

In the United States Bankruptcy Court

for the Northern District of Iowa

KAMPEN FARMS, INC.
Debtor.

Bankruptcy No. X87-01347XF
Chapter 12

ORDER RE: ORDER TO SHOW CAUSE

Hearing was held October 30, 1996 in Fort Dodge, Iowa on the court's Order to Show Cause why respondents Harriett Bothne, L.D. Bothne, Ardis M. Day, Berl E. Priebe, Madelyn Priebe and John Roehrick (RESPONDENTS) should not be held in contempt of this court for violation of the discharge injunction in the bankruptcy case of Kampen Farms, Inc. (KAMPEN FARMS). Robert A. Dotson appeared for debtor Kampen Farms, movant for the order to show cause. Jerrold Wanek appeared on behalf of the alleged contemnor Respondents. The court now issues its findings and conclusions as required by Fed.R.Bankr.P. 7052.

On August 22, 1996, Kampen Farms filed a motion requesting the court to issue an order to show cause why the Respondents should not be held in civil contempt of court. The court issued the order on September 4, 1996. Kampen Farms made the following statement as to the court's jurisdiction over this matter: "This Court's jurisdiction is invoked under 28 USCA 1334, 157, and 1481 and under the Bankruptcy Code and Rules including without limitation 11 USCA 105(a)." Motion, 1. The Respondents denied this allegation. Section 1481 of title 28 was repealed as part of the effort to resolve the constitutional crisis following Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858 (1982). See generally 1 Collier on Bankruptcy

3.01[1][a], [b] (15th ed. 1996). The present jurisdictional statute is 28 U.S.C. 1334. The bankruptcy court is authorized by 11 U.S.C. 105(a) to enter orders of civil contempt and to recommend to the district court orders of criminal contempt. Brown v. Ramsay (In re Ragar), 3 F.3d 1174, 1180 (8th Cir. 1993).

A proceeding to hold a creditor in contempt is an appropriate method of enforcing the discharge injunction. Costa v. Welch (In re Costa), 172 B.R. 954, 963 (Bankr. E.D. Cal. 1994). A court's order to show cause, issued upon good showing by the debtor, satisfies the notice procedure required in Fed.R.Bankr.P. 9020(b). Id. at 963-64.

FINDINGS OF FACT

On March 25, 1985 Paul Kampen and Marcia Kampen executed a note to Farmers Trust & Savings Bank of Buffalo Center, Iowa (FARMERS TRUST), in the principal amount of \$375,000. Exhibit A, p. 84. Co-signers on the note were Harriett Bothne, L.D. Bothne, Carl E. Day, Ardis M. Day, Berl E. Priebe, Madelyn Priebe, Allan Foth and Joyce Foth. Carl Day is now deceased. The loan was for the purpose of acquiring the assets of Lone Rock Bank. The transaction did not take place, and Lone Rock Bank eventually closed. The note to Farmers Trust was originally due in June 1985. The maturity date was extended to December 20, 1985. Exhibit A, p. 90.

By warranty deed on July 19, 1985, Paul and Marcia Kampen conveyed several quarter sections of farmland to Kampen Farms. Exhibit A, p. 19. Kampen Farms was incorporated in 1978, with Paul Kampen as the sole stockholder. Exhibit A, p. 221, 19. Kampen Farms took the property subject to all encumbrances, which included a mortgage to The Travelers Insurance Company (TRAVELERS) (Exhibit A, p. 9) and a judgment lien in favor of Norwest Bank Des Moines, N.A. (Exhibit A, p. 13).

In December 1985, the note to Farmers Trust was in default. Farmers Trust brought an action in the Iowa District Court for Kossuth County against the Bothnes, Days, Foths, Kampens, and Priebe. In July 1986, Farmers Trust obtained

judgment against them jointly and severally for \$300,000. Exhibit A, p. 21. After Farmers Trust began collection efforts, judgment debtors Bothnes, Days, Foths and Priebe sought legal counsel. In early 1987, they hired Respondent John Roehrick. Roehrick represented them in negotiations to settle the Farmers Trust judgment, and in pursuit of claims against the Kampens. In October 1987, the Bothnes, Days, Foths and Priebe entered into a settlement agreement with Farmers Trust. Exhibit A, p. 100. They later obtained release of the judgment against them. Exhibit A, p. 110.

