

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

IN RE:) In Proceedings
) Under Chapter 12
JIMMIE R. HINTZ and)
MARILYN HINTZ,) No. BK 88-30212
)
Debtor(s).)

O R D E R

This matter is before the Court on a Motion for Authority to Use Cash Collateral filed by debtors Jimmie and Marilyn Hintz ("debtors") and objections thereto filed by First National Bank of Sandoval ("First National"). After a hearing on the motion the Court ordered that debtors be permitted to use cash collateral in an amount not to exceed \$19,000.00. The parties were then given an opportunity to submit briefs on the issue of whether First National has a valid lien on the Spring 1988 wheat crop and that issue was taken under advisement.

Initially, the Court notes that this matter should have been filed as an adversary proceeding pursuant to Bankruptcy Rule 7001(2) since it concerns a determination of the validity of a lien. However, rather than letting the case grind to a halt pending the filing of an adversary petition, the Court will direct the Clerk to assign this proceeding an adversary case number upon debtors' payment of the appropriate filing fee. Issuance and service of summons are waived pursuant to Bankruptcy Rule 9005 and 11 U.S.C. §105.

Converting this matter to an adversary proceeding will not prejudice any substantive rights of the parties since they are

already before the Court and have already argued and briefed the validity of the lien issue. See, In re Lemons and Associates, Inc., 69 B.R. 360, 362 (Bankr. D. Nev. 1987).

The relevant facts as to First National's alleged lien are not in dispute. On April 1, 1987, First National loaned debtors \$100,000.00. To secure the loan, debtors gave First National a security interest in

[a]ll crops including growing and stored, owned by Jimmie Hintz and Marilyn Hintz, Shattuc, Il. and located on lands in Clinton and Marion Counties, Illinois...

[and]

All machinery and equipment now owned and hereafter acquired.

First National perfected its security interest by filing a UCC financing statement containing the same description of collateral quoted above.

Debtors argue, inter alia, that the security agreement only applies to crops growing or stored at the time the security agreement was entered into on April 1, 1987, and that after acquired crops, such as debtors' Spring 1988 wheat crop, are not covered by the agreement. First National does not address this issue in its brief. Instead, it simply assumes that after acquired crops are covered in the security agreement and then goes on to address debtors' other arguments.

Section 9-204(1) of the Uniform Commercial Code (Ill.Rev.Stat., ch. 26, ¶9-204(1)) states that "a security agreement may provide that any and all obligations covered by the security agreement are to be

secured by after acquired collateral." In order for a security interest to cover after acquired collateral, the security agreement must clearly spell out that after acquired collateral is being claimed. In re Balcain Equipment Co., Inc., 80 B.R. 461, 462 (Bankr. C.D. Ill. 1987).

The filing of a bankruptcy petition terminates an after acquired collateral provision in a security agreement. 11 U.S.C. §552(a). However, a security interest in after acquired collateral remains valid as to crops planted prepetition but not harvested until after the filing of the petition. 11 U.S.C. §522(b). See also, In re Randall, 58 B.R. 289, 290 (Bankr. C.D. Ill. 1986).

In the present case, the petition was filed on March 16, 1988, well after the planting of the Spring 1988 wheat crop. Therefore, if the security agreement included after acquired crops as part of the collateral, First National would have a valid lien on the wheat crop even though it was harvested after the petition was filed.

The court in In re Balcain Equipment Co., supra, faced a similar situation. In that case, debtor had given a bank a security interest in "all accounts receivable now existing or hereafter arising" and "all inventory held in connection with [debtor's] business." The court held that the security agreement gave the bank a security interest in after acquired accounts receivable but not in after acquired inventory. 80 B.R. at 462.

In the present case, the language of the security agreement clearly states that it applies to all machinery and equipment of debtors "now owned and hereafter acquired." However, the same

"hereafter acquired" language is notably absent in the description of crops securing the lien. A reasonable interpretation of the language in the security agreement is that First National was granted a security interest in after acquired machinery and equipment, but not in after acquired crops. (See Id.) Therefore, the Court finds that First National does not have a security interest in debtors' Spring 1988 wheat crop.

IT IS THEREFORE ORDERED that debtors shall pay the appropriate filing fee for an adversary complaint instanter and the Clerk of the Court shall assign this matter an adversary case number.

IT IS FURTHER ORDERED that, upon receipt of the appropriate filing fee, judgment shall be entered DENYING the validity of First National Bank of Sandoval's lien against debtors' Spring 1988 wheat crop.

_____/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: September 12, 1988