

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

GLENN STURM and MARLIES STURM
Debtors.

Bankruptcy No. 95-51776XS
Chapter 13

ORDER RE: DEBTORS' MOTION TO DISMISS CASE

Glenn and Marlies Sturm move to dismiss their chapter 13 case. Cyril Renze d/b/a ACRE Assistance Company (Renze) objects, asking the court to retain limited jurisdiction of this chapter 13 case for the purpose of resolving a controversy among debtors, Renze and Farmers State Bank (Bank). Hearing on debtors' motion and Renze's objection was held by telephone on November 15, 1996. Ronald F. Eich appeared for debtors; Michael P. Mallaney appeared for Renze; Colin J. McCullough appeared for Bank. This is a core proceeding under 28 U.S.C. 157(b)(1).

During the course of their chapter 13 case, Sturms filed an adversary proceeding against Renze, Bank and the United States in which they sought a determination by the court as to the priority and extent of liens asserted against the proceeds of some of their crops. The liens were claimed by Renze, Bank and the United States on behalf of the Farm Service Agency. The proceeding was titled "Glenn Sturm and Marlies Sturm v. Farmers State Bank; United States of America, on behalf of its agency Consolidated Farm Service Agency; and Cyril Renze d/b/a ACRE Assistance Company," Adversary No. 96-5027. Prior to filing of the adversary proceeding, the crop proceeds were represented by six checks solely from the sales of crops. Sometime after the filing of Sturms' bankruptcy, by agreement of these parties, the checks were deposited in the trust account of debtors' attorney, Ronald F. Eich. Also by agreement, the adversary proceeding was tried as though the checks had not been cashed or the money commingled.

On September 3, 1996, I issued a decision determining, among other things, the priority of interests in each check. Judgment entered that:

to the extent of \$24,404.93 the security interest of Farmers State Bank in grain proceeds check nos. 27997, 28172, 28173, 28189 and 28127 is prior and superior to the security interest of Cyril Renze d/b/a ACRE Assistance Company; that to the extent of \$21,642.11 the security interest of Cyril Renze d/b/a ACRE Assistance Company in the same checks is prior and superior to the security interest of Farmers State Bank; that the security interest of Farmers State Bank in grain proceeds check no. 28433 in the amount of \$8,923.33 is prior and superior to the security interest of ACRE Assistance Company. . . .

Sturm v. Farmers State Bank (In re Sturm), Adv. No. 96-5027XS, slip op. at 19 (Bankr. N.D. Iowa Sept. 3, 1996).

I also determined that the United States had no security interest in any of the grain proceeds checks. *Id.* As a related matter, I decided a cross-claim dispute between Renze and Bank on Renze's claims for breach of contract and conversion of collateral. Renze obtained judgment against Bank for the sum of \$5,380.10. No post-trial motions were filed. No appeal was taken from the judgment.

Sturms now seek to dismiss their chapter 13 case. Because this case has not been previously converted, the court must dismiss the case on the request of these debtors. 11 U.S.C.

1307(b).

A dispute has arisen among the debtors, Bank and Renze as to the disposition of interest earned on the grain proceeds money after the checks were deposited in an interest-bearing bank account pending the outcome of the lien dispute. Renze contends that the interest should be distributed pro rata in accordance with the court's division of the proceeds. Bank says that equitably the Bank should have all the interest because Renze took unreasonable positions during the litigation, and because the judicial determination of the case was substantially similar to Bank's settlement offers to Renze. Sturms argue they should have all the money. They say they were merely a stakeholder for the parties, and that they incurred substantial legal expenses in bringing the priority dispute before the court for resolution.

The adversary proceeding presented to the court the priority dispute over the six grain checks. The issue of distribution of the interest was not discussed, and counsel are frank that they did not think of it during trial. None of the parties has indicated that there was any agreement regarding the distribution of interest when the parties agreed to the negotiation of the checks and the deposit of the proceeds in a bank account. Their concern at the time was to be sure that pending the outcome of their dispute, the checks did not become worthless because of any adverse financial circumstances of the maker.

The parties ask the court to retain jurisdiction of the adversary proceeding to resolve this belated dispute. Where there is a federal interest, a bankruptcy court may retain jurisdiction of an adversary proceeding notwithstanding dismissal of the underlying bankruptcy case. Chapman v. Currie Motors, Inc., 65 F.3d 78, 81-82 (7th Cir. 1995). However, here the question is not so much whether the court should relinquish or retain jurisdiction over the adversary proceeding, but whether there is any jurisdiction to retain.

It is argued that perhaps all that is being asked is clarification of the court's decision and judgment. But that is not so. This dispute was about the priority of security interests in check proceeds from debtors' grain sales. The dispute had arisen before the checks were ever deposited. The parties agreed to the negotiation and deposit of the checks pending judicial resolution of the dispute. The court's decision did not cover the parties' deposit agreement. Bank concedes that legally the interest would follow the court's division of the checks. But Bank argues for a payment of the interest based on equitable principles and concedes that decision on that basis would require further evidence as to the conduct of the parties during the litigation. Debtors also claim the interest, I suspect, on equitable grounds. No doubt debtors also would have further evidence.

Counsel has cited no authority showing the court's jurisdiction of this dispute as part of the adversary proceeding in light of the court's final judgment therein and considering that the new dispute arises from facts outside the record of that proceeding.

Debtors have the right to dismiss their chapter 13 case. The motion to dismiss will be granted. Having entered final judgment in Adversary No. 96-5027XS, I do not have jurisdiction of the parties' dispute over the interest.

IT IS ORDERED that debtors' motion to dismiss their chapter 13 case is granted. Judgment shall enter that this chapter 13 case is dismissed.

SO ORDERED THIS 18th DAY OF NOVEMBER 1996.

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: Debtors, Ronald F. Eich, Michael P. Mallaney, Colin J. McCullough, U.S. Attorney, Robert Peters, A. Frank Baron and U.S. Trustee.