

In the United States Bankruptcy Court
for the Northern District of Iowa

CLIFFORD R. HOLTHAUS, LOIS K. HOLTHAUS
Debtors.

Bankruptcy No. 96-61345KW
Chapter 7

CITIZENS STATE BANK
Plaintiff

Adversary No. 96-6178KW

vs.

CLIFFORD R. HOLTHAUS;
LOIS K. HOLTHAUS;
HABBO FOKKENA, Trustee;
DOROTHY SAUDER;
UNION PRODUCE COOPERATIVE;
and
WILSON FEED & SUPPLY, INC.
Defendants.

RULING ON MOTION TO DISMISS

On November 15, 1996, the above-captioned matter came on for telephonic hearing pursuant to assignment. The matters before the Court are Motions to Dismiss filed by Creditor Dorothy Sauder and the Trustee. Attorney John Heckel represented Citizens State Bank. Attorney James Updegraff represented the Defendant/Movant Dorothy Sauder. Trustee Habbo Fokkena waived his right to participate in the telephonic hearing.

STATEMENT OF THE CASE

Citizens State Bank, a secured and unsecured creditor of Debtors Clifford R. Holthaus and Lois K. Holthaus, filed its adversary complaint against Debtors, the Trustee and three creditors of the Debtors to determine the ownership of crop proceeds, and to determine the priority of creditor claims against the crop proceeds. The Bank also requests that the Court determine the status of the landlord's lien claimed by former landlord Dorothy Sauder in the Iowa District Court for Fayette County against the proceeds of the crops.

Creditor/landlord Dorothy Sauder responds to the Bank's complaint by claiming that her action in state court is based on a landlord's lien and a constructive trust theory in her favor against the receiver of proceeds from the crop. Sauder filed a Motion to Dismiss requesting that this Court dismiss this action for lack of jurisdiction. The Trustee also filed a Motion to Dismiss, asserting that this action is not a core proceeding, but merely a dispute between two creditors to be settled in state court.

STATEMENT OF FACTS

Debtors Clifford and Lois Holthaus were farmers residing near Postville, Iowa. Debtors purchased one farm in 1992, with the Bank as the lender. They also leased two additional farms in the 1995 crop year, including at least one owned by Dorothy Sauder. Debtors received crop input loans from the Bank in 1995 for the Sauder farm and other farms under a perfected security interest. After harvest, Debtors turned over crop proceeds to the Bank to satisfy advances on crop

input loans. The remaining crop proceeds were returned to Debtors. Debtors did not pay the land rent to Sauder with the crop proceeds.

After problems with their farming operations in 1993, 1994, and 1995, the Bank, Debtors' primary lender, refused to lend them additional money to finance the 1996 crop season. After mediation, Debtors consented to a liquidation sale of most of their machinery and livestock. Debtors also sold their farm. However, these sales did not generate expected revenues and did not satisfy the obligations of Debtors.

Sauder filed suit seeking to recover from the crop proceeds in the Iowa District Court for Fayette County against Debtors, the Bank, and two other creditors, Union Produce Cooperative, and Wilson Feed and Supply, Inc. Both Union Produce Cooperative and Wilson Feed and Supply are unsecured creditors. In the state court action, Sauder alleges that she should be allowed to assert and foreclose a landlord's lien against the purchaser of the crop from the rented land. She also asserts that a constructive trust exists in her favor and against the receiver of proceeds of the sale of the crop.

Debtors filed their Chapter 7 petition on May 30, 1996. The Bank filed its adversary complaint on September 26, 1996, against Debtors, Sauder, the Trustee, Union Produce Cooperative, and Wilson Feed and Supply, Inc. The Bank claims that this is a core proceeding because it is requesting the Court determine that the crop proceeds are property of the estate under 11 U.S.C. 541. The Bank also seeks avoidance of any landlord's lien. This will result in a return of the crop proceeds to the estate, allowing the Bank to recover as the largest secured and unsecured creditor of Debtors.

Sauder filed a Motion to Dismiss the Bank's adversary proceeding on the grounds that it is not a core proceeding under 28 U.S.C. 157. Sauder claims this proceeding is merely a dispute between two creditors which should be settled in state court because it does not involve property of the estate. Trustee also filed a Motion to Dismiss. Trustee states that this proceeding is a dispute between two creditors involving neither Debtors nor the estate and should be resolved in state court. Union Produce Cooperative filed its answer to the complaint requesting that the Court dismiss the complaint for failure to state a claim upon which relief may be granted.

