

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
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March 5, 2004

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Chapter 7 Trustee
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Subject: *In re Nathan Shaul*,
Chapter 7; Bankr. No. 02-30051

Dear Trustee and Counsel:

The matter before the Court is Motion to Turn Over Non-estate Property filed by Debtor and the objections thereto filed by Trustee John S. Lovald and creditors American Bank & Trust and Fin-Ag, Inc. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014(c). As set forth below, the Court concludes that the subject government farm program payments are not property of Debtor's bankruptcy estate.

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SUMMARY. An involuntary Chapter 7 petition was filed against Nathan Shaull ("Debtor") on May 28, 2002. An order for relief was entered June 20, 2002.

On February 20, 2003, federal legislation known as the Agricultural Assistance Act of 2003 was enacted. Under the Act, Debtor became entitled to certain government payments for crop disasters or deficiencies related to crop years 2001 and 2002. On October 17, 2003, the United States Department of Agriculture paid to Trustee John S. Lovald \$46,907 for disasters related to Debtor's 2001 crops in Buffalo County,¹ South Dakota.

On November 6, 2003, Debtor filed a motion asking that Trustee Lovald be ordered to turnover the \$46,907 to him because the funds were not property of the bankruptcy estate. He argued that since the legislation that created the funds was not enacted until after Debtor's Chapter 7 estate was created, the post-petition funds were his, not the bankruptcy estate's.

Trustee Lovald objected to Debtor's turnover motion on November 6, 2003. He argued the \$46,907 was property of the estate because the funds related to crop disasters in 2001, which was before the bankruptcy estate was created. In a supplement to his response, Trustee Lovald stated he had been served with a notice of levy on the funds by the Hughes County Sheriff. If the Bankruptcy Court concluded that the \$46,907 was not property of the bankruptcy estate, Trustee Lovald advised parties in interest that he would turnover the subject funds to the sheriff, not Debtor personally.

Two creditors, American Bank & Trust and Fin-Ag, Inc., also objected to Debtor's turnover motion. Like Trustee Lovald, they argued the funds were property of the bankruptcy estate. They also argued that they each had a perfected security interest in the funds.

¹ FSA officials provided the county information to the Court by telephone on March 3, 2004.

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A hearing was held December 11, 2003. The parties agreed that no facts were in dispute and they each filed briefs² in support of their respective positions.

DISCUSSION. Since this Court's decision in *Community First National Bank v. Elkhorn Farm, Inc. (In re Elkhorn Farm, Inc.)*, Adversary No. 00-5004, Bankr. No. 99-50553, slip op. (Bankr. D.S.D. May 3, 2000), the Court of Appeals for the Eighth Circuit has concluded that post-petition government farm program payments related to a pre-petition crop year are not property of a Chapter 7 bankruptcy estate if the legislation creating the payments was enacted post-petition. *Drewes v. Vote (In re*

² On November 6, 2003, Trustee Lovald filed a motion asking the Court to compel Debtor to account for all crop disaster payments for which he had applied or which he had collected since the commencement of Debtor's case. Trustee Lovald also asked that Debtor be required to turnover any government payments Debtor had received related to the 2002 crop year. In the motion, Trustee stated he had been informed that Debtor had applied for and received benefits related to farming activities in Hyde County, South Dakota. At a December 11, 2003, hearing, Trustee Lovald withdrew his November 6, 2003, motion. Thereafter, the parties filed briefs related to Debtor's motion for turnover of the \$46,907 in government payments related to Debtor's farming in Buffalo County. In his February 2, 2004, and February 12, 2004, briefs responding to Debtor's turnover motion, which dealt only with the Buffalo County payments, Trustee Lovald asked that Debtor be compelled to account for government payments related to Debtor's farming activity in Hand County, South Dakota. This decision regarding Debtor's motion for turnover, however, will deal only with the \$46,907 in payments from Buffalo County. After reviewing *Drewes v. Vote (In re Vote)*, 276 F.3d 1024 (8th Cir. 2002), Trustee Lovald may file, if necessary, a motion to compel Debtor to account for and turnover any other government farm program payments that may be property of the bankruptcy estate. Trustee Lovald's November 6, 2003, motion will be considered to have been withdrawn without prejudice.

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Vote), 276 F.3d 1024 (8th Cir. 2002). That is precisely the fact scenario presented here. Debtor did not have a "readily discernable legal interest" in the yet-to-be-created farm program payments when his case was commenced. *Id.* at 1026-27. Accordingly, the \$46,907 held by Trustee Lovald is not property of this bankruptcy estate.

Since the funds are not property of this bankruptcy estate and since the funds are already subject to a Notice of Levy arising from a state court action between Debtor and American Bank & Trust, this Court will not rule on whether Fin-Ag, Inc., or American Bank & Trust has a perfected security interest in the funds, and if so, which creditor has the superior claim. Those issues can be resolved by the state court or another court with jurisdiction over the funds, though Fin-Ag, Inc., may need to intervene in American Bank & Trust's state court action within the ten days before this Court's order becomes final. If any bankruptcy law issues surface in the state court litigation, the state court may refer them back here.

An order granting Debtor's turnover motion will be entered.

Sincerely,

/s/ Irvin N. Hoyt

Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original and serve parties in interest)