

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

IN RE: ) In Proceedings  
) Under Chapter 11  
LAMONT MILLER and )  
MARY E. MILLER, ) No. BK 86-31129  
)  
Debtors. )

O R D E R

This matter is before the Court on debtors' motion to release funds and on the United States' motion to effect offset. The Court, having heard argument and reviewed the documents filed by the parties, finds as follows:

Debtors currently owe Commodity Credit Corporation ("CCC")<sup>1</sup> more than \$12,679.65 on a loan they took out in 1977. For the past several years, debtors have participated in crop deficiency programs operated by the Agricultural Stabilization and Conservation Service ("ASCS").<sup>2</sup> In 1986, by virtue of their participation in an ASCS program, debtors earned the following sums:

Corn Deficiency Payment	\$ 74.54
Wheat Deficiency Payment	208.25
Corn Deficiency Certificate	77.97
Wheat Deficiency Certificate	330.28

Since 1977, debtors have only made one payment on their CCC loan. All the other payments have been offsets from monies due

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<sup>1</sup>CCC is a wholly-owned federal corporation within the United States Department of Agriculture. In re Brooks Farms, 70 B.R. 368, 370 n. 2 (Bankr. E.D. Wisc. 1987).

<sup>2</sup>ASCS is a separate agency within the Department of Agriculture which acts on behalf of CCC. Id.

them under various farm programs. ASCS offsets these funds on behalf of CCC pursuant to 7 C.F.R §§13 and 14.08.

Debtors filed their voluntary Chapter 11 petition on November 6, 1986. The 1986 deficiency payments were not offset by ASCS because the calculations for deficiency payments (which are based on nationwide figures) were not completed prior to the filing of the bankruptcy petition.

CCC has moved to use the 1986 deficiency payments currently held by ASCS to offset the amounts owed by debtors on the 1977 loan. Debtors argue that the deficiency payments arose postpetition and, therefore, cannot be used to offset debtors' obligation to CCC. Debtors also argue that use of the deficiency payments to offset the debt would be a voidable preference under §547. They move for release of the deficiency payments as they allege that the funds are necessary for their Plan of Reorganization.

The right of a creditor to effect an offset in bankruptcy is set forth in §553(a), which provides 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...

The only requirements for an offset under Section 553 are: (1) the debts and claims must be mutual, and (2) they must be pre-petition. In re Braniff Airways, Inc., 42 B.R. 443, 447 (Bankr. N.D. Texas, 1984). A creditor may not offset its prepetition claims against a debt owed to

debtor which came into existence after the filing of the petition. Cooper-Jarrett, Inc. v. Central Transport, Inc. , 726 F.2d 93, 96 (3rd Cir. 1984); Westinghouse Electric Corp. v. Fidelity & Deposit Co. , 63 B.R. 18, 20 (E.D. Pa. 1986).

A creditor's right to offset a debt may be asserted in bankruptcy 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. Matter of Matthieson , 63 B.R. 56, 59 (D. Minn. 1986). "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.

Although the exact amount debtors would receive in deficiency payments was not known prior to the filing of their petition, ASCS's obligation to make these payments clearly accrued before the petition was filed. Therefore, CCC has the right to offset the 1986 deficiency payments against the amounts still owed it by debtors. See, Id.

Debtors' voidable preference argument is inapplicable in this case. Several courts have held that the voidable preference provisions of §547 are inapplicable when an offset has been effected under §553. See, In re Brooks Farms, supra at 372-3, and cases cited therein.

IT IS ORDERED that the United States' motion to effect offset is GRANTED.

IT IS FURTHER ORDERED that debtors' motion to release funds is DENIED.

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

ENTERED: September 8, 1987