the debtor is indebted to Peoples. IRS objects to the settlement on similar grounds. It contends that if Peoples' claim against debtor is defective, then IRS's claim against accounts and livestock is prior to Peoples' claim and Peoples should, therefore, not be paid using IRS interests.

The adversary proceeding was brought by debtor to have the court resolve the disputes among the parties as to the validity, priority and value of liens against property of the estate. Debtor's settlement with Peoples goes far beyond settling those issues. Debtor asks court approval for the validity of Peoples' claim, although not for its priority, and then

asks permission to make transfers to Peoples in partial settlement of its secured claim. Such treatment is plan treatment of a secured interest. It is treatment that might be objected to by other creditors in determining whether a plan should be approved. Moreover, it is treatment using assets to which the claims are in dispute between the parties to the adversary. The settlement goes beyond a determination of the validity, priority and extent of lien claims and requires payment. This implicates 11 U.S.C. § 363 and the use of cash collateral. It may well be that others, FNB or IRS, may have prior interests in the collateral sought to be protected or in the collateral used to make the payment, or in the accounts sought to be transferred. In a determination on use of cash collateral, their interests in the cash need to be considered and, if necessary, protected. Yet such protection has not been shown.

One factor to be considered in determining whether to approve compromises is likelihood of success on the merits. It would seem, therefore, that for this settlement to be approved as a partial resolution of this adversary proceeding, the debtor would need to show that it is likely that Peoples' interest in the accounts is valid and prior to the interests of FNB and IRS and that Peoples' interest in the pre-petition livestock was greater than, valid and prior to the interest of the IRS. It has done neither. Debtor merely hopes not to have to litigate the issue of the validity of Peoples' lien.

It may well be that this settlement is beneficial to the debtor, or at least not harmful to the debtor. But that is not necessarily the test. In this case, debtor is substituting what amounts to agreed plan treatment of Peoples in place of the court's determination of whether Peoples has a valid lien prior to other defendants. In addition, debtor seeks to use cash to settle without consideration of whether other defendants are entitled to protection for the use of that cash. The court declines to approve such a settlement. Accordingly,

IT IS ORDERED that debtor's motion to compromise the claim of Peoples Bank & Trust Company, Trustee in Adversary No. 93-5121XS, is denied. Judgment will enter accordingly.

SO ORDERED ON THIS 15th DAY OF NOVEMBER, 1994.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U.S. mail to: U. S. Trustee, Don Molstad, Steven Jensen, Richard Moeller, Roger Bindner, U. S. Attorney, and 2002 List.