The Bank responded to the Motions to Dismiss, stating that the crop proceeds should be turned over to the Trustee, unless the Bank's perfected security interest has priority over the landlord's lien. The Bank claims that this is a core proceeding because the crop proceeds are property of the estate, if the landlord's lien is avoided.

LANDLORD'S LIEN

Iowa Code sec. 570.1 states that a landlord shall have a lien for the rent upon all crops grown upon the leased premises. The purpose of the landlord's lien is to compensate the landlord for the use of the premises which contributed to the maintenance, improvement or production of the property upon which the lien attached. Meyer v. Hawkeye Bank & Trust, 423 N.W.2d 186, 188 (Iowa 1988) (citing Thompson v. Anderson, 53 N.W. 418, 419 (Iowa 1892)).

A landlord's lien against crop proceeds is superior to that of a perfected security interest against the same crop proceeds, regardless of whether the perfected security interest is a purchase money mortgage. Perkins v. Farmers Trust & Sav. Bank, 421 N.W.2d 533, 535 (Iowa 1988). The time each lien arises or is perfected is not determinative. Id. A statutory landlord's lien has priority over a blanket security interest or a purchase money mortgage. Id. When the tenant has given crop proceeds to the holder of a perfected security interest on the crops, and the holder of the perfected security interest knows that the landlord has a lien on those crop proceeds, the holder of the perfected security interest is deemed to be holding the crop proceeds in constructive trust for the landlord. Meyer, 423 N.W.2d at 189.

A statutory lien on property of the debtor may be avoided to the extent that lien is for rent. 11 U.S.C. 545(3); In re Waldo, 70 B.R. 16, 18 (Bankr. N.D. Iowa 1986). A landlord's lien on crop proceeds may be avoided under 545(3) because it is a claim for rent. Waldo, 70 B.R. at 18. When the landlord's lien is avoided on crop proceeds, the proceeds are returned to the estate to be distributed by the trustee. Id.

Sauder's landlord's lien has priority over the Bank's perfected security interest under Iowa law. The landlord's lien has priority regardless of whether it was first in time. If the Bank had knowledge of the landlord's lien at the time it retained the crop proceeds from Debtors, under Iowa law, the Bank was merely holding the crop proceeds in constructive trust

for the landlord, Sauder. Since the Bank was Debtors' primary lender, assisting Debtors' purchase of the only farm they owned and lending Debtors money for crop input on three farms, it might well have known that the land was being leased and that a landlord's lien could attach. If so, the Bank is not in a favorable position to recover the crop proceeds if this case is dismissed. If the adversary proceeding is not dismissed and the lien is avoided, the crop proceeds would be distributed by the Trustee, and the Bank, as the largest secured and unsecured creditor, would recover a substantial percentage.

MOTION TO DISMISS

Bankruptcy courts are authorized to hear "all cases under title 11 and all core proceedings arising under title 11 or arising in a case under title 11." 28 U.S.C. 157(b)(1). The bankruptcy judge shall determine whether a proceeding is a core proceeding under 157(b), or whether a proceeding is related to a case under Title 11. 28 U.S.C. 157(b)(3). Bankruptcy courts are not authorized to entertain cases involving noncore, unrelated matters. In re Gallucci, 931 F.2d 738, 741 (11th Cir. 1991). A bankruptcy court lacks jurisdiction to resolve controversies between third party creditors which do not involve debtor or property of the estate, unless the court cannot complete its administrative duties without resolving the controversy. In re Gardner, 913 F.2d 1515, 1518 (10th Cir. 1990). A dispute is unrelated to the bankruptcy case if it does not affect the amount of property available for distribution to creditors. In re Xonics, Inc., 813 F.2d 127 (7th Cir. 1987). An unrelated dispute between two creditors should be dismissed because it is not a core proceeding. Id.

