

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of :  
JOHN DEAN FLANERY and : Case No. 83-228-C H  
VIRGINIA K. FLANERY, : Chapter 7  
 :  
 Debtors. :  
- - - - - :  
JOHN DEAN FLANERY and : Adv. No. 87-0248  
VIRGINIA K. FLANERY, :  
 :  
 Plaintiffs, :  
 :  
 v. :  
 :  
 GUTHRIE COUNTY STATE BANK, :  
 FIRST NATIONAL BANK OF OMAHA, :  
 AND THE UNITED STATES OF :  
 AMERICA FOR AND ON BEHALF OF :  
 THE FARMERS HOME ADMINISTRATION, :  
 :  
 Defendants. :  
 :  
- - - - -

**ORDER--COMPLAINT TO DETERMINE VALIDITY,**  
**PRIORITY AND EXTENT OF LIENS**

This proceeding pends upon the complaint to determine the validity, priority, and extent of liens upon remand from The United States District Court for the Southern District of Iowa, Central Division. A pretrial hearing was held on March 11, 1991, the Plaintiff-Debtors appearing by their attorney, James L. Spellman, Neiman, Neiman, Stone and Spellman, P.C.; the Defendants Guthrie County State Bank and First National Bank of Omaha (hereinafter "Banks") appearing by their attorney of record F. L. Burnette II, Nyemaster, Goode, McLaughlin, Voigts, West, Hansell & O'Brien, P.C.; and the United States of America on behalf of Farmers Home

Administration (hereinafter "FmHA") appearing by Kevin R. Query, Assistant U.S. Attorney, Southern District of Iowa. The parties stipulate that this Court must now establish the values. Accordingly, the following findings and conclusions are entered.

### **FINDINGS**

1. On December 23, 1988, this Court entered its order dismissing the complaint for failure to state a cause of action on the basis that Plaintiff-Debtors are precluded from using 11 U.S.C. § 506(d) to avoid their mortgage liens.

2. Plaintiff-Debtors appealed that order and the United States District Court for the Southern District of Iowa, Central Division reversed that decision (89-360-E) and remanded the case for further proceedings herein.

3. In reversing this decision, said United States District Court held that the Debtor may use 11 U.S.C. § 506(d) to avoid lien claims, in whole or in part, which exceed the value of the collateral securing those claims.

4. Thereafter, the United States Court of Appeals for the Eighth Circuit dismissed an appeal for lack of subject matter jurisdiction for want of finality.

5. Debtors filed for relief under Chapter 11 of the Bankruptcy Code on February 18, 1983. This case was converted to a Chapter 7 liquidation by order entered on October 25,

1984.

6. At the time of filing, Debtors owned five tracts of real estate located in Guthrie County, Iowa. These tracts are described as follows:

Tract No. 1:

The Southeast Quarter ( $SE\frac{1}{4}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ) of Section 17 and the East Half ( $E\frac{1}{2}$ ) of the Northwest Quarter ( $NW\frac{1}{4}$ ) and the Southwest Quarter ( $SW\frac{1}{4}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ) of Section 20, all in Township 80 North, Range 31, West of the 5th P.M., Iowa

Tract No. 2:

The South Half ( $S\frac{1}{2}$ ) of the South Half ( $S\frac{1}{2}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ) and the West Half ( $W\frac{1}{2}$ ) of the Southeast Quarter ( $SE\frac{1}{4}$ ) and the Northeast Quarter ( $NE\frac{1}{4}$ ) of the Southeast Quarter ( $SE\frac{1}{4}$ ) all in Section 21, Township 80 North, Range 31, West of the 5th P.M., Iowa

Tract No. 3:

The Northwest Quarter ( $NW\frac{1}{4}$ ) of the Southeast Quarter ( $SE\frac{1}{4}$ ) in Section 17, Township 80 North, Range 31, West of the 5th P.M., Iowa

Tract No. 4:

The South Half ( $S\frac{1}{2}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ) and the Southwest Quarter ( $SW\frac{1}{4}$ ) of the Northeast Quarter ( $NE\frac{1}{4}$ ) of Section 17, Township 80 North, Range 31 West of the 5th P.M., Iowa

Tract No. 5:

The North Half ( $N\frac{1}{2}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ) in Section 17, Township 80 North, Range 31, West of the 5th P.M., Iowa

7. Tract No. 5 includes the 40-acre homestead of the parties.

8. Prior to seeking relief under the Bankruptcy Code, Debtors gave a mortgage to FmHA on the five tracts to secure a loan in the principal amount of \$300,000.00, plus interest.

9. Banks are loan participants sharing a mortgage on all five tracts.

10. All of the real estate was abandoned by Chapter 7 Trustee on December 28, 1984.

11. Debtors received their discharge on March 5, 1985.

12. Debtors filed their complaint herein on November 20, 1987. At the time of trial, June 1, 1988, the fair market value of the five tracts were as follows:

Tract 1	160 acres	\$ 33,600.00
Tract 2	160 acres	68,000.00
Tract 3	40 acres	15,000.00
Tract 4	120 acres	64,000.00
Tract 5	<u>80 acres</u>	<u>90,750.00</u>
TOTAL	560 acres	\$271,350.00

13. Tract No. 1 is subject to a real estate mortgage to Agnes Flanery. At the time of trial, the balance owing on this mortgage, principal and interest, was \$91,949.37.

14. The accrued unpaid real estate taxes on Tract 1 amount to \$4,251.00.

15. The mortgage to Agnes Flanery antedates and was filed of record prior to that of FmHA and the Banks.

16. Tract 4 is subject to a real estate contract wherein Agnes Flanery is seller and Debtors are the buyers. The contract balance as of the date of trial is \$68,590.00.

17. The accrued real estate taxes on Tract 4 are \$8,251.00.

18. Commodity Credit Corporation (hereinafter "CCC") holds a mortgage on a portion of Tract 5. FmHA subrogated its mortgage on this tract to CCC. As of the date of trial, the principal interest on this mortgage totaled approximately \$39,000.00.

19. Accrued real estate taxes as of the date of trial on the following tracts are as follows:

Tract 2	\$ 9,576.00
Tract 3	2,298.00
Tract 5	12,640.00

20. FmHA filed a claim in the case in the amount of \$321,471.22, plus per diem interest of \$65.1194 from February 18, 1983. As of June 30, 1988, this claim amount to \$448,876.00.

#### **CONCLUSIONS OF LAW**

In order for a claim to be an allowed secured claim under 11 U.S.C. § 506(a), as relevant herein, three elements must be present:

1. It must be an allowed claim of a creditor;

2. it must be secured by a lien on property; and
3. the estate must have an interest in the property.

Elements 1 and 2 are not at issue in this proceeding, and under the law of this case, the values must be determined as if the estate had an interest in the property. The value is determined "in light of the purpose of the valuation and the proposed disposition or use of such property." The collateral is to be retained and used by the Debtors for use as agricultural land. Therefore, the Court must place a value on the property, which would be received in the hypothetical sale as opposed to an actual disposition of the property. Under the circumstances of this case the value of the collateral should be determined as of the time of the hearing.

The value of the collateral at the time of hearing is as follows:

Tract 1:

Fair Market Value	\$ 33,600.00	
Minus Real Estate Tax	4,251.00	
Minus First Mortgage	<u>91,949.37</u>	
		0.00

Tract 2:

Fair Market Value	68,000.00
Minus Real Estate Tax	<u>9,576.00</u>

\$58,424.00

Tract 3.

Fair Market Value	15,000.00
Minus Real Estate Tax	<u>2,298.00</u>

\$12,702.00

Tract 4:

Fair Market Value	\$ 64,000.00
Minus Real Estate Tax	8,251.00
Minus Contract Balance	<u>68,590.00</u>

0.00

Tract 5:

Fair Market Value	90,750.00
Minus Real Estate Tax	12,640.00
Minus CCC Mortgage	<u>39,000.00</u>

\$39,110.00

\$110,236.00

FmHA's claim is in the amount of \$448,876.00. The value of the collateral for § 506(a) purposes is \$110,236.00. Accordingly, FmHA's claim exhausts the secured value of the collateral as of the date of hearing and FmHA's mortgage has the secured value of \$110,236.00.

Banks' mortgage on the tracts is junior to that of FmHA. Since FmHA's claim exhausted the value of the collateral, Banks' mortgage has no secured value.

IT IS ACCORDINGLY ORDERED as follows:

(1) The value of FmHA's secured interest in the five tracts, as shown in the Findings of Fact, is \$110,236.00; the balance of the secured claim is avoided as to that amount in excess of \$110,236.00; and

(2) the Banks' mortgage is avoided on said tracts of real estate as the mortgage of FmHA has exhausted all value in the five tracts of land.

LET JUDGMENT RENDER ACCORDINGLY.

Dated this 30th day of July, 1991.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE