

THE UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of  
CHARLES T. GROSS,

Case No. 84-794-W  
Chapter 11

Debtor.

**ORDER MOTION FOR RELIEF FROM STAY AND  
MOTION FOR ADEQUATE PROTECTION AND TO  
COMPEL PAYMENTS DUE UNDER STIPULATION  
AND OPERATING AGREEMENT**

On February 2, 1988, a hearing was held on motion for relief from stay and motion for adequate protection and to compel payments due under stipulation and operating agreement, both of which were filed July 9, 1987, by the creditor Federal Deposit Insurance Corporation (hereinafter "FDIC"). Michael C. Washburn appeared on behalf of the Debtor and Robert V. Ginn appeared on behalf of FDIC. At the conclusion of said hearing, the Court took this matter under advisement and now considers it fully submitted.

This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(G). The Court, having reviewed the pleadings, briefs, and arguments of counsel, now enters its findings and conclusions pursuant to FED.R. BANKR. p. 7052.

**FINDINGS OF FACT**

1. On May 15, 1984, Debtor filed his Chapter 11 petition.
2. Debtor is a hog farmer and has been in the farming business since 1940.

3. As of May 15, 1984, Debtor was indebted on notes to the Oakland Savings Bank of Oakland, Iowa, (hereinafter "Bank") for an undetermined amount.

4. As collateral for said indebtedness, Debtor granted Bank a security interest in all equipment, farm products, including, but not limited to, crops, livestock, supplies used or produced in farming operations, deficiency payments, diversion payments, contract rights, accounts, and proceeds thereof.

5. Bank properly perfected said security interest.

6. On July 10, 1984, the court approved a stipulation and operating agreement (hereinafter "Agreement") entered into by Debtor and Bank. The Agreement granted Debtor: 1) a \$100,000 operating loan secured by a real estate mortgage and other collateral; 2) consent to sell hogs and use sale proceeds for which Debtor was to pay Bank \$50 per market hog sold, \$100 per breeding sow sold and replaced, and all proceeds of every breeding sow sold and not replaced; and 3) consent to use certain crop proceeds. As adequate protection for the use of its cash collateral, Bank received a replacement lien on all livestock, various other nonequipment types of collateral including products and proceeds, and a second mortgage lien.

7. After entering into said Agreement, Bank became insolvent. On September 7, 1984, Bank was closed by order

of the State Superintendent of Banking who then appointed FDIC as Receiver.

8. FDIC, in its corporate capacity, purchased all of Bank's rights with respect to property of Debtor's estate, including Bank's claims against Debtor, whether known or unknown.

9. pursuant to paragraph 2.5 of the Agreement, Bank's (now FDIC's) consent to use cash collateral ended on January 15, 1985.

10. In an Order of February 28, 1985, the Court ordered Debtor to maintain a separate account for his hog operation and to segregate all proceeds from hog sales in said account until further order of the Court.

11. In an Order of November 3, 1985, the Court ordered the release of the first mortgage lien granted under the Agreement because Debtor repaid the \$100,000 loan by January 15, 1985. In the same Order, the Court fixed the amount of the second mortgage lien granted under the Agreement at \$179,589.94 plus interest, representing the total amount of cash collateral used during the life of the Agreement.

12. Debtor filed his original plan on March 29, 1985, and filed an amended plan on September 26, 1985. Paragraph 3.03 gave Debtor full authority to sell and use property of the estate. Paragraph 3.07 provided that as additional compensation for their work in the farming operation, Debtor's three sons would receive nine 40-pound gilt pigs

per month to be owned by the sons in partnership. Paragraph 7.08 provided that FDIC's allowed claim as finally determined by the Court would be paid in full on or before the effective date of the plan. Paragraph 11.01(1) provided that FDIC would retain its lien securing its claim until either the lien property was sold or the claim was satisfied in full. If the property was sold, FDIC's lien would attach to the proceeds.