To determine if a bankruptcy court should retain jurisdiction over a proceeding, the court must first determine if the proceeding is core and, if not, determine if the proceeding is sufficiently related to the bankruptcy case to come within the bankruptcy court's subject matter jurisdiction. In re Sonnyco Coal, Inc., 89 B.R. 658, 663 (Bankr. S.D. Ohio 1988). In making a determination of whether a proceeding is a core proceeding, the court should determine: (1) whether the complaint states exclusively a state law cause of action; (2) whether the cause of action is filed against a defendant who has not filed a claim against the bankrupt estate; (3) whether bankruptcy laws would be involved in the resolution of the dispute; and (4) whether the cause of action will impact administration of the bankruptcy estate. In re Bingham Sys., Inc., 139 B.R. 809, 814 (Bankr. N.D. Miss. 1991). Other factors to consider in determining whether a proceeding is core are if the cause of action would exist independently outside of the bankruptcy proceedings, and if the parties and their rights and obligations are not significantly affected as a result of filing the bankruptcy case. In re Nationwide Roofing & Sheet Metal, Inc., 130 B.R. 768, 775 (Bankr. S.D. Ohio 1991). The bankruptcy court must examine both the form and substance of the proceeding to determine if the proceeding is core. Id.

As a general rule, individual creditors cannot exercise a trustee's avoidance powers under 544, 545, 547, 548. In re Feldhahn, 92 B.R. 834, 836 (Bankr. S.D. Iowa 1988). Typically, the trustee should be the party to weigh the merits of an action, the likelihood of success, the litigation costs to the estate and the net benefit to the estate. Id. A creditor lacks standing to bring an adversary proceeding to avoid a lien when, even if the creditor succeeded in avoiding the lien, the estate would not receive any benefit. Id.

The Bank's adversary complaint rests upon the avoidance of the landlord's lien. As a creditor, the Bank does not have the power to avoid a lien under 545. The Bank lacks standing to bring this action. The landlord's lien may not be avoided unless the Trustee decides to pursue lien avoidance. Without the Trustee's pursuit of lien avoidance, the only dispute remaining is the priorities of the two creditors, Sauder and the Bank. This dispute could exist independently of bankruptcy proceedings in a state court based upon state laws. Neither Debtors nor property of the estate will be affected by the outcome of this proceeding. The bankruptcy code would not be involved in the resolution of this dispute and the administration of the bankruptcy estate would be unaffected. Consequently, unless the Trustee pursues lien avoidance, this action must be dismissed because it fails to meet the statutory requirement, a core or related proceeding, for this Court to have jurisdiction.

TRUSTEE'S AVOIDANCE POWER

A statutory lien, including a lien for rent, may be avoided by the trustee under 545. The avoidance power of the trustee under this section is limited by 11 U.S.C. 546(a) to be exercised before the earlier of: (1) the later of two years after the entry for the order for relief or one year after the appointment of the first trustee,; or (2) the time the case is closed or

dismissed. 11 U.S.C. 546(a)(1), (2).

One of the duties of the trustee is to collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of the parties in interest. 11 U.S.C. 704(1); In re Lloyd, 37 F.3d 271, 275 (7th Cir. 1994). The trustee is not required to commence avoidance procedures, but instead has the discretionary power to do so. 1 Epstein, et al., Bankruptcy 6-2 (1992). A trustee is under no mandatory duty to pursue and recover every transfer that might be voidable. In re Haugen Constr. Serv., Inc., 104 B.R. 233, 240 (Bankr. D.N.D. 1989).

The power to avoid under 545 rests solely with the trustee. In re Milam, 37 B.R. 865, 867 (Bankr. N.D. Ga. 1984). The first and primary reason for this conclusion is the language of the statute which speaks in terms of the "trustee" alone. Id. This conclusion is supported by the need to maintain orderly administration of the estate, and encourage an impartial third party to weigh the net benefit and costs to the estate. Id. at 868.

Applying the foregoing principles to this case, it is clear that the statutory two year time limit provided in 546(a) has not expired. Debtors' Chapter 7 Petition was filed May 30, 1996. However, the Trustee has been involved in this adversary proceeding and has filed his own Motion to Dismiss. This Court cannot conclude, based upon this record, that the absence of a Motion to Avoid Lien by the Trustee is accidental. As the Trustee has chosen not to pursue this course of action, this adversary proceeding fails to meet the statutory requirements of being a core or related proceeding. As such, this Court lacks jurisdiction and the Motion to Dismiss must be granted.

WHEREFORE, for all the reasons set forth herein, the Motions to Dismiss filed by Creditor Dorothy Sauder and the Trustee are GRANTED.

FURTHER, for the reasons set forth herein, this adversary proceeding is DISMISSED.

SO ORDERED this 10th day of December, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge