

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

IN RE:)
) CASE NO. 91-30030-INH
)
EDWARD W. CARR and)
) CHAPTER 7
WILMA CARR,)
)
)
)
Debtors.)

IN RE:

CARR FARMS, INC.,) CASE NO. 91-30031-INH
a corporation,)
)
) CHAPTER 7
Debtor.)
) MEMORANDUM OF DECISION RE:
) MOTIONS FOR RELIEF FROM
) THE AUTOMATIC STAY
) AND FOR ABANDONMENT

The matters before the Court are the Motions for Relief from the Automatic Stay and for Abandonment filed by Farm Credit Bank of Omaha and the responses thereto filed by the United States Trustee and by Debtors. These are core proceedings under 28 U.S.C. § 157(b)(2). This ruling shall constitute Findings and Conclusions as required by Bankr. R. 7052.

I.

On April 8, 1991, Debtors Edward W. and Wilma Carr and Debtor Carr Farms, Inc., filed Chapter 7 petitions for liquidation. Creditor Farm Credit Bank of Omaha (FCBO) filed in each Chapter 7 case a Motion for Relief From the Automatic Stay and for Abandonment. Therein, FCBO argued Debtors did not have equity in the real property secured to FCBO and that FCBO's interest in the property was not adequately protected. FCBO also asked the Court to order the Chapter 7 Trustee to abandon the real property in

question to FCBO.

The United States Trustee rejected FCBO's request for a direct abandonment to FCBO because FCBO did not have a possessory interest in the property. Debtors objected to FCBO's Motion and claimed, *inter alia*, that they have equity in the real property.

A hearing was held May 29, 1991 in conjunction with the hearing on FCBO's Motion to Dismiss Debtors' prior Chapter 11 cases. Thomas E. Lee appeared for Cecelia A. Grunewaldt on Debtors' behalf. Brent A. Wilbur appeared for FCBO. Chapter 7 Trustee John S. Lovald appeared *pro se*.

At the hearing, Debtor-husband acknowledged that FCBO's claim against Debtors was now approximately \$386,000.00¹ and that Debtors were not current on that claim or real estate taxes due May 1, 1991. Debtor-husband also testified that it was his practice to pay the real estate taxes in full in November. He said the tax basis in the land was approximately \$106,000.00. Debtor-husband testified that their attempts to sell the land were unsuccessful.

Cecil Richter, a real estate broker/farmer from the Onida area who had some familiarity with the real property in the Chapter 7 estates, testified that the estate's real property was worth at a minimum approximately \$420,000.00, based on a price of \$350.00, to a high of \$462,000.00, based on a price of \$385.00 per acre. Mr. Richter had not formally appraised the property nor had he been

¹ FCBO's Exhibit B supports that conclusion.

directly involved in any attempts to sell the land. He based his opinion on other unidentified land sales in Sully County.

Debtor-husband testified that the Chapter 7 estate farm property was tentatively enrolled in the federal "0-92" program and that Debtors had received a \$10,000.00 advance from that program prior to filing their Chapter 7 petitions. He further stated that they had spent the \$10,000.00 on expenses not associated with some farm land they are now leasing. He said that an additional \$17,000.00 was due under the program if the government was satisfied that the land was free of weeds and was not planted to crops.

Trustee Lovald informed the Court that he intended to abandon the property since a sale would create a substantial tax liability for the Chapter 7 estate. He also said that he did not intend to lease the land this crop year because that action might be inconsistent with an abandonment and because FCBO's mortgage on the property had a rents and profits clause which FCBO had not elected to waive.

II.

Section 362(d) provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under [§ 362(a)], such as by terminating, annulling, modifying, or conditioning such stay-

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property of [§362(a)], if-

(A) the debtor does not have equity in such property; and

(B) such property is not necessary to an effective reorganization.

11 U.S.C. § 362(d).

III.

FCBO failed to establish that the Chapter 7 estate does not have equity in the real property. Consequently, relief from the stay may not be granted under § 362(d)(2). Further, FCBO is not entitled to relief from the automatic stay under § 362(d)(1) because they have not established cause, including the lack of adequate protection. The scant valuation evidence presented at the hearing indicated FCBO is oversecured. The taxes now delinquent are minimal and do not appear to jeopardize FCBO's claim. Further, the Chapter 7 estate may not be without other assets to protect FCBO's interest since the \$10,000.00 "0-92" advance payment made to Debtors may be recoverable by the Trustee and the estate may be entitled to additional payments at a later date.

FCBO failed to show any other grounds for cause for immediate relief under § 362(d). See, e.g., In re Voelker, Bankr. No. 86-40428, slip op. (June 6, 1991). Unambiguous information on the estate's eligibility, duties, and potential receipts for the 1991 crop year under the "0-92" program or other government programs was not presented. Further, there was no quantitative evidence of any injury to FCBO due to Trustee's failure to rent the property for this crop year.

Finally, the Court will not order the Trustee to abandon the real property under 11 U.S.C. § 554(b) and Bankr. R. 6007. FCBO's

Motions for Relief From the Automatic Stay and for Abandonment were served on interested parties only. Under Bankr. R. 6007(a), notice of a proposed abandonment by a trustee must be given to all creditors unless the Court directs otherwise. Similarly, Bankr. R. 6007(c) authorizes the Court to establish the extent of the notice that must be given of a motion requiring the trustee to abandon property. Since the property that FCBO wants the Trustee to abandon constitutes what appears to be a substantial asset of Edward and Wilma Carr's Chapter 7 estate, the Court concludes that a hearing on a proposed abandonment of that property by the Trustee or a hearing on a motion requiring the Trustee to abandon it should be held only after notice is given to all creditors and other interested parties.

An order denying FCBO's Motions for Relief From the Automatic Stay and for Abandonment will be entered.

Dated this 14th day of June, 1991.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
PATRICIA MERRITT, CLERK

By _____
Deputy Clerk
(SEAL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

IN RE:)
) CASE NO. 91-30030-INH
)
EDWARD W. CARR and)
) CHAPTER 7
WILMA CARR,)
)
)
)
Debtors.)

IN RE:

CARR FARMS, INC.,) CASE NO. 91-30031-INH
a corporation,)
)
) CHAPTER 7
Debtor.)
)
) ORDER DENYING
) MOTIONS FOR RELIEF FROM
) THE AUTOMATIC STAY
) AND FOR ABANDONMENT

In recognition of and compliance with the Memorandum of Decision Re: Motions for Relief From the Automatic Stay and for Abandonment filed this day,

IT IS HEREBY ORDERED that Farm Credit Bank of Omaha's Motions for Relief From the Automatic and for Abandonment are DENIED.

So ordered this _____ day of June, 1991.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)