

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
FAX (605) 224-9020

March 2, 1990

Rodney C. Lefholz, Esq.
Post Office Box 8301
Rapid City, South Dakota 57709

Andrew B. Reid, Esq.
745 North River Street
Hot Spring, South Dakota 57747

Office of United States Trustee
300 North Dakota Avenue, Suite 510
Sioux Falls, South Dakota 57102

Thomas Lloyd, Esq.
225 South Pierre, #326
Pierre, South Dakota 57501

Dennis Whetzal, Esq.
Post Office Box 8285
Rapid City, South Dakota 57709

Mr. L.D. Alderson
Rt. 61, Box 16
Hayes Center, Nebraska 69032

Re: L.D. Alderson
Chapter 7 89-50106
Rents, Profits & Proceeds
of Gull Ranch

Dear Counsel and Mr. Alderson:

The above entitled matter having come on for hearing before this Court on February 5, 1990, Attorney Reid presented argument in support of his motion. Objections were filed by Dennis Whetzal, as Chapter 7 Trustee, Rodney Lefholz, and Tom Lloyd, on behalf of ASCS and I.R.S. The matter was taken under advisement and authority was submitted by the various parties in support of their respective positions.

The Court has reviewed the authorities and finds the authority submitted by Mr. Reid to be controlling in this situation. Probably the most compelling argument in this particular situation, considering all the circumstances, is that, in essence, to grant the objection would have the ultimate effect of compelling the Gulls' Estate to pay L.D. Alderson's obligations, which would result in a gross injustice. Accordingly, this Court would overrule the objections interposed and grant the motion presented on behalf of the Gull Ranch. Accordingly, I have signed the proposed order submitted by Mr. Reid, with the exception of paragraph 6, which I have lined through.

Very truly yours,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH/sh

CC: Bankruptcy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

IN RE:) Case No. 89-50106-INH
) Chapter 7
L.D. ALDERSON,)
) ORDER RE RENTS, ETC.
Debtor.)

Upon the Motion re Rents, Profits and Proceeds of the Gull Ranch made by creditor Eunice I. Gull, and upon hearing the arguments of counsel, Andrew B. Reid appearing for the movant, Dennis C. Whetzal appearing as standing trustee, Charles Nail appearing as United States Trustee, Rodney C. Lefholz appearing for himself, and Assistant United States Attorney Thomas Lloyd appearing through written argument, the Debtor not appearing, proof of service of the Motion and Notice of Hearing upon him duly shown in the record herein, and upon the Court's review of the record and the submissions of counsel after having taken the motion under advisement;

The Court finds that, with the exception of the ASCS Drought Relief Program PlK payments, all rents, profits, and proceeds received from the Debtor's use and possession of the Gull Ranch since January 8, 1988, are the property of the movant creditor Gull, including the proceeds therefrom, and that of said PlK proceeds, the landlord's share of 1/3 and the payment for sorgum seed used to plant the crop are property of movant with the remainder property of Debtor's estate and subject to distribution.

WHEREFORE, IT IS HEREBY ORDERED that:

1) All pasture rent monies from the use of the Gull Ranch which are held by the standing trustee, or the proceeds therefrom,

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or substitutions or replacements thereof, including the \$5,000 paid by the Debtor to Nr. Lefholz which has been delivered to the trustee and any property shown to have been purchased by debtor with said monies including the Honda ATV and stock tanks deposited by the Debtor with-Mr. Robert Brown, shall be immediately released by the standing trustee to the possession, ownership and beneficial use of movant creditor Gull.

2) All further and future payments or monies received from the use and possession of the Gull Ranch shall be and inure to the sole ownership and benefit of movant creditor Gull and not to the Debtor, Debtor's estate, the trustee, or other creditors, including that received from the Lampert pasture rent contract, the Henderson pasture rent contract, the cable TV tower lease, and firewood or timber sales.

3) From the proceeds of the ASCS P1K payments, the trustee shall immediately release to the possession, ownership and beneficial use of movant creditor Gull the following amounts: \$963.00 for seed and \$1,907.42 as the landlord's share.

4) The movant creditor Gull has agreed not to participate in the distribution of the remainder of the ASCS P1K proceeds held by the trustee, and the Court approves said agreement.

5) The movant creditor Gull has agreed not to receive the

interest upon said rent and ASCS monies and proceeds held by the trustee, and the Court approves said agreement.

~~6) The Court approves the stipulation of the parties made in regard hereto on February 6, 1990, and by written stipulation on February _____, 1990 the debtor not participating between those4 parties subscribing thereto.~~ /s/ 3/2/90 Irvin N. Hoyt

/s/ March
Dated this 2nd day of February, 1990.

BY THE COURT:

Irvin N. Hoyt
Bankruptcy Judge

ATTEST:

Clerk of Court