

specifically, PCA contends that debtors' actions (in selling the crops and subsequently filing for bankruptcy) evidence a lack of good faith, and that dismissal is accordingly justified. While debtors admit that their "conduct cannot be condoned," they argue that their actions were not so severe as to warrant dismissal.² Debtors ask that they be given an opportunity to propose a plan of reorganization that would restore to PCA the payments rightfully due them under the security agreement.

PCA did not cite any particular section of the Bankruptcy Code in support of its motion to dismiss. However, the Court assumes from a review of the law and from oral arguments that PCA's motion is brought pursuant to sections 1208(c) and 1208(d). Those sections provide, in part, as follows:

(c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause....

(d) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter or convert a case under this chapter to a case under chapter 7 of this title upon a showing that the debtor has committed fraud in connection with the case.

11 U.S.C. §1208(c) & (d). The list of what constitutes "cause" in section 1208(c) is not exhaustive, and the courts have held that filing a chapter 12 petition in "bad faith" constitutes cause for dismissal. See, e.g., In re Galloway Farms, 82 B.R. 486, 489-90 (Bankr. S.D. Iowa

²In their Memorandum in Support of Denial of Motion to Dismiss Chapter 12 Bankruptcy, for example, debtors state that it was their belief that PCA had an "understanding" with Trenton Cooperative Equity Exchange that part of the crop proceeds would be used to pay Trenton Cooperative for a 1991 operating loan. No evidence of any such agreement or "understanding," however, was presented at the hearing on PCA's motion to dismiss.

1987). Likewise, as debtors concede, the fraud that must be established for dismissal or conversion under section 1208(d) can occur before or after the filing of the bankruptcy petition. See In re Reinbold, 110 B.R. 442, 444 (Bankr. D.S.D. 1990) (court finds debtor's pre-petition sale of creditor's collateral could, by itself, warrant conversion from chapter 12 to chapter 7 under section 1208(d)).

The Court has carefully reviewed those cases discussing dismissal and conversion under sections 1208(c) and (d). While the Court certainly does not condone debtors' conduct, and in fact, has serious concerns regarding debtors' actions, the Court believes that dismissal is a harsh remedy and is not warranted at this time. In those cases that were actually dismissed or converted under section 1208, debtors had engaged in conduct more egregious than what is present here. That conduct generally consisted of some type of continuing scheme to defraud creditors, and often included a combination of the following: (1) multiple filings of bankruptcy petitions; (2) transferring assets with no consideration while still trying to maintain control of those assets; and (3) filing misleading or false schedules. See, e.g., In re Marshall, 108 B.R. 195 (Bankr. C.D. Ill. 1989); In re Zurface, 95 B.R. 527 (Bankr. S.D. Ohio 1989); In re Galloway Farms, 82 B.R. 486 (Bankr. S.D. Iowa 1987). That type of conduct is not present in this case, and the Court therefore will not grant dismissal at this time. However, debtors will be required, and are hereby ordered, to propose a plan of reorganization in which PCA is placed in as good a position as it was prior to the sale of the collateral. Debtors are admonished that if they are unable to propose such a plan, confirmation will likely be

denied, and the Court will, at that time, consider such additional action as it deems appropriate.

Accordingly, for the reasons stated, the motion to dismiss filed by Farm Credit Services of Southeastern Illinois, PCA is DENIED.

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

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