On June 9, 1987, Kampen Farms filed a voluntary petition under Chapter 12 of the Bankruptcy Code. On the same date, Paul and Marcia Kampen filed a voluntary Chapter 11 petition. Their case converted to Chapter 7 on July 13, 1987. Travelers had foreclosed its mortgage in April 1987; the filing of the bankruptcy petition stayed execution on its judgment and decree.

Respondents were not scheduled as creditors in the Kampen Farms case. None of them filed a proof of claim. There was no adjudication in the Chapter 12 case of disallowance of a claim of any of them. The plan treated the following classes of claims: administrative claims, priority tax claims, general unsecured claims, and secured creditors Commodity Credit Corporation, North Central Farm Service and Travelers. The plan was confirmed August 31, 1988. Kampen Farms performed the plan and obtained its discharge April 4, 1989. Respondents were not served with the notice of plan confirmation or the discharge order. Roehrick learned no later than 1992 that Kampen Farms had received its discharge. The case was closed May 15, 1989.

All Respondents participated in the Chapter 7 case of Paul and Marcia Kampen. Respondents L.D. Bothne, Harriett Bothne and Berl Priebe were scheduled as creditors. L.D. Bothne and Roehrick attended the Kampens' meeting of creditors on August 13, 1987. At the meeting Respondents first learned that Paul and Marcia had transferred all their farmland to Kampen Farms. Also at the meeting, Roehrick first learned of the existence of Kampen Farms and that it had filed a Chapter 12 petition. He obtained copies of the schedules and the plan of reorganization.

On the date of their petition, Paul and Marcia Kampen each owned shares of Kampen Farms. They scheduled their stock ownership interest and valued it at "0." In July, 1988, the Chapter 7 trustee conducted an auction of the stock. Respondents made a joint bid in the arbitrary amount of \$400. The Kampens' four sons, Brett, Jeff, Joel and Chad, purchased the stock with a bid of \$500. Brett Kampen became president of the corporation.

On October 13, 1987, attorney Roehrick filed three adversary proceedings on behalf of Respondents and others: Adv. No. X87-0355F, Hart v. Kampen; Adv. No. X87-0356F, Bothne v. Kampen; and Adv. No. X87-0357F, Day, Foth and Priebe v. Kampen. These actions and another, Adv. No. X87-0317F, Asher v. Kampen, made claims to determine dischargeability of debts or to deny the discharge. The claims involved related facts and the four adversary proceedings were consolidated for trial. Hart and Asher each reached a settlement with the Kampens and on April 27, 1990 dismissed their claims.

On September 18, 1990, Bothnes, Days, Foths and Priebe entered into an agreement with Paul and Marcia Kampen to settle the remaining two adversary proceedings. Exhibit A, p. 122. The agreement contained a provision concerning the dischargeability of the claims. Exhibit A, p. 126, III.A. The parties filed stipulated motions to dismiss. Exhibit A, pp. 112, 117. An order of dismissal issued September 17, 1990. A money judgment was not entered by the bankruptcy court in favor of the plaintiffs, nor was there a judgment determining that their claims were nondischargeable. On October 4, 1990, Paul and Marcia Kampen received a Chapter 7 discharge. The Chapter 7 trustee filed his final account on July 8, 1992 and the case was closed July 27, 1992.

In October 1992, Paul and Marcia Kampen defaulted on their settlement agreement with Days, Foths, Priebe and Bothnes. The settlement agreement stated that upon default the adversary plaintiffs could "enforce the judgment" of Farmers Trust to the extent of \$180,000. Exhibit A, p. 125, II.B. Respondents filed the settlement agreement in the Kossuth County action brought by Farmers Trust. They then obtained, on the basis of the agreement, writ of execution over the objection of the Kampens. Exhibit A, pp. 142, 144. The writ was transmitted to the Humboldt County Sheriff (Exhibit A, p. 145) but was returned unsatisfied. Farmers Trust filed a proof of claim in Kampens' Chapter 7 case; the claim was not excepted from discharge.

The Kampen Farms Chapter 12 plan of reorganization provided for payment of the Travelers mortgage. The plan valued

the secured claim of Travelers at \$690,400 and provided for annual payments, with the balance due February 1, 1998. Plan, filed Feb. 18, 1988, VII.3.a, c. After its discharge, Kampen Farms became delinquent on the payments to Travelers. Priebe purchased Travelers' claim and security interest. On August 10, 1995, an Assignment of Judgment was filed in the Travelers foreclosure proceeding, Equity No. 15390 in the Iowa District Court for Humboldt County. Motion for Show Cause Order, 21 and Exhibit 9. After learning of the assignment, Kampen Farms obtained from First State Bank, Britt, Iowa, a letter of commitment for financing to pay off the Travelers mortgage debt. Id., 19 and Exhibit 8. First State Bank did not make the loan; the mortgaged property was then the subject of fraudulent conveyance litigation.

On June 14, 1993, the Bothnes, Days, Foths and Priebe filed a petition in the Iowa District Court for Humboldt County to set aside the 1985 transfer of farmland as a fraudulent conveyance. Exhibit A, p. 1. The Foths later withdrew as plaintiffs. On October 24, 1995, plaintiffs obtained judgment. Exhibit A, p. 216. Judge Goode overruled the statute of limitations and laches defenses raised by Kampen Farms and held that the transfer was made with actual intent to defraud creditors. The court divested Kampen Farms of title to 160 acres, the only property in which it retained an ownership interest, and vested title in Paul and Marcia Kampen. The property is legally described as:

Southeast Quarter (SE 1/4) of Section 30, Township 92 North, Range 28 West of the 5th P.M. in Humboldt County, Iowa.

Exhibit A, p. 243. The state court's decision has been appealed. Sheriff's sales were scheduled for December 18, 1995 on special execution issued on the Travelers foreclosure decree and on general execution issued on the Farmers Trust judgment. Paul and Marcia Kampen moved to reopen their Chapter 7 case and to enjoin the sales. In their re-opened case, this court held that the property was not unadministered property of their bankruptcy estate and denied the motion to enjoin. In re Kampen, 190 B.R. 99 (Bankr. N.D. Iowa 1995).

The Humboldt County Sheriff sold the 160 acres of farmland. Berl and Madelyn Priebe purchased 120 acres. Respondents Day, Priebe, and Bothnes together purchased the remaining 40 acres. The 40 acre parcel is subject to a one year period of redemption. Brett Kampen and his wife, Jill Kampen, borrowed money to redeem the 19 acres where they live.

On March 14, 1996, Respondents Day, Bothnes and Priebe, through attorney Roehrick, filed a petition in the Iowa District Court for Humboldt County against Kampen Farms, Brett Kampen and Jill Kampen. Motion for Show Cause Order, Exhibit 7. The petition alleged that on September 12, 1994, during the pendency of the fraudulent conveyance action filed in 1993, Brett Kampen, as president of Kampen Farms, conveyed a portion of the subject real estate to himself individually and that the conveyance was fraudulent as against creditors. Id., 20.

DISCUSSION

Kampen Farms alleges that Respondents are in contempt of this court for violation of the discharge injunction. It argues that Respondents had a claim that could have been brought against the corporation in the Chapter 12 case. Respondents were aware of the bankruptcy case and did not object to the plan of reorganization. Section 1227(b) of the Bankruptcy Code provides that "confirmation of a plan vests all of the property of the estate in the debtor." Kampen Farms argues that through this provision, the real estate titled in Kampen Farms at the time of confirmation "was quieted with Debtor." Motion for Show Cause Order, 11. Thus, it argues, Respondents were not entitled to pursue proceedings to divest Kampen Farms of title to the 160 acres after confirmation. Kampen Farms claims that, as a result of Respondents' contemptuous conduct, Kampen Farms has been deprived of 160 acres of farmland and the rents and profits from the land; that it has lost a loan commitment which would have enabled it to pay the Travelers mortgage; and that it has incurred attorney fees and expenses in defense of litigation.

Respondents deny that they had a claim against Kampen Farms on the date of its Chapter 12 filing. They argue that their action to avoid transfer of the 160 acres was a remedy in collection of nondischargeable debt owed by Paul and Marcia Kampen individually. They argue further that if they had claims against Kampen Farms, they were not provided for in the Kampen Farms Chapter 12 plan.

Respondents may be held in contempt if they knowingly and willfully violated the discharge order. Saeger v. ITT Financial Services (In re Saeger), 119 B.R. 184, 190 (Bankr. D. Minn. 1990). "'Willfulness' in contempt cases means a deliberate or intended violation, as distinguished from an accidental, inadvertent, or negligent violation of any order." Hubbard v. Fleet Mortgage Co., 810 F.2d 778, 781 (8th Cir. 1987) (citations omitted). Section 524(a)(2) provides that a bankruptcy discharge:

operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor, whether or not discharge of such debt is waived.

