

**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**

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February 3, 1989

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Re: Bar 7 Bar Charolais Ranch  
Chapter 11  
585-00200; Adv. 88-5010

Dear Counsel:

This letter opinion decides Production Credit Association of the Midland's motion filed March 29, 1988 to determine the core/non-core status of the above adversary, and to dismiss the adversary. Also considered are PCA's motions filed February 5, 1988 to dismiss the bankruptcy petition and for relief from stay. All of these matters were initially taken under advisement by Judge Ecker.

Procedural History

Roger and Paul Barber are partners in Bar 7 Bar Charolais Ranch located in Pennington County. Victor and Catherine Gentry are partners in Double Hook Ranch, a Nebraska partnership. The ranches are linked together by a February 21, 1983 joint venture agreement under which Bar 7 Bar purchased from Double Hook a one-half interest in 375 cattle for \$937,500.0. Bar 7 Bar is in bankruptcy in this District. Double Hook Ranch is in bankruptcy in the District of Nebraska.

At the time it filed bankruptcy in Nebraska, Double Hook Ranch apparently owed a Nebraska branch of the PCA over \$5,000,000. In a stipulation reached June 24, 1986 in Nebraska Bankruptcy Court, PCA

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and the Gentrys stipulated that PCA was secured as to Gentrys' interest in livestock, and other collateral. This security apparently is at least partially conveyed by Gentrys' assignment of the joint venture contract to PCA. The Gentrys also stipulated that PCA would have relief from stay to foreclose any interest in livestock the Gentrys may own. PCA appears in this bankruptcy seeking any interest Gentrys may have in the joint venture cattle or offspring possessed by Bar 7 Bar. Gentrys filed a \$831,340 proof of claim in the Bar 7 Bar bankruptcy based upon the joint venture agreement. PCA also seeks any interest Gentrys may have In cattle Bar 7 Bar obtained from the Frawleys.

Gentrys' interest may have in cattle held by Bar 7 Bar is very much in dispute. In order to judicially determine whether the Gentrys own an interest PCA could foreclose on, PCA filed motions to dismiss, and for relief from stay with this Court on February 5, 1988. If successful on either motion, PCA intended to file a foreclosure suit in Federal District Court of this District under diversity jurisdiction. The motion to dismiss alleges unreasonable delay, depletion of the estate, and no reasonable chance to successfully reorganize.

A hearing on RCA's motions was held March 8, 1988 in Rapid City before Judge Ecker. At that hearing Attorney Hurley indicated he had filed an adversary complaint to determine the same issues PCA sought to litigate in district court. Attorney Hodge held a copy of the complaint at the time of the hearing. PCA argued that this Court had neither core nor non-core jurisdiction over the adversary. Judge Ecker stated he would take the jurisdiction issue under advisement, joining it with the relief from stay motion, implying that relief would be granted if he later concluded the Bankruptcy Court held no jurisdiction over the adversary. The motion to dismiss was continued pending his ruling on jurisdiction, reasoning that if PCA were granted relief from stay it would no longer have standing to move t.o dismiss. An advisement order was entered March 14, 1988 formalizing the above rulings, and among other things, ordering PCA to answer the debtor's adversary.

The adversary actually was not filed until March 31, 1988. Two days earlier, PCA filed motions to dismiss the adversary for lack of subject matter jurisdiction, and to determine the core/non-core status of the adversary under 28 U.S.C. § 157(b)(3).

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The case was converted to Chapter 12 by an order entered May 9, 1988. The Chapter 12 plan was confirmed September 7, 1988 pursuant to stipulations between PCA and Bar 7 Bar, although no order confirming the plan has been provided by Attorney Hurley. The undersigned inherited this case when Judge Ecker's Rapid City caseload was transferred on July 1, 1988. Although PCA has not answered the debtor's adversary as required by Judge Ecker's advisement order of March 14, 1988, the Court will consider the case as fully submitted.

