In the United States Bankruptcy Court

for the Northern District of Iowa

STRAYER SEED FARMS INC.
Debtor(s).

Bankruptcy No. 95-62081KW
Chapter 11
Contested No. 5206

ORDER RE MOTION FOR RELIEF FROM AUTOMATIC STAY AND MOTION FOR DETERMINATION OF SECURED STATUS AND

This matter came on for hearing before the undersigned on January 3, 1996 pursuant to assignment. The following attorneys appeared of record: Michael Dunbar for Debtor Strayer Seed Farms, Inc.; Terry Gibson for Unsecured Creditors Committee; Gerald Monk for Lincoln Savings Bank of Reinbeck; Tom McCuskey for Various Creditors; Eric Lam as Examiner; Wes Huisinga for Prairie Land Cooperative; and Steve Moline from the Iowa Attorney General's Office. The matter before the Court is Lincoln Savings Bank's Motion for Relief from Automatic Stay and Motion for Determination of Secured Status and Distribution of Cash Collateral. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G, M).

STATEMENT OF THE CASE

Lincoln Savings Bank (the "Bank") has a secured claim of $664,482.91 with a blanket security interest in essentially all of Debtor's property. It holds three promissory notes which together compromise this claim. Promissory Note No. 81722, originally in the amount of approximately $230,000, is delinquent. At the preliminary hearing on this motion, the Court allowed Debtor to pay the Bank $115,000 from cash in Debtor's account to reduce this claim and reduce the accruing interest payments. As of the time of the final hearing, the remaining amount due on this note is $116,405.24.

Although two other notes compromise the remainder of the Bank's secured claim, the Bank is primarily interested in being paid on the one promissory note which is delinquent, No. 81722. It requests that the automatic stay be lifted to receive payment of the remainder due on this note from Debtor's cash which constitutes cash collateral under its blanket security interest.

Prairie Land Coop, through its Agent AMI, filed a response claiming a lien in soybeans which is prior to the Bank's interest. The Bank does not deny the assertion that AMI has priority. AMI's total claim amounts to approximately $17,805. AMI asserts only that the Court's ruling should take into account its undenied priority and asks the Court not to make a disposition which would imperil its position.

Debtor currently has approximately $330,000 in liquid assets and anticipates further accumulation of cash from the sale of soybeans. It does not resist payment of the amount due on the defaulted note to the Bank out of its liquid assets. Debtor asserts that this would ultimately be in its best interest as well as that of all its creditors.

The primary objection comes from Attorney Tom McCuskey on behalf of 18 specific unsecured creditors. Attorney McCuskey asserts that as no evidence was presented, the Bank cannot satisfy the requirements of § 362 for relief from the automatic stay. Debtor agrees that the Bank is not undersecured at this time and, factually, the requirements of § 362 may not be met. It asserts, however, that payment to the Bank should be approved as no creditor is injured because the cash collateral is secured property of the Bank. Debtor argues that such payment will ultimately enure to the best interests of Debtor and the other creditors by reducing interest payments owing to the Bank.

Attorney McCuskey replies that if Debtor wishes to make this payment, he should file a Motion by way of settlement and notice all creditors with a bar date after which the matter may be resolved without objection.

CONCLUSIONS OF LAW

Pursuant to § 363(c)(2), a debtor-in-possession may use cash collateral if "each entity that has an interest in such cash collateral consents" or if authorized by the Court after notice and hearing. On request of an entity with an interest in the cash collateral, the Court shall condition use of cash collateral "as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

The concept of adequate protection is designed to ensure that secured creditors receive the value for which they bargained. Unsecured Creditors' Comm. v. Jones Truck Lines, Inc., 156 B.R. 608, 610 (W.D. Ark. 1992); In re Martin, 761 F.2d 472, 474 (8th Cir. 1985). In assessing adequate protection, the court must (1) establish the value of the secured interest, (2) identify the risks to the value by use of cash collateral and (3) determine if the proposal for adequate protection protects the value against the risks, consistent with the concept of indubitable equivalence. In re Weiser, Inc., 74 B.R. 111, 115 (Bankr. S.D. Iowa 1986); Martin, 761 F.2d at 477. Adequate protection should be determined liberally, permitting debtors maximum flexibility in structuring a proposal for adequate protection. Jones Truck Lines, 156 B.R. at 610.

Notice of proposals and stipulations for use of cash collateral is prescribed by Bankruptcy Rule 4001(d) and principles of due process. In re Manchester Ctr., 123 B.R. 378, 381 (Bankr. C.D. Cal. 1991). The notice requirements of Rule 4001(d) may be waived by the Court if the motion is sufficient to afford reasonable notice of material provisions of the proposal for use of cash collateral and opportunity for a hearing. Bankr. R. Proc. 4001(d)(4). Some courts have found that use of cash collateral without notice and hearing is appropriate if all creditors with interests in the cash collateral consent. Id.; In re Trout, 123 B.R. 333, 337 (Bankr. D.N.D. 1990), aff'd sub nom Armstrong v. Norwest Bank, 964 F.2d 797 (8th Cir. 1992).

In one case, the court questioned whether the objecting Unsecured Creditors' Committee had an interest in a stipulated proposal for use of cash collateral. Jones Truck Lines, 156 B.R. at 611. The court stated that the bank and the debtor have clear interests but it was hard to see what the unsecured creditors' interest is in use of the bank's cash collateral. Id. Unsecured creditors have no interest in such cash collateral which would entitle them to adequate protection under § 363(e). Pileckas v. Marcucio, 156 B.R. 721, 725 (N.D.N.Y. 1993).

Based on the foregoing, the Court concludes that the Bank's motion should be granted, conditioned on protection of AMI's interest. The only entities having an interest in Debtor's cash collateral are Debtor, the Bank and AMI. Debtor agrees with the Bank's request to be paid cash for the balance due on Note No. 81722. AMI agrees if its prior but smaller interest in Debtor's cash is protected. Attorney McCuskey's clients are unsecured creditors with no interest in the cash collateral and no rights to adequate protection under § 363.

The values of both the Bank's interest and AMI's interest in the cash collateral are essentially undisputed. Considering the circumstances and Debtor's ability to continue selling soybeans to accumulate additional cash collateral, there is no risk presented by paying off Note No. 81722. The Bank is receiving the indubitable equivalent of its interest under that promissory note. AMI is adequately protected by Debtor's retention of cash sufficient to cover its secured claim.

After notice, the Court held a preliminary hearing on the Bank's motion on December 1, 1995. The Court's Order resulting from that hearing gave notice of the final hearing scheduled for January 3, 1996. The Court concludes that this gave sufficient notice to comport with Rule 4001(d) and principles of due process.

WHEREFORE, Lincoln Savings Bank's Motion for Relief from Automatic Stay and Motion for Determination of Secured Status and Distribution of Cash Collateral is GRANTED.

FURTHER, Debtor or Examiner is authorized to distribute cash collateral to the Bank to the extent necessary to pay the balance due on Note No. 81722, but at all times retaining sufficient cash collateral to cover the balance due on AMI's secured claim of approximately $17,805.

SO ORDERED this 19th day of January, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge