

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
BUEHNE FARMS, INC.,) Bankruptcy Case No. 04-32052
GERVASE L. BUEHNE and)
NORMA BUEHNE,)
)
Debtors.)
)
AG LEASE OR LOAN, LLC, US)
BANK, as successor in interest)
to Firststar Bank & HILLCREST BANK,)
)
Movants,)
)
vs.)
)
BUEHNE FARMS, INC.,)
GERVASE L. BUEHNE and)
NORMA BUEHNE,)
)
Respondents.)

OPINION

This matter having come before the Court for trial on a Motion for Relief from Stay and for Adequate Protection filed by Ag Lease or Loan, LLC and Hillcrest Bank and an Objection thereto filed by the Debtors; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

There is no dispute that Movants, Ag Lease or Loan, LLC and Hillcrest Bank, are secured creditors of the Debtors, since they have a properly perfected security interest in certain dairy cattle in the possession of the Debtors together with all milk produced from said cows, all female offspring produced by said cows, and any replacement cows obtained by the Debtors. Prior to the Debtors' filing for bankruptcy relief, Movants received monthly

payments in the amount of \$6,640 and \$4,791.76, through the dairy where the Debtors delivered their milk. There is no dispute that, shortly before filing for bankruptcy relief, the Debtors changed dairies, and did not inform the new dairy of the milk assignment such that no payment has been made on Movants secured debt since April 2004. As a result, Movants seek either relief from the automatic stay for the purpose of taking possession of the cattle now in the possession of the Debtors, or, in the alternative, an order of adequate protection providing a stream of payments from the Debtors to protect Movants against dissipation and loss of their collateral.

At the outset, the Court must note that the Debtors were not credible witnesses. The Court has some first-hand knowledge about the operation of a dairy herd, and finds that various of the practices of Debtors in the operation of their own herd are not in keeping with normal practice. According to the Debtors' own testimony, they maintain very few records. The Court finds this to be an incredible and troubling practice. Additionally, the Debtors methods of tagging cows, and, in particular, their failure to tag offspring of their cows seriously undermines the veracity of the Debtors. The Court found the witnesses testifying on behalf of Movants to be credible and wholly supportive of the position taken by Movants.

The evidence adduced at trial clearly shows that there has been a dissipation in Movants' collateral. The Debtors were unable to present any credible evidence to show that they had replaced culled cows or cows that had died, pursuant to their agreement with Movants. Furthermore, the Debtors have utterly failed to identify offspring of the original dairy cows supplied to the Debtors or their replacements as Debtors were required to do under Movants' properly perfected security interest. The evidence also indicated that the Debtors have purchased dairy cows from other third parties. Given the Debtors lack of records and improper tagging procedures, there is virtually no way to distinguish between cows that are rightfully collateral of Movants and cows that have been purchased from other parties. Under the case authority cited by Movants, the Court finds that the Movants have

clearly established a likelihood of injury and dissipation to their collateral if some form of adequate protection is not provided. See: Zink v. Vanmiddlesworth, 300 B.R. 394 (Bankr. N.D. N.Y. 2003); In re Wiegmann, 95 B.R. 90 (Bankr. S.D. Ill. 1989).

Having found that Movants are entitled to adequate protection, the Court concludes that adequate protection should be provided in the following form. First, the Debtors should be ordered to resume making monthly payments in the amount of \$11,431.76. This payment is to be made by virtue of a milk assignment which the Debtors will provide through their present dairy, Central Equity. This milk assignment will remain in effect until such time as Movants are paid in full. Second, the Debtors must immediately identify 212 milking cows as collateral of Movants by placing ear tags in both ears, with tags to be provided by the Movants. Third, Movants may inspect the Debtors' dairy herd on an unannounced basis as frequently as every thirty days to ensure that the Debtors are carrying out the orders of this Court. Fourth, Debtors will keep records concerning all cows identified as collateral of Movants, including their offspring; and Debtors will pay Movants the proceeds of any culled cows serving as collateral for Movants from the date of this Order until directed otherwise.

ENTERED: March 3, 2005.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge

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Respondents.)

ORDER

For the reasons set forth in an Opinion entered on the 3rd day of March 2005;

IT IS HEREBY ORDERED that the Motion for Relief from Stay and Adequate Protection is ALLOWED to the extent that Movants will be granted adequate protection in the following form:

A. Debtors are to resume making monthly payments in the amount of \$11,431.76, by virtue of a milk assignment which the Debtors will provide through their present dairy, Central Equity, until such time as Movants are paid in full;

B. Debtors must immediately identify 212 milking cows as collateral of Movants

by placing ear tags in both ears, using tags provided by the Movants;

C. Movants may inspect the Debtors' dairy herd on an unannounced basis as frequently as every thirty days to ensure that the Debtors are carrying out the orders of this Court; and,

D. Debtors are to keep records concerning all cows identified as collateral of Movants, including their offspring, and pay Movants the proceeds of any culled cows serving as collateral for Movants from the date of this Order until directed otherwise.

ENTERED: March 3, 2005.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge