

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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March 15, 1989

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Re: Weems Farms
Chapter 12 186-00225
Adversary 88-1028

Dear Counsel:

The Court has considered the parties' joint Pre-Trial Statement, briefs, transcripts of hearings, and the Court file in this matter.

A brief restatement of the salient facts as stated in the joint Pre-Trial Statement is constructive. In July and September of 1974 Jim Weems conveyed a security interest to the Security State Bank of Doland (Bank) in livestock and specific machinery, including such after acquired property. Again on January 6, 1976 Jim Weems gave a security interest to Bank in livestock, including after acquired animals. On April 20, 1976 Jim Weems executed a security interest with Farmers Home Administration (FmHA), granting the agency a security interest in, among other things, after acquired livestock and a tractor. On February 22, 1977 FmHA acquired a purchase money security interest in 152 cattle, by lending Jim Weems \$53,000 for their purchase. Jim Weems conveyed another security interest to FmHA in specific machinery~ on February 27, 1977.

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On January 8, 1976 and May 31, 1977 Bank "released" its security interest in specific machinery. As is more relevant to the present issues, on May 15, 1986 the Bank established a \$75,000 revolving line of credit with the debtor. On July 22, 1986 FmHA executed a subordination form subordinating its lien in "all machinery and livestock" of Jim and Esther Weems. This subordination replaced an earlier \$75,000 lien subordination dated April 21, 1986 made in connection with the revolving line of credit. It also included an additional \$15,000 Bank loaned to debtors evidenced by a note dated November 18, 1986. The subordination is expressly limited to the amount actually loaned by Bank to the borrower plus expenses, for a total subordination limitation of \$117,000.

The debtors filed a Chapter 11 Petition on September 2, 1986. Very shortly thereafter William Pfeiffer, attorney for the debtors, made a motion for use of cash collateral. Attached to the motion were expense and income projection exhibits for the periods beginning September, 1986 and extending through August, 1987. See Local Bankruptcy Rule 306(D) (1) . The motion states that the only creditors affected by the cash collateral request were ASCS-CCC, FmHA and Bank. Although these parties were all served with notice of the motion, the only appearances at the hearing were George Manolis on behalf of Bank, and Attorney Pfeiffer.

The Order following the hearing was entered September 26, 1986 by Judge Ecker. It provides that the debtors may use the income projected in Exhibit B for the purpose of paying the expenses projected in Exhibit A. These exhibits were incorporated in the Order. What greatly complicates this case is paragraph three of the Order, which sets forth the manner in which cash collateral was to be used and repaid. This paragraph established a revolving account under which proceeds of the debtor's operation supposedly were to be credited to Bank's operating loan, and further operating funds required by the debtor were "loaned" by Bank out of the revolving account. The Bank's operating loan was stated to be "somewhere in the area of \$35,000" at the time the order was entered.

The Court first holds the cash collateral order expired August 31, 1987. The motion for use of cash collateral only contained expense and income projections through August 31, 1987. Therefore, parties served with the motion were provided notice that cash

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collateral use was requested only through the specified time period. See also L.B.R. 306(D) (requiring expense exhibit to cover "the period requested for use of cash collateral.") The use of cash collateral is, after all, primarily a temporary method of providing cash to a reorganizing debtor prior to confirmation.

Bank argues that the debtor was authorized to use cash collateral indefinitely, and as a result the order indefinitely continued the FmHA subordination. It points to paragraph three of the cash collateral order which provides that Bank "will receive from and after the date of this Order all proceeds of the farm partnership business of Weems Farms until further order of this Court," and paragraph four which provides that the order "shall be in full force and effect until further order of the Court." It appears from the transcript of the September 9, 1986 hearing that the debtor and Bank did stipulate to continue the revolving cash collateral arrangement indefinitely. Even if this agreement occurred and the order reflects the terms of the agreement, the Bank's position must fail.

Any stipulation reached by the debtor and the Bank affected the rights of creditors other than those party to the stipulation. The stipulation was not noticed for court approval as required by Bankruptcy Rule 9019(a). "Absent compliance with these requirements of notice, hearing, and court approval, a purported settlement or compromise is unenforceable." In re Bramham, 38 B.R. 459, 465 (Bkrcty. D. Nev. 1984), citing In re Lloyd, Carr and Co., 617 F.2d 882, 885 (1st Cir. 1980). See also In re Bell & Beckwith, 50 B.R. 422, 431 (Bkrcty. N.D. Ohio 1985), citing In re Flight Transp. Corp. Securities Litigation, 730 F.2d 1128 (8th Cir. 1984); 1988 Bankr. Lexis 2262. Bank is unable to enforce the agreement against FmHA.

The parties' rights are frozen as of August 31, 1987. An accounting is required as to all transactions affecting the cash collateral account since that date. According to the Pre-Trial Statement the balance of the debt owed the Bank as of that date was \$61,766. From August 31, 1987 through August 1, 1988 Bank "readvanced various amounts" to the debtor and received \$457,953 in payments.

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The Court will await the results of the accounting required by the accompanying Order. At that time the Court will discuss with the parties whether the case is ready for trial.

This matter constitutes a core proceeding under 28 U.S.C. §157(b)(2). This opinion shall constitute the Court's conclusions of law. Findings of fact are not required on a stipulated record. The Court shall enter an appropriate order.

Very truly yours,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH/sh

CC: Bankruptcy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

IN RE:)	CASE NO. 186-00225
)	ADVERSARY NO. 88-1028
WEEMS FARMS,)	
)	CHAPTER 12
Debtor.)	
)	ORDER
)	
UNITED STATES OF AMERICA,)	
by and through the Farmers)	
Home Administration,)	
)	
Plaintiff,)	
)	
vs.)	
)	
FARMERS AND MERCHANTS BANK)	
OF DOLAND, et al.,)	
)	
Defendants.)	

Pursuant to the letter opinion executed this same date in this matter,

IT IS HEREBY ORDERED that Bank and the debtor, through appropriate agents of each entity, shall provide a complete accounting of all deposits made to and disbursements from that account maintained at Farmers and Merchants Bank in Doland, South Dakota, established by agreements between attorneys for the Bank and debtor, which agreements were formalized in an order allowing use of cash collateral entered by this Court September 26, 1986.

Dated this _____ day of March, 1989.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By: _____
Deputy Clerk

(SEAL)