

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

IN RE:) In Proceedings
) Under Chapter 11
RUSSELL E. SINCLAIR, SR.)
and M. M. SINCLAIR,) No. BK 85-50136
)
Debtors.)

O R D E R

This matter is before the Court pursuant to debtors' motion for dismissal with leave to refile. Debtors filed a Chapter 11 proceeding on April 22, 1985 and request that their proceedings be dismissed with leave to refile a Chapter 12.

The specific issue raised is whether a dismissal pursuant to Section 1112(b) for the purpose of filing a Chapter 12 improperly allows debtors to circumvent the intended effect of Section 302(c)(1) of the Family Farmer Bankruptcy Act, thereby violating the holding of Central Trust Co. v. Geiger, 454 U.S. 354 (1982).

In Central Trust, the court held that the debtor could not voluntarily dismiss its case filed under Chapter XI of the 1898 Act to facilitate refiling under Chapter 11 of the 1978 Act. The court concluded that the debtor should not be allowed to unilaterally accomplish by indirection that which was directly prohibited, since the conversion of old Chapter XI cases to new Chapter 11 was forbidden by the enacting legislation of the 1978 Code.

Central Trust was based upon §403(a), which stated: "A case commenced under the Bankruptcy Act, and all matters and proceedings in or relating to any such case, shall be conducted and determined

under such Act as if [the New Code] had not been enacted, and the substantive rights of parties in connection with any such bankruptcy case, matter or proceeding shall continue to be governed by the law applicable to such case, matter or proceeding as if the [New Code] had not been enacted." 92 Stat. 2683, note proceeding 11 U.S.C. §101 (1976 ed., Supp. IV).

The language of section 302(c)(1) is unequivocal. Section 302(c)(1) of the Family Farmer Bankruptcy Act (Public Law 99-554) states:

"Amendments relating to family farmers.--(1)
The amendments made by Subtitle B of Title II
shall not apply with respect to cases commenced
under Title 11 of the United States Code before
the effective date of this Act."

The provisions of Chapter 12 "shall not" apply to cases filed before November 26, 1987, and no exception is provided.

IT IS ORDERED that debtors' motion for dismissal with leave to refile is denied.

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

ENTERED: March 26, 1987