

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of
GARY L. MUNCK and
JANET C. MUNCK,

Case No. 87-2942-DH
Chapter 12

Debtors.

ORDER - MOTION TO LIFT AUTOMATIC STAY

This case pends upon the motion of creditor John Deere Company to lift automatic stay. This motion was set for telephonic hearing on June 2, 1988, but was continued upon joint motion of the parties to June 10, 1988, so that the parties could settle the value issue.

This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(G). The Court, having heard the arguments of counsel and having considered the information submitted by letter brief by letters dated June 9, 1988, and June 15, 1988, now enters its findings and conclusions pursuant to F.R. Bankr. p. 7052.

FINDINGS OF FACT

1. The John Deere Company has a security interest in and to a John Deere 8650 4-wheel drive tractor pursuant to a security agreement and UCC Financing Statement filed on December 16, 1982, with the Secretary of State.

2. Debtors are in default under the terms of this note and security agreement.

3. Upon application of the Debtors and a hearing, this Court awarded possession of said John Deere 8650 4-wheel drive tractor to the Debtors.

4. Debtors filed their Amended and Substituted Plan on April 19, 1988. Under said Plan, Debtors have agreed to pay the stated value of said tractor in the amount of \$50,000.00. The payment of this value would be deferred over a period of 5 years, payable annually beginning December 15, 1988, and continuing thereafter until paid in full. The John Deere Company would be paid an interest rate of 10 1/2 percent per annum and each planned payment would be the blended amortized principal and interest due on the claim, the estimated annual payment being \$12,557.46. Said plan further provided that the Debtors would pay the John Deere Company the sum of \$3,000.00 on June 1, 1988, as rent on said tractor until the payments began. The payment of \$3,000.00 would be deducted from the principal.

5. Debtors have contracted for custom work and this tractor is necessary to perform the custom work. Said tractor is essential to the Debtors' proposed plan in order to facilitate a workable cash flow.

6. Said tractor has a 235 horse power engine.

7. Pursuant to the 1988 Iowa Farm Custom Rate Survey, the average charge per hour per horse power for a tractor is \$.12, without fuel or operator.

8. Debtors estimate they will use the tractor from 300 to 500 hours per year.

DISCUSSION

Bankruptcy Code section 362(d) (1) provides that the Court, upon a request of a party in interest and after notice and a hearing, can lift the automatic stay for cause, including a lack of adequate protection. Creditor John Deere Company contends that Debtors have not offered or provided adequate protection for the tractor. Debtors contend they have offered adequate protection under their proposed plan.

The tractor would rent for \$28.20 an hour (\$.12 X 235 horse power). The annual rental would then range from \$8,460.00 (\$28.20 X 300 hours) to \$14,100.00 (\$28.20 X 500 hours).

Debtors' proposed plan provides for a value of the tractor in the amount of \$50,000.00 with payments over 5 years in the amount of \$12,557.46 as a blended amortized principal and interest, with an initial payment of \$3,000.00. These offered payments would provide the John Deere Company with adequate protection for said security.

IT IS ACCORDINGLY ORDERED that the motion of the John Deere Company to lift the automatic stay is overruled.

Dated this 28th day of June, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE