

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

IN RE: ) In Proceedings  
 ) Under Chapter 12  
HAROLD McEVERS, )  
 ) No. BK 87-50021  
 )  
Debtor(s). )  
  
COMMODITY CREDIT CORP., )  
 )  
Movant, )  
 )  
v. )  
 )  
HAROLD McEVERS, )  
 )  
Respondent. )

O R D E R

This matter is before the Court on a Motion for Relief from Stay filed by the Commodity Credit Corporation ("CCC") against debtor Harold MeEvers ("debtor"). The relevant facts, which are not in dispute, are as follows:

In the latter part of April 1986, debtor entered into a contract to participate in CCC's 1986 Price Support and Production Adjustment Program. The contract obligated CCC to make periodic price support payments to debtor. CCC made all the required price support payments except for those that were due on October 1, 1987. The money due debtor on that date was \$10,166.22. These funds are being held by CCC pending resolution of this motion.

On December 22, 1986, debtor received two loans from CCC, a corn loan of \$40,529.04 and a soybean loan of \$21,241.80. Debtor paid off the corn loan in full but only made one payment on the soybean loan.

Debtor filed his petition under Chapter 12 of the Bankrupt Code on January 15, 1987. At the time he filed his petition, debtor remained indebted to CCC for \$9,192.54 on the soybean loan.

CCC requests relief from the stay in order to setoff the \$10,166.32 in price support payments it owes debtor against the amount debtor still owes on the soybean loan. CCC claims that a setoff, pursuant to §553(a) of the Bankruptcy Code, is warranted because these are mutual debts, each of which arose prior to the filing of debtor's bankruptcy petition.

In his memorandum in opposition to CCC's motion, debtor argues that CCC is not entitled to setoff because it did not comply with 31 U.S.C. §3716, the statutory provision that gives federal agencies the authority to set off claims. Debtor also argues against setoff on the grounds that the withheld support payments were not pre-petition because he was not entitled to receive them from CCC until after the filing of the bankruptcy petition.

The right to setoff is provided for in §553(a), which states in pertinent part:

Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case ...

A creditor establishes a right of setoff under this section when the following three-part test is met:

1. A debt owed by the creditor to the debtor

which arose prior to the commencement of the bankruptcy case;

2. A claim of the creditor against the debtor which arose prior to the commencement of the bankruptcy case; and

3. The debt and the claim are mutual obligations.

In re Rinehart, 76 B.R. 746, 749 (Bankr. D. S.D. 1987); In re Brooks Farms, 70 B.R. 368, 371 (Bankr. E.D. Wis. 1987). For the debt and the claim to be "mutual" they must be in the same right and between the same parties standing in the same capacity. 4 Collier on Bankruptcy ¶553-04[2] at p. 553-18 (15th ed. 1988); In re Rinehart, supra, 76 B.R. at 750.

There is no dispute as to the mutuality of the obligations in the present case, nor is there a dispute that debtor's debt to CCC arose pre-petition. Therefore, the only question to be resolved is whether CCC's obligation to debtor arose prior to the commencement of the case.

The price support contract between debtor and CCC was entered into prior to the filing of the petition but part of the money CCC was required to pay debtor under the contract was due after the commencement of the case. CCC wants to set off some of these post-petition payments against what debtor still owes on the soybean loan.

The leading case concerning this issue is the decision of the Minnesota District Court in Matter of Matthieson, 63 B.R. 56 (D. Minn. 1986). Matthieson involved contracts for Agricultural Stabilization and Conservation Service ("ASCS") deficiency payments which were entered into pre-petition but where the actual payments were due post-petition. The debtors in Matthieson each had pre-petition debts owing

to the federal government. The question before the court was whether the ASCS payments owed to the debtors represented pre-petition claims subject to setoff by the government.

The court held that the deficiency payments were pre-petition obligations subject to setoff under §553 because the obligation of ASCS under the deficiency program contracts arose at the time the contract was created. Id. at 60. The court noted that,

[t]he creditor's right of setoff may be asserted in a bankruptcy case even though at the time the petition is filed the debt is absolutely owing but not presently due, or where a definite liability has accrued but is as yet unliquidated

...

Where an obligation exists prior to bankruptcy, it is irrelevant that the exact amount of liability will not be determined until after the bankruptcy petition was filed.

Id. at 59 (citations omitted).

The Matthieson decision has been cited by numerous courts, including this one, to support the allowance of setoff in cases involving government farm support programs where a contract to participate in a support program was entered into pre-petition but the exact amount owed by the government to the farmer was not determined until after the petition was filed. See, In re Ratliff, 79 B.R. 930 (Bankr. D. Colo. 1987) and In re Greseth, 78 B.R. 936 (D. Minn. 1987) (CCC became obligated to make payments to Chapter 12 debtors under the Conservation Reserve Program at the time the contracts were entered into, prior to the filing of the bankruptcy petitions, and, therefore, such payments were subject to setoff against debts owed to the

government by debtors); In re Miller, No. BK 86-31129 (Bankr. S.D. Ill. September 8, 1987) (crop deficiency payments were subject to setoff against debt owed by Chapter 12 debtor to CCC where contract between debtor and ASCS for the deficiency payments was entered into pre-petition). See also, In re Pinkert, 75 B.R. 218 (Bankr. N.D. Tex. 1987); In re Parrish, 75 B.R. 14 (N.D. Tex. 1987); In re Brooks, 70 B.R. 368 (Bankr. E.D. Wis. 1987).

In the present case, the contract between debtor and CCC was entered into almost nine months before the filing of debtor's bankruptcy petition. Since CCC's obligation to make the payments to debtor arose at the time the contract was entered into, and not at the time the payments were due, CCC's obligation to debtor is a pre-petition debt which is subject to setoff under §553(a).

Debtor argues that CCC's attempt at setoff is invalid because it did not comply with 31 U.S.C. §3716, the statute which allows federal agencies to collect a claim by "administrative offset." Debtor does not specify how CCC failed to comply with the statute but simply argues that if a claim under the statute would interfere with or defeat the purposes of another federal program, e.g., Chapter 12, the claim should be denied. Debtor also argues that a possible violation of the automatic stay occurred when CCC withheld the price support payments for seven months before bringing the present motion for relief from stay.

Debtor has not cited any law to support his interpretation of the "administrative offset" statute and a reading of the plain language of 31 U.S.C. §3716 fails to support his position. Furthermore, debtor

has failed to show that he was prejudiced by CCC's delay in bringing this motion.

IT IS THEREFORE ORDERED that the Motion for Relief from Stay filed by Commodity Credit Corporation is GRANTED.

/s/ Kenneth J. Meyers  
United States Bankruptcy Judge

ENTERED: July 14, 1988