13. The provisions regarding full payment of FDIC's claim and the transfer of pigs to Debtor's sons were identical in both the original and amended plans. FDIC did not object to the original plan. FDIC's objection to the amended plan did not mention the provisions regarding the transfer of pigs to the sons.

14. The plans contained no provisions concerning adequate protection payments to FDIC for the use of its cash collateral and equipment by Debtor.

15. Debtor's amended plan was confirmed on November 12, 1985.

16. On July 9, 1987, FDIC filed a motion for relief from stay. In said motion, FDIC argued the stay should be lifted for two reasons: 1) Debtor's continued unauthorized use of FDIC's cash collateral and equipment, subject to FDIC's lien, without providing adequate protection payments; and 2) Debtor's failure to pay in full FDIC's claim, pursuant to the terms of Debtor's confirmed plan.

17. On July 9, 1987, FDIC filed a motion for adequate protection and to compel payments due under stipulation and operating agreement. In said motion, FDIC argued it was entitled to payments as adequate protection for Debtor's continued unauthorized use of FDIC's cash collateral and equipment, both subject to FDIC's lien. Further, FDIC requested payment for the sale of hogs, pursuant to the terms of the Agreement.

18. On July 15, 1987, Debtor filed a response to both motions. In said response, Debtor argued that FDIC's claim amount is disputed and its validity is the subject of a pending adversary proceeding. Debtor further argued the Agreement was completely performed and is now terminated. Finally, Debtor noted his use of farm equipment was according to the terms of the confirmed plan and that its continued use was necessary to his reorganization.

#### DISCUSSION

Bankruptcy Code section 362(d) (1) provides that on request of a party in interest, the court can lift an automatic stay "for cause," including the lack of adequate protection of an interest in property of said party. The decision of whether or not to lift the stay under section 362(d)(1) is left to the bankruptcy judge's discretion. Matter of Rutter, 25 B.R. 244, 247 (Bankr. D. Kansas 1982); In re Frigitemp Corp., 8 B.R. 284, 289 (D.S.D. N.Y. 1981). In the case at bar, FDIC has moved alternatively for lifting

of stay due to lack of adequate protection, and for adequate protection and an order compelling Debtor to make payments under the Agreement.

The provisions of a confirmed plan bind all parties whose rights are affected by said plan. In re Jartran, 76 B.R. 123, 125 (Bankr. N.D. Ill. 1987); Matter of Wood, 47 B.R. 774, 777 (Bankr. W.D. Wis. 1985). Following confirmation of a Chapter 11 plan, a creditor's lien rights are only those granted in the confirmed plan. In re Arctic Enterprises, Inc., 68 B.R. 71, 79 (D. Minn. 1986). Concerning the use of property of the estate in Chapter 11 proceedings, courts have applied section 363 to transactions only where plans have not yet been confirmed. Wood, 47 B.R. at 776. Thus, if a Chapter 11 plan is confirmed, section 363 does not apply. Id.

In the case at bar, FDIC moved to lift stay on two grounds, including: 1) Debtor's continued unauthorized use of FDIC's cash collateral and equipment, subject to FDIC's lien, without providing adequate protection; and 2) Debtor's failure to pay in full FDIC's claim, pursuant to the terms of Debtor's confirmed plan. Taking the two in reverse order, Debtor's failure to pay in full FDIC's claim does not rise to the level of "for cause" under section 362(d) (1). Debtor has yet to pay FDIC's claim because the amount of said claim is disputed and its validity is the subject of a pending adversary proceeding. Therefore, this ground for

relief from stay is not "for cause" under section 362(d) (1) and thus is rejected.

FDIC's second ground for relief from stay—Debtor's unauthorized use of cash collateral and equipment without providing adequate protection—is also unpersuasive for the following reasons. First, during the life of the Agreement, Debtor had FDIC's consent to use its cash collateral. In addition, adequate protection for the use of cash collateral under the Agreement was established by the Court's November 3, 1985, Order. Thus, during the life of the Agreement, FDIC consented to Debtor's use of cash collateral and was adequately protected.