11 U.S.C. 524(a)(2).

Upon completion of Chapter 12 plan payments, the debtor is entitled to a discharge of "all debts provided for by the plan." 11 U.S.C. 1228(a). Excepted from a Chapter 12 discharge are long-term debts provided for under 11 U.S.C. 1222(b)(5) or 1222(b)(9). 11 U.S.C. 1228(a)(1); see also 5 Collier on Bankruptcy 1228.01[2][a] at n.1 (noting technical error in 1228(a)). The Travelers claim and security interest, as preserved in the plan, were not affected by the discharge Kampen Farms received in 1989. See 11 U.S.C. 1228(a)(1). Priebe, as assignees of Travelers' rights under the plan, were not barred from pursuing those rights. Kampen Farms became delinquent on payments on the Travelers claim. Actions by Priebe in enforcement of the Travelers mortgage, including obtaining special execution sale of the property, were not in violation of the discharge injunction.

Other acts complained of might not be violations of Kampen Farms' discharge injunction in themselves, but their effectiveness or validity may be impaired by their relation to the 1993 fraudulent conveyance action if that suit was itself contemptuous. The Respondents' fraudulent conveyance petition filed in March 1996 alleged that Brett Kampen transferred property to himself and his wife in September, 1994, knowing the 1993 fraudulent conveyance action was pending. The Respondents' cause of action in the March 1996 suit could not have been a claim discharged in the Kampen Farms case. The alleged transfer by Brett Kampen took place more than five years after the discharge entered. The writ of general execution, upon which sheriff's sale was had December 18, 1985, was issued in a case that did not involve Kampen Farms, but the sale could not have taken place until Kampen Farms was divested of title to the real estate. Therefore, the issue is whether the 1993 fraudulent conveyance action was an attempt to collect a discharged debt.

Judge Goode made two rulings about the status of Respondents, other than Roehrick, as creditors. For purposes of the Iowa common law of fraudulent conveyances, Respondents were creditors of Paul and Marcia Kampen at the time of the fraudulent conveyance. Exhibit A, p. 229. In ruling on the statute of limitations issue, Judge Goode held that the cause of action to set aside the fraudulent conveyance accrued on September 18, 1990 when Respondents' rights against Kampens became fixed. The state court did not decide whether the cause of action was a claim in the Kampen Farms Chapter 12 case; no one raised the issue.

The court will not decide whether the defense of discharge is precluded. The Bankruptcy Code intended to change Act practice requiring the debtor to plead discharge as an affirmative defense. Walker v. M & M Dodge, Inc. (In re Walker), 180 B.R. 834, 842 n.9 (Bankr. W.D. La. 1995); Martin v. AVCO Financial Services (In re Martin), 157 B.R. 268, 274 (Bankr. W.D. Va. 1993). Kampen Farms' failure to raise the issue of discharge until three years after the fraudulent conveyance action was brought is evidence as to Kampen Farms' belief whether the claim was discharged in the Chapter 12 case. Even Brett Kampen, president of Kampen Farms, testified at the show cause hearing that he did not think their Chapter 12 plan would have provided for the Respondents' claim because they were not creditors of the corporation. The conceptual difficulty of viewing the Respondents as creditors of Kampen Farms tends to diminish any inference that their actions were in willful violation of the discharge order. However, the definition of "claim" under the Bankruptcy Code is broad. The court will decide whether the fraudulent conveyance claim was a claim in the Chapter 12 case and, if so, whether such claim was a debt provided for in the plan and, therefore, was discharged.

As previously stated, with certain exceptions, the completion of payments by a debtor under a Chapter 12 plan discharges its "debts." 11 U.S.C. 1228(a). A "debt" is a "liability on a claim." 11 U.S.C. 101(12). Congress intended "that the meanings of 'debt' and 'claim' be coextensive." Pennsylvania Dept. of Public Welfare v. Davenport, 495 U.S.

552-558, 110 S.Ct. 2126, 2130 (1990). "[A] creditor has a 'claim' against the debtor; the debtor owes a 'debt' to the creditor." H.R. Rep. No. 95-595, at 310 (1977); S. Rep. No. 95-989, at 23 (1978). "Claim" means--

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. 101(5). "Congress intended by this language to adopt the broadest available definition of 'claim.'" Johnson v. Home State Bank, 501 U.S. 78, 83, 111 S.Ct. 2150, 2154 (1991). "The plain meaning of a 'right to payment' is nothing more nor less than an enforceable obligation. . . ." Pennsylvania Dept. of Public Welfare v. Davenport, 495 U.S. at 559, 110 S.Ct. at 2131.

Bankruptcy Code 102 provides rules of construction for title 11. Section 102(2) states that "'claim against the debtor' includes claim against property of the debtor." In Johnson v. Home State Bank, the Court held that a mortgagee's right to receive proceeds from the sale of Chapter 13 debtors' property was a right to payment that survived after the debtors' personal liability to the mortgagee was discharged in Chapter 7. The right to payment was a claim that could be treated in a Chapter 13 plan. The Court found support in the text and legislative history of 102(2) for its conclusion that the definition of "claim" includes an obligation enforceable only against the debtor's property. Johnson v. Home State Bank, 501 U.S. at 85-87, 111 S.Ct. at 2155. Congress intended 102(2) to "extend to all interests having the relevant attributes of nonrecourse obligations regardless of how these interests come into existence." Id.; see also 2 Collier 102.03. An *in rem* right of action against a debtor is a "claim" in bankruptcy. Johnson v. Home State Bank, 501 U.S. at 84, 111 S.Ct. at 2154; Lindsey, Stephenson & Lindsey v. FDIC (Matter of Lindsey, Stephenson & Lindsey), 995 F.2d 626, 629 (5th Cir. 1993) *cert. denied*, 114 S.Ct. 1053 (1994).

A fraudulent conveyance action is a proceeding *in rem*. Fidelity & Casualty Co. of New York v. Bank of Plymouth, 213 Iowa 1058, 237 N.W. 234, 235-36 (1931); Lambert v. Reisman Co., Inc., 207 Iowa 711, 223 N.W. 541, 546 (1929). Respondents had no right to a personal recovery from Kampen Farms. Lambert v. Reisman Co., Inc., 223 N.W. at 546. Respondents sought to divest Kampen Farms of the land and to transfer title to the Kampens individually. In essence, the effect of this remedy is to establish Respondents' rights in the property as superior to the rights of Kampen Farms. Hoskins v. Johnston, 205 Iowa 1333, 219 N.W. 541, 544 (1928).

I conclude that Respondents obtained an equitable right to payment from property of the debtor and that such a right is a claim in bankruptcy. 11 U.S.C. 101(5)(A) and 102(2). But that does not end the inquiry. I must determine whether the Respondents' claim was a claim at the time of the Kampen Farms' bankruptcy filing.

When Kampen Farms filed its Chapter 12 petition in 1987, Respondents' claim against Kampen Farms had not yet accrued under state law. At that time, a creditor must have reduced to judgment its claim against the transferor or have had a lien against the property. Mickle v. Walraven, 92 Iowa 423, 60 N.W. 633, 634 (1894); Iowa Code 630.16 (action by equitable proceedings may be brought at any time after judgment). This did not change until the enacting of the Uniform Fraudulent Transfer Act which became effective in Iowa on January 1, 1995 for causes of action arising on or after that date. Iowa Code 684.7, 684.1(3) and (4). The definition of a "claim" under that Act is the same as the broad definition under the Bankruptcy Code. Compare Iowa Code 684.1(3) and 11 U.S.C. 101(5)(A).

Although at the time of the Kampen Farms bankruptcy, Respondents' claims had not accrued under state law, the circumstances were such that Respondents nonetheless had claims dischargeable in bankruptcy. It "is a foundation principle of the 1978 Code: creditors may be entitled to allowable claims in bankruptcy even though remedies are not yet (and may never be) available under nonbankruptcy law." Roach v. Edge (In re Edge), 60 B.R. 690, 694-95 (Bankr. M.D. Tenn. 1986). I recognize that the existence of claims in bankruptcy should be determined with appropriate reference and regard to state law. Id. at 695. Claims against the debtor or its property are disallowed if unenforceable under applicable law "but only for reasons other than because such claim is contingent or unmatured." 11 U.S.C.

502(b)(1).

Although at the time of Kampen Farms' bankruptcy filing Respondents' claims against Kampen Farms had not yet accrued under Iowa law, it was only the contingent nature of their claims against Kampens and the lack of judgment for contribution that prevented the accrual. At the time of the filing, the following had taken place: Paul and Marcia Kampen had, with Respondents, signed the note to Farmers Trust; less than four months later they transferred the land to Kampen Farms for no consideration (Exhibit A, p. 235); Kampens had transferred the land with actual fraudulent intent, to put it beyond the reach of future and then-existing creditors (Exhibit A, pp. 229-30); Farmers Trust had obtained judgment against the promisors jointly and severally.

On June 9, 1987, when the bankruptcy cases were filed, Respondents had contingent claims against Paul and Marcia Kampen. Their rights to contribution "arose" upon the execution of the note, but their rights to enforce contribution did not "accrue" until they discharged more than their proportionate shares of the common liability. See Dairyland Ins. Co. v. Mumert, 212 N.W.2d 436, 440 (Iowa 1973)(contribution for common tort liability). Respondents' rights to seek satisfaction of the contingent claims against the property transferred to Kampen Farms would, therefore, also seem to have been contingent at the time of the corporation's filing. Such claims did not become enforceable against the corporation until Respondents had reduced their contingent claims against Kampens to judgment. Respondents had allowable and dischargeable claims in the Kampen Farms bankruptcy despite the fact that their claims had not become enforceable under state law.

Although I agree with Kampen Farms that Respondents had dischargeable claims in its Chapter 12 case, I disagree that the claims were discharged. Completion by a Chapter 12 debtor of payments under a plan, except those permitted over a period exceeding the life of the plan, discharges debts provided for by the plan, except nondischargeable debts and those debts to be paid over the period exceeding the length of the plan. 11 U.S.C. 1228(a). Confirmation of the plan, except as otherwise provided by the plan or the order of confirmation, vests all property of the estate in the debtor. 11 U.S.C. 1227(b). Also, with certain exceptions, such property vests in the debtor free and clear of any claim or interest of any creditor provided for by the plan. 11 U.S.C. 1227(c). For a claim to be provided for in a plan, it must be referred to and dealt with, even if the claim receives a zero payment. Lawrence Tractor Co. v. Gregory (Matter of Gregory), 705 F.2d 1118, 1122 (9th Cir. 1983).

Kampen Farms' plan provided for unsecured claims, but Respondents' claims were not unsecured claims. As previously discussed, Kampen Farms was not personally liable to Respondents on account of the fraudulent conveyance. Lambert v. Reisman Co., 223 N.W. at 546. A secured claim is an allowed claim "secured by a lien on property in which the estate has an interest. . . ."

11 U.S.C. 506(a). A "'lien' means charge against or interest in property to secure payment of a debt. . . ." 11 U.S.C. 101(37). A "charge" against property is not further defined. However, a "charge" has been defined as a "claim." Black's Law Dictionary 211 (5th ed. 1979). A "lien" as defined in the Bankruptcy Code includes "inchoate" liens. H.R. Rep. No. 95-595, at 312 (1977); S. Rep. No. 95-989, at 25 (1978). When Kampen Farms filed its Chapter 12 petition, Respondents' claims against the real estate were equitable and inchoate. They were not avoided under any avoidance right or power. Kampen Farms does not claim that the fraudulent conveyance claims were dealt with in the plan and the court finds and concludes that they were not. Because they were not provided for by the plan, Respondents' claims in the case were not discharged, and the real estate did not vest in debtor free of those claims. And as the claims were not discharged, there was no violation of the discharge injunction.

Kampen Farms contends that Respondents knew of the Chapter 12 case and should have objected to confirmation of the plan if they wished to preserve rights against the farmland. In a Chapter 11 case, creditors with knowledge of a case have an affirmative duty to participate in the case or risk discharge of their claims. Confirmation of the Chapter 11 plan discharges all claims arising prior to confirmation. Siouxland Beef Processing Co. v. Knight (In re Siouxland Beef Processing Co.), 55 B.R. 95, 100 (Bankr. N.D. Iowa 1985). In contrast, the Chapter 12 debtor obtains discharge of claims provided for in the plan. Moreover, Respondents were not immediately free to pursue their fraudulent transfer claim in the Chapter 12 case. While the Chapter 7 case was pending, the power to avoid the transfer of farmland on the ground of a fraudulent transfer belonged to the Chapter 7 Trustee. Kampen Farms argues that pursuant to 1227(b) title to the property was "quieted" in its name. Section 1227(b) is not a title clearing statute. Vesting of property in the debtor

upon confirmation ensures a debtor's ability to use and control property of the estate in order to continue the farm operation and perform the plan. 5 Collier 1227.01 at 1227-3.

ORDER

IT IS ORDERED that Respondents Harriett Bothne, L.D. Bothne, Ardis M. Day, Berl E. Priebe, Madelyn Priebe and John Roehrick have not violated the discharge injunction in the Chapter 12 case of Kampen Farms, Inc. and, therefore, are not guilty of civil contempt.

SO ORDERED THIS 19th DAY OF DECEMBER 1996.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order by U.S. mail to: U.S. Trustee, John Roehrick, Robert Dotson, Jerold Wanek, 2002 List, and Carol Dunbar.