

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

IN RE: ) In Proceedings  
) Under Chapter 12  
NORBERT RIDER, )  
) No. BK 87-40285  
Debtor(s). )  
)  
UNITED STATES OF AMERICA) )  
) Plaintiff, )  
v. ) ADVERSARY NO.  
) 89-0052  
C.P. BURNETT & SONS, )  
)  
Defendant. )

MEMORANDUM AND ORDER

On May 7, 1987 debtor filed a bankruptcy petition under Chapter 12. An order confirming debtor's amended plan was entered on August 8, 1988, effective nunc pro tunc November 19, 1987. According to the plan, Farmer's Home Administration ("plaintiff") and C. P. Burnett & Sons ("defendant") have a joint secured claim in the amount of \$28,178.95, which consists of the proceeds from the sale of 1986 crops. The plan provides that "[s]pecific payments to each creditor cannot be determined until the issue as to who has a priority lien on the 1986 proceeds is determined." (Amended Chapter 12 Plan, p. 5). Likewise, the plan provides that the unsecured portion of the debt owed to plaintiff and/or defendant will be paid from debtor's disposable income, but cannot be determined until resolution of the lien priority issue. The plan further states that debtor shall pay, on or before January 15, 1988, \$28,178.95 to the Chapter 12 Trustee, who will then pay the appropriate creditor upon resolution of the lien dispute. However,

since the dispute remained unresolved as of January 15, 1988, the Trustee, pursuant to a provision in the plan, placed the proceeds at issue into an interest bearing account pending final resolution of this matter.

On March 17, 1989 plaintiff filed a Complaint to Determine Priority of Liens, alleging that its security interest in the 1986 crop proceeds is superior to defendant's, and requesting an order directing the Trustee to pay plaintiff the full amount of the proceeds. In response, defendant filed a motion to dismiss, alleging that the bankruptcy court lacks jurisdiction to hear and determine a lien dispute between two secured creditors. Specifically, defendant argues that the claim set forth in the complaint is based strictly on an interpretation of state law, and that resolution of the underlying dispute will have no impact on the administration of debtor's estate. The Court disagrees, and holds that under 28 U.S.C. 157(b), plaintiff's complaint involves a "core matter," and as such, this Court has jurisdiction to hear and determine the issues raised in the complaint.

Section 157 of Title 28 provides in part:

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

28 U.S.C. 157(a) and (b)(1). A core proceeding includes "matters concerning the administration of the estate," and "determinations of the validity, extent, or priority of liens. 28 U.S.C. 157(b)(2)(A) and (K).

The complaint in the instant case clearly involves a determination of the priority of liens. Defendant contends, however, that section 157(b)(2)(K) "must be read as empowering [the bankruptcy court] only to make 'determinations of the validity, extent, or priority of liens upon property of the estate.'" In re Dr. C. Huff Co., Inc., 44 B.R. 129, 134 (Bankr. W.D. Ken. 1984) (emphasis in original). The Court agrees that section 157(b)(2)(K) encompasses only lien disputes involving property of the estate, but disagrees with defendant's premise that the proceeds at issue are no longer property of the estate. Section 541 of the Bankruptcy Code provides that the bankruptcy estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a)(1). The debtor had an interest in the crop proceeds at the commencement of the bankruptcy case and has not, in his plan or otherwise, abandoned that property. Unlike the cases cited by defendant, where debtor had expressly disclaimed any interest in the particular property at issue, or had divested himself of all legal and equitable interests in the property, In re McKinney, 45 B.R. 790 (Bankr. W.D. Ken. 1985) and In re Dr. C. Huff Co., Inc., 44 B.R. 129 (Bankr. W.D. Ken. 1984), debtor has not done so in the present case. The proceeds remain property of the estate and the Court therefore has jurisdiction to resolve the lien dispute under 28 U.S.C.157(b)(2)(K).

The Court recognizes the Seventh Circuit decision, Matter of Xonics, Inc., 813 F.2d 127 (7th Cir. 1987), in which the court held that disputes among creditors of a bankrupt come within the bankruptcy court's jurisdiction only if they involve property of the estate or if resolution of the dispute will affect the recovery of other creditors. Id. at 131-32. See also Matter of Kubley, 818 F.2d 643, 645 (7th Cir. 1987). In Xonics, however, debtor had formally abandoned, in his Chapter 11 plan, the accounts receivable subsequently claimed by competing creditors. As stated by the Seventh Circuit:

The bankruptcy court had jurisdiction of disputes of this kind under 28 U.S.C. 157(b)(2)(K)...at the outset of the case. But...jurisdiction does not follow the property. It lapses when property leaves the estate....As we have said, resolving competing claims to property that belonged to the debtor when it filed a petition in bankruptcy is one of the central functions of bankruptcy law. The only reason why this particular dispute might be treated otherwise is the debtor's "abandonment" of its claim to these receivables.

Id. at 131-132 (citations omitted)(emphasis added).

This Court's decision in In re Kavelman, Adv. No. 88-0196 (S.D. Ill. Oct. 14, 1988) is likewise distinguishable. In Kavelman, the Court held that it lacked jurisdiction over a lien priority dispute among various secured creditors. Kavelman, however, was a Chapter 7 case in which the proceeds at issue were either already in the possession of one of the secured creditors, or on deposit with a bank pursuant to a state court order. The debtor retained no interest in the funds, and the property, though not formally abandoned, was no longer held by either debtor or the trustee.

Even assuming arguendo that the Court lacks jurisdiction under 28

U.S.C. 157(b)(2)(K), this case involves a matter "concerning the administration of the estate." 28 U.S.C. 157(b)(2)(A). The trustee cannot complete plan payments until the lien dispute is resolved, nor can the amount of unsecured debt owed to plaintiff and/or defendant be determined. In short, the estate cannot be completely administered and reorganization cannot be accomplished without resolution of this dispute. Cf. In re Friendship Medical Center, Ltd., 710 F.2d 1297, 1302 (7th Cir. 1983) (suggesting bankruptcy court has jurisdiction of disputes among creditors when it is otherwise "impossible to administer completely the bankrupt's estate").

Accordingly, for the reasons stated, defendant's motion to dismiss is DENIED.

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

ENTERED: August 3, 1989