Second, since November 12, 1985, the date of confirmation of Debtor's amended plan, Debtor has been authorized to use FDIC's cash collateral and equipment pursuant to the terms of the plan. As noted above, the provisions of a confirmed plan bind all parties whose rights are affected by the plan. Jartran, 76 B.R. at 125. In Debtor's plan, paragraph 3.03 gave Debtor full authority to sell and use property of the estate. Paragraph 3.07 provided that Debtor's three sons would receive nine 40-pound gilt pigs per month. FDIC did not object to these provisions in either the original or the amended plan. Thus, Debtor's post-confirmation use of cash collateral and equipment was authorized by the terms of the plan.

Concerning adequate protection for Debtor's post-confirmation use of FDIC's cash collateral and equipment, section 363 does not apply after a Chapter 11 plan is confirmed. Wood, 47 B.R. at 776. Furthermore, as noted above, the provisions of a confirmed plan bind all parties. Jartran, 76 B.R. at 125. There is no provision in Debtor's confirmed plan providing adequate protection payments to FDIC for the post-confirmation use of its cash collateral and equipment. Therefore, since the adequate protection requirements of section 363(e) are no longer applicable, and since Debtor's confirmed plan does not provide for post-confirmation adequate protection, FDIC is not entitled to any post-confirmation adequate protection.

The only period in question regarding Debtor's authorization to use FDIC's cash collateral and equipment is the gap period between the end of the Agreement and prior to confirmation, January 16, 1985 - November 11, 1985. Throughout this period, Debtor continued to sell hogs and use equipment as part of his farm operation. In the February 28, 1985, Order, the Court required Debtor to maintain a separate account for his hog operation and to segregate all hog sale proceeds in said account until further order of the court. Thus, Debtor was authorized to use FDIC's cash collateral and equipment during the gap period.



No provision providing adequate protection to FDIC for the use of its cash collateral and equipment during the gap period was included in either the original or amended plan. FDIC did not object to the lack of such provision in either plan. As noted above, the provisions of a confirmed plan bind all parties. Jartran, 76 B.R. at 125. In addition, a creditor's lien rights are only those granted in the confirmed plan. Arctic Enterprises, 68 B.R. at 79. Thus, when Debtor's amended plan was confirmed without a provision providing for gap period adequate protection, FDIC was thereafter barred from seeking such. Therefore, Debtor's continued use of FDIC's cash collateral and equipment during the gap period was authorized, and FDIC is not entitled to any adequate protection payments for such use.

In conclusion, since Debtor was authorized to use FDIC's cash collateral and equipment throughout the Agreement, gap period and post-confirmation, and since FDIC is not entitled to any adequate protection payments for such use, FDIC is not entitled to have the stay lifted because it has not proven a "for cause" ground under section 362(d) (1).

FDIC's second motion is for adequate protection and to compel payments due under the Agreement. FDIC's arguments on this motion are unpersuasive for the following reasons. First, as noted above, FDIC is not entitled to adequate protection during either the gap period or post-confirmation because: 1) Debtor's confirmed plan does not provide for

adequate protection for Debtor's use of such property during either period; and 2) section 363(e) does not apply post-confirmation. Second, the Agreement expired January 15, 1985, and the Court's Order of November 3, 1985, settled once and for all FDIC's lien and adequate protection for the use of its cash collateral and equipment during the life of the Agreement. Therefore, FDIC is not entitled to either adequate protection or payments under the Agreement.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that Debtor's use of FDIC's cash collateral and equipment was authorized throughout the Agreement, gap period, and post-confirmation.

FURTHERMORE, FDIC is not entitled to adequate protection payments for the use of its cash collateral and equipment by Debtor throughout the Agreement, gap period, and post-confirmation because the Agreement has expired and was previously ruled upon, Debtor's confirmed plan does not so provide, and section 363(e) is not applicable post-confirmation.

IT IS ACCORDINGLY ORDERED, that FDIC's motions for relief from stay and for adequate protection and to compel payments due under the stipulation and operating agreement are denied.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE