

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

IN RE:) In Proceedings
) Under Chapter 7
ROBERT E. VAN CLOOSTERE)
and MAXINE VAN CLOOSTERE) No. BK 88-40001
)
Debtor(s).)

MEMORANDUM AND ORDER

This matter is before the court on motion of the Illinois Department of Agriculture and the Illinois Grain Insurance Corporation (creditors) to alter or amend the Court's order of December 9, 1988, in which the Court denied the creditors' motion for extension of time to file discharge and dischargeability complaints with regard to debtors, Robert and Maxine Van Cloostere. See In re Van Cloostere, 94 B.R. 131 (Bankr. S.D. Ill. 1988). The Court's order was based on its finding that the creditors had actual notice of debtors' bankruptcy in time to ascertain and meet the bar date for filing discharge and dischargeability actions. In their motion the creditors request the Court to reconsider its ruling regarding the issue of notice by Department officials or, in the alternative, to address the applicability of the doctrine of subrogation to this case.

The creditors assert that knowledge of debtors' bankruptcy by the Department's attorney could not be imputed to the Department because the attorney's representation was limited to regulatory matters. At hearing, however, the Department's attorney was characterized as the "legal advisor" for both the Department and the Director. While the testimony showed that his duties included

representation at regulatory hearings, the record does not indicate that he acted only in this capacity. Rather, a Department official, after acknowledging that the Department had "conferred with their attorney regarding [debtors'] individual bankruptcy," testified as follows:

Q. Whose responsibility is it to determine what action is to be taken in regards to the Van Cloostere case, Texas Grain?

A. Initially it was the Department's attorney. I believe it was for the Illinois Department of Agriculture, John ~~Na~~ [sic].

The official's additional testimony that the Attorney General, rather than the Department's attorney, "represents the Department in court [on matters requiring litigation]" fails to show, as the creditors assert, that the representation of the Department's attorney did not involve debt collection against the bankrupt, since referring the matter to another attorney for litigation is not inconsistent with this representation. The Court finds no basis in the creditors' arguments to alter its original finding that the Department and the Director, through their legal advisor, had notice of debtors' bankruptcy in time to file discharge and dischargeability complaints so as to bar any subsequent action under §523(a)(3).

The creditors additionally assert that by virtue of the Department's subrogation powers under §10(c) of the Illinois Grain Insurance Act, it was necessary to give notice to all grain claimants of debtors in order to bar a dischargeability complaint. Section 10(c) provides:

The Department shall have the following duties under this Act:

....

(c) to be subrogated to all the rights of the claimant, the claimant shall assign all his rights, title and interest in any judgment to the Department; the Department shall initiate any action it may deem necessary to compel the grain dealer or warehouseman against whom an awarded claim arose to repay to the Illinois Grain Insurance Fund such sums as are disbursed therefrom in relation to each such claim[.]

Ill.Rev.Stat., ch. 114, ¶710(c) (emphasis added).

The creditors argue that since the Department is subrogated to the rights of those individuals who had deposited grain with Texas Junction Grain, Inc., and who had claims against the elevator by reason of its failure, the creditors' dischargeability action cannot be barred in the absence of notice to these claimants. None of the individual claimants was listed on the bankruptcy petition as a creditor, and, while debtors assert that these individuals were aware of debtors' bankruptcy, no testimony was presented at hearing in this regard.

The creditors' argument is without merit in that debtors' liability under the guaranty agreement is to the Director and not to the individual grain claimants. These individuals claims for lost grain lay against the licensee, Texas Junction Grain, Inc., and, while debtors guaranteed payment of the debts of Texas Junction Grain, Inc., to the Department through its Director, there was no independent basis for liability of debtors to the grain claimants.* Since the grain

*The creditors, while alluding to the possibility that debtors themselves constituted grain warehousemen with corresponding liability to grain claimants (Report of Proceedings, at 10), failed

claimants did not constitute creditors of debtors, they were not entitled to notice of the bankruptcy filing, and the Department has no greater rights as subrogee to these claimants than under the guaranty itself.

For the reasons stated, the Court's original order finding that actual notice to the Department constituted notice sufficient to bar the creditors' dischargeability action must stand.

IT IS ORDERED, therefore, that the creditors' motion to alter or amend the Court's order of December 9, 1988, is DENIED.

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

ENTERED: April 10, 1989

to pursue this argument with regard to the subrogation issue. Absent evidence to justify "piercing of the corporate veil," debtors' stock ownership of Texas Junction Grain, Inc., does not make them "owners" of the grain warehouse so as to come within the statutory definition of "grain warehouseman." See Ill.Rev.Stat., ch. 114, ¶702.