

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

JAMES H. WUBBEN,
RENEA S. WUBBEN,
Engaged in Farming,

Case No. 87-810-CJ

Chapter 7

Debtors.

ORDER

On January 8, 1988 the Chapter 7 trustee filed a "Final Report and Final Account Before Distribution". On January 15 and 16, 1988 the United States of America filed two objections to the trustee's final report and account on behalf of the Farmers Home Administration (FmHA). On January 15, 1988 the government also filed a motion for abandonment which relates directly to its objections.

The FmHA argues that it has a prior superior interest in the debtors' deficiency payments and PIK certificates under the 1986 Government Feed and Grain Program and pursuant to its security agreements and mortgages. Accordingly, the FmHA contends that such property is not an asset of the estate which can be distributed to general unsecured creditors. The FmHA does not claim it advanced input costs for the crop for which deficiency payments were made.

Pursuant to the March 10, 1988 hearing in this matter, this court entered a minute order which stated that "the disposition of this matter pends on the outcome in Butz and Hotopp".

DISCUSSION

The issue in this dispute is whether the FmHA has a security interest in certain cash payments and PIK certificates.

Both before and after the hearing was conducted, this court rendered a number of decisions that remain viable and dispositive of the issue in this case. See In re Halls, 79 B.R. 417 (Bankr. S.D. Iowa 1987) (7 C.F.R. sections 709 and 713.153(b) prohibit assignment of program payments to secure a pre-existing indebtedness and 7 C.F.R. section 770.4(b) and 770.6 prohibit the assignment of PIK certificates as security); In re Mattice, 81 B.R. 504 (Bankr. S.D. Iowa 1987) (following Halls and noting no federal statute permitted the FmHA to encumber certificates), ***aff'd sub nom.*** United States v. Mattice No. 88-22-W, slip op. (S.D. Iowa October 3, 1988) (bankruptcy court properly applied federal law over state law)¹; Matter of Butz, 86 B.R. 595 (Bankr. S.D. Iowa 1988) (the FmHA was not entitled to CRP benefits under the rents and profits clause of its mortgage or under administrative offset provisions or under a Halls analysis) , ***rev'd and remanded sub nom.*** United States of America v. Butz, No. 88-366-A, slip op. (S.D. Iowa, filed March 21, 1989) (reversed "capacity" finding and remanded for further findings on the equity of offset, affirmed

¹ The government appealed District Court Judge O'Brien's decision to the Eighth Circuit Court of Appeals. Thereafter, the government moved for dismissal of that appeal. The motion was granted and the appeal was dismissed. United States of America v. Mattice, No. 88-2803SI, Judgment (8th Cir. January 31, 1989).

finding with respect to rents and profits and declined to rule on Halls analysis); Matter of Hunerdosse, 85 B.R. 999 (Bankr. S.D. Iowa 1988) (FmHA not entitled to program payments under administrative offset provisions, payments were not earnings from services performed, deficiency and diversion payments were not proceeds for purposes of the UCC and, had FmHA's security interest in "general intangibles" been sufficient, the Halls analysis would have applied) , *aff'd sub nom.* United States of America v. Hunerdosse, No. 88-364-B, slip op. (S.D. Iowa, filed Nov. 28, 1988)²; and Matter of Hotopp, No. 87-650-C, slip op. (Bankr. S.D. Iowa July 5, 1988) (FmHA waived right to claim offset where proof of claim, which was filed long before agency raised issue, indicated the claim was not subject to offset).

Additionally, on January 26, 1989 the Eighth Circuit Court of Appeals rendered In re Kingsley, 865 F.2d 975 (8th Cir. 1989). In that decision, the appellate court found that both diversion and deficiency payments were not proceeds under North Dakota law but rather resulted from contract rights based upon the statutory and regulatory framework of the farm support program. *Id.* at 978-81. Parenthetically, it is noted that the Eighth Circuit found its conclusion was not at odds with its prior ruling that rights to government payments fall into the category of either

² The government did not appeal from Chief District Court Judge Vietor's decision.

accounts or general intangibles under the Uniform Commercial Code. See Sunberg, 729 F.2d 561 (8th Cir. 1984). The court in Kingsley was not presented with such claims and, accordingly, did not analyze the facts further under a "preemption" theory based on the regulations that took effect since the Sunberg decision was rendered.

As stated at the outset of the ruling, this court's prior decisions are dispositive of the issue in this case. The only ruling by this court which has been reversed to date is that of there being no mutual capacity between government agencies to permit administrative offset. However, in the remand order in Butz, District Court Judge Wolle directed this court to make further findings with regard to the equity of offset. ³ That need not be done in this case because the FmHA did not claim a right of offset on its proof of claim filed July 23, 1987. Consistent with the Hotopp decision, the court finds that the FmHa has waived its right to claim an administrative offset.

Therefore, the FmHA's objections to the trustee's final report and account are overruled and its motion for abandonment is denied.

Signed and filed this 10th day of July, 1989.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE

³ Oral arguments on the remanded issue were heard on June 8, 1989. The matter is under advisement.