

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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MYRON J. KLOUBEC  
ELLEN K. KLOUBEC  
dba Kloubec Fish Farm  
*Debtor(s).*

Bankruptcy No. 99-02325-C

Chapter 12

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### ORDER RE MOTION TO PREVENT USE OF CASH COLLATERAL

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The above-captioned matter came on for trial pursuant to assignment on October 19, 1999. The matter before the Court is the motion of Farmers State Bank of Walford (the "Bank") to prohibit the use of cash collateral by Debtors Myron and Ellen Kloubec. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(M).

#### STATEMENT OF THE CASE

Debtors filed for relief under Chapter 12 of the Bankruptcy Code (the "Code") on August 31, 1999. The Bank claims a security interest in Debtors' commercially raised fish. It filed this motion to prevent Debtors from using proceeds from the sale of some of those fish. Debtors claim the Bank has no interest in the proceeds because their security agreements with the Bank did not adequately describe the fish as collateral.

#### FINDINGS OF FACT

Debtors own property in Iowa County, Iowa where they raise various species of fish for commercial sale. Debtors have several ponds where they keep and raise these fish. At various points throughout the year, Debtors harvest and sell the fish either for human consumption or as "sport fish."

On October 10, 1986 and again on September 15, 1993, Debtors executed security agreements (collectively the "Security Agreements") to secure payment of several notes the Bank held. (Bank's Exs. B, C.) The Security Agreements grant the Bank an interest in:

All cattle, hogs, other livestock and all increase therefrom ... all grain, feed, crops and products therefrom ... all implements, machinery, attachments, parts and replacements, tools and equipment, contract rights, accounts and all proceeds, it being the intention of the debtors to include all personal property now owned or hereinafter acquired. (Bank's Exs. B, C.) (emphasis added).

Debtors defaulted on their obligations to the Bank. On April 23, 1999, the Iowa District Court for Johnson County issued a writ of replevin pursuant to consent of the Bank and Debtors. This order stipulated that the Security Agreements covered Debtors' commercially raised fish. Prior to execution

of the writ, Debtors filed this Chapter 12 proceeding. After it learned that Debtors were selling their fish, the Bank filed this motion to prevent Debtors from using the proceeds therefrom.

### CONCLUSIONS OF LAW

A trustee or debtor in possession may not use, sell, or lease cash collateral unless: 1) every entity having an interest in the cash collateral consents; or 2) the court authorizes the use, sale, or lease of the cash collateral. 11 U.S.C. §363(c)(2). The Bank has not consented to, and the Court has not approved, Debtors' use of cash collateral.

Debtors agree that if the Bank has a security interest in Debtors' fish, proceeds from the sale of those fish would constitute cash collateral. Debtors contend, however, that the language in the Security Agreements is not sufficient to grant the Bank a security interest in the fish. Because the Bank has no security interest in the fish, Debtors contend, the proceeds from their sale do not constitute cash collateral and §363(c) is inapplicable.

### RES JUDICATA

Federal courts must apply state law when determining whether a previous state court judgment bars litigation of an issue in federal court. Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985). Under Iowa law, a final judgment rendered by a court of competent jurisdiction is an absolute bar to further litigation of an issue if the first case involved: 1) the same parties or parties in privity, 2) the same cause of action, 3) the same issues, and 4) litigation of the issue on the merits. Iowa Coal Mining Co. v. Monroe County, 555 N.W.2d 418, 440 (Iowa 1996); Ideal Mut. Ins. Co. v. Winker, 319 N.W.2d 289, 294 (Iowa 1982). Although a default judgment is not entitled to the benefits of res judicata, a consent judgment is. Compare Lynch v. Lynch, 94 N.W.2d 105, 108 (Iowa 1959) (default judgment not entitled to preclusive effect) with City of Chariton v. J.C. Blunk Construction Co., 112 N.W.2d 829, 833 (Iowa 1962) (consent judgments are entitled to preclusive effect) and 50 C.J.S. Judgment §731 (1997) (same).

The Iowa District Court for Johnson County issued a consent order and writ of replevin in favor of the Bank on April 23, 1999. (Bank's Ex. A.) In its order, the court found, and Debtors agreed, that the Security Agreements covered Debtors' "machinery, equipment and inventory consisting of fish and the proceeds therefrom." (Bank's Ex. A.) (emphasis added). Having agreed in a previous action that the Security Agreements covered fish, Debtors may not now come before this Court and argue to the contrary. The order was final, and the parties do not contest the jurisdiction of the previous court. The prior cause of action involved Debtors and the Bank, and decided the exact issue now before the court, whether the Security Agreements cover Debtors' commercially raised fish. Debtors, therefore, may not relitigate the issue before this Court.

### SECURITY AGREEMENTS

If this Court was required to determine the issue, it would arrive at the same result. A security agreement is enforceable if it reasonably describes the collateral. Iowa Code §§ 554.9110, 554.9203 (1999); In re Product Design, 182 B.R. 803, 806 (Bankr. N.D. Iowa 1994); In re Hunderdosse, 85 B.R. 999, 1005 (Bankr. S.D. Iowa 1988). A general description is sufficient, and the security agreement need not list collateral by name, model number or specific designation. 79 C.J.S. Secured Transactions §46.

The Security Agreements grant the Bank a security interest in, among other things, "livestock," "crops," and "personal property." (Bank's Exs. B, C.) At least one court has held that fish are livestock. In re Findley, 76 B.R. 547, 554 (Bankr. N.D. Miss. 1987). Debtors urge the Court to turn to Webster's Dictionary to determine if "livestock" or "crops" reasonably identify Debtors' commercially raised fish as collateral. Webster's Dictionary defines livestock as "animals kept or raised for use or pleasure; esp[ecially] farm animals kept for use and profit." Webster's Collegiate Dictionary 682 (10th ed. 1993). Fish are animals. Debtors raise these animals, on their farm, for a profit. Therefore, using Debtors' definition, the term "livestock" is sufficient to include Debtors' fish.

The Security Agreements also list "crops" as collateral. Webster's Dictionary defines a "crop" as a "plant or animal raised for profit." Webster's Collegiate Dictionary 276 (10th ed. 1993). Debtors raised fish for profit. Because Debtors raised their fish for profit, the use of the term "crops" also reasonably identifies Debtors' fish as collateral.

In addition, the Security Agreements describes "personal property" as collateral. Personal property includes everything that is not real property. Gingerich v. Protein Blenders, Inc., 95 N.W.2d 522, 524 (Iowa 1959). Fish are classified as personal property. 73 C.J.S. Property §21 (1995). Consequently, the phrase "personal property" in the Security Agreements also adequately describes Debtors' fish.

The Court need not decide which label is the most appropriate because the Security Agreements grant the Bank a security interest in all three. Because Debtors' fish could qualify under all three categories, the Security Agreements reasonably identify Debtors' fish as collateral.

### CONCLUSION

The Security Agreements' descriptions are sufficient to grant the Bank a security interest in Debtors' fish. Because a court of competent jurisdiction has already determined the matter between the parties, Debtors may not relitigate the issue before this Court. Even if the Court were to reach the merits of the issue, it would find that the Security Agreements adequately describe Debtors' fish as collateral.

**WHEREFORE**, the Court ORDERS Debtors to segregate all proceeds from the sale of fish in a separate account.

**FURTHER**, the Court further ORDERS Debtors not to use any proceeds from the sale of any of their fish without further Order from this Court.

**SO ORDERED**, this 15th day of November, 1999.

Paul J. Kilburg  
Chief Bankruptcy Judge