### Present Adversary

The complaint alleges that under the February 21, 1983 joint venture agreement Double Hook Ranch was to provide Bar 7 Bar with all of the semen and bulls necessary for breeding, and finance the travel, entertainment, promotion, and merchandising necessary to maintain and develop the joint venture cattle. The Barbers claim the Gentrys breached these duties. They further claim that on July 19, 1985 the Barbers notified Gentrys of their intention to terminate the joint venture because Gentrys' supposed breach rendered Barbers unable to continue payments to the Gentrys. The complaint continues that under the terms of the joint venture agreement, upon termination of the agreement, certain cattle were to be divided between the joint venturers. Gentrys have not picked up their share of the livestock.

The jurisdiction issues present in this adversary proceeding cannot be analyzed without classifying the claims made in the debtors' complaint. Broadly reading the complaint, it is alleged that Gentrys, and therefore PCA, have no interest in cattle held by the debtors because (1) any interest Gentrys may have held in the cattle has been extinguished by damages caused by Gentrys' breach of the joint venture agreement; (2) Gentrys abandoned their interest in the cattle by failing to retrieve them after Bar 7 Bar terminated the joint venture agreement; (3) the cost Bar 7 Bar has incurred maintaining the herd after the joint venture was terminated exceeds the value of Gentrys' interest in the herd, and that these costs are secured by an agister's lien which has priority over any Gentry/PCA interest; and (4) PCA abandoned its security interest in Double Hook Cattle by allowing the sale to Bar 7 Bar. The Complaint also requests that the Court determine (5) that the Cattle possessed by Bar 7 Bar are property of the bankruptcy estate; (6) the value of

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the agister's lien and PCA liens; and (7) that if the Gentrys' proof of claim is allowed, the Court offset any claim Bar 7 Bar has against the Gentrys.

### Jurisdiction Analysis

In this letter opinion I will not attempt a complete overview of bankruptcy jurisdiction as created by Congress in the turbialent wake of the Supreme Court's Marathon decision. The bottom line is that due to Judge Bogue's order of reference entered July 27, 1984, this Court has final jurisdiction over all core proceedings "arising under title ii or arising in "a case under title 11, and non-core jurisdiction over proceedings merely "related to a case under title 11." 28 U.S.C. § 157(b) (1) & (c) (1).

Proceedings "arise under" title 11 when the claim asserted in the proceeding is "based on a provision of Title 11." National City Bank v. Coopers and Lybrand, 802 F.2d 990, 994 (8th Cir. 1986) . See also Farmers Home Administration v. Farmers State Bank of Hosmer (In re Dohn) 68 B.R. 282 (D.S.D. 1986). Regarding "related" proceedings, over which the court has non-core jurisdiction,

the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy . . . . An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankrupt estate.

Coopers, 802 F.2d at 994 (emphasis in original).

Commentators and the courts, including the Eighth Circuit, have not defined proceedings which "arise in" cases under Title 11 as clearly as the other two categories. 1 Collier on Bankruptcy, para. 3.01[C][v] (15th ed. 1988); 1 Norton on Bankruptcy Law and Practice §5.31, p.150(1<sup>981</sup>). See Coopers; Craig v. McCarty Ranch Trust (In re Cassidy Land and Cattle Co., Inc.), 836 F.2d 1130 (8th Cir. 1988), cert. denied, 108 S.Ct. 2016 (1988) ; National Union Fire Insurance Company of Pittsburgh v. Titan Energy, Inc. (In re Titan Energy, Inc.), 837 F.2d 325 (8th Cir. 1988); In re Dog Patch U.S.A., Inc., 810 F.2d 782 (8th Cir. 1987).

A concise definition of "arising in" proceedings was provided by the Fifth Circuit Court of Appeals in Matter of Wood, 825 F.2d 90, 97 (1987) (emphasis in original).

The meaning of 'arising in' proceedings is less clear, but seems to be a reference to those 'administrative' matters that arise only in bankruptcy cases. In other words, 'arising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy.

Judge Porter has concurred with this definition. "Non-core proceedings have been defined as 'those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a district court or state court.'" Lower Brule Construction Co. v. Sheesleys Plumbing and Heating Co., Inc., 84 B.R. 638, 644 (D.S.D. 1988), quoting Matter of Cob. Energy Supply, Inc., 728 F.2d 1283, 1286 (10th Cir. 1984) See also Rosen-Novac Auto Co. v. Honz, 783 F.2d 739, 742 (8th Cir. 1986) (noting that a non-core related proceeding could have been brought in federal district or state court in the absence of a bankruptcy petition)

Final guidance is provided by 28 U.S.C. §157(b) (2) which gives a non-exclusive list of examples of core proceedings. Based on the broad reading of plaintiff's complaint summarized above, the following subparts of §157(b) (2) are relevant.

(B) allowance or disallowance of claims against the estate ...

(C) counterclaims by the estate against persons filing claims against the estate

. . .

(K) determinations of the validity, extent, or priority of liens ...

(0)ther proceedings affecting liquidation of the estate  
or the adjustment of the debtor creditor relationship

All claims in plaintiff's complaint arguably fall under one or another of these core proceeding examples. That a claim may be so categorized, however, does not alone necessarily render it a core proceeding. The eighth circuit, as have many other courts, has cautioned against a broad construction of §152(b) (2). Categorizing all proceedings as core which arguably fall within the language of that statute would run afoul of Marathon. Cassidy at 1132. See also, e.g., J. 'Ferriell, Core Proceedings in Bankruptcy Court, 56 LVM.KC. L. Rev. 47 (1987). This Court therefore will not treat a claim which arguably falls within one of the four above categories as core unless asserting core jurisdiction over the claim also comports with Marathon, and the jurisdictional definitions provided by the eighth circuit and district courts of this district.

The Court turns at last to the claims stated in the debtor's complaint and categorized on page 3 of this opinion. To the extent the complaint seeks damages for breach of the joint venture agreement, it is clearly stating a Marathon type of state contract claim, which is not within the core jurisdiction of this Court. See also Lower Brule Construction, 84 B.R. at 644. This Court therefore cannot assert core jurisdiction over claim (1) . The Court also declines to assert core jurisdiction over claims (2) , (3) and (4) which allege that Gentrys abandoned any interest they had in the cattle, that Bar 7 Bar has an agister's lien on the cattle for an amount and in a priority which defeats the Gentry/PCA claim, and that PCA abandoned its security interest in the Double Hook cattle by allowing the sale to Bar 7 Bar. All four claims are based solely on state law (compare 28 U.S.C. 157(b) (3)), and could be tried in state or district court, assuming those courts have jurisdiction. absent Bar 7 Bar's bankruptcy petition. Once these claims are decided, this Court then may assert core jurisdiction, over the last three claims. These remaining claims are "proceedings arising under title 11." See 11 U.S.C. §§506(a) , 541, 362(a) (7).

It remains to be decided whether the Court has non-core jurisdiction over plaintiffs' first four claims. I hold that those four claims are "otherwise related" to the bankruptcy estate. Bar 7 Bar's success on any of these claims would alter its rights and liabilities, and have a beneficial affect on the value of the bankruptcy estate. These claims therefore are "related" to the bankruptcy estate as defined in Coopers.

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The disposition of the motions under advisement is as follows. Because the debtors' adversary apparently encompasses the issues PCA seeks to try in district court, PCA's motion for relief from stay is denied. The motion to dismiss the petition is also denied. This motion apparently was brought to facilitate filing suit in district court. Also, some of the grounds alleged in the motion no longer exist. Because the Court has either core or non-core jurisdiction over all claims in the debtors' complaint, PCA's motion to dismiss the adversary proceeding for lack of subject matter jurisdiction is denied. The foregoing opinion decides PCA's motion to determine the core/non-core status of the claims in the adversary. Within this adversary claims (1) through (4) will be treated as non-core proceedings, unless PCA changes its position and consents to this Court exercising final jurisdiction over those claims. Claims (5) through (7) will be treated as core claims.

The issues discussed in this letter opinion, PCA's motions to dismiss, for relief from stay, and for determination of core/non-core status are core proceedings under 28 U.S.C. Section 157(b). This letter decision shall constitute the Court's findings of fact and conclusions of law. See B.R. 7052(a). The Court shall enter judgment in accordance with this opinion.

Very truly yours,

Irvin N. Hoyt  
Chief Bankruptcy Judge

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