

**UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa**

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|-----------------------------|---|----------------------------|
| <b>In re:</b>               | : | <b>Case No. 02-3201-CH</b> |
| <b>RYDER FARMS, INC. OF</b> | : |                            |
| <b>MISSOURI &amp; IOWA</b>  | : |                            |
|                             | : | <b>Chapter 11</b>          |
| <b>Debtor.</b>              | : |                            |

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**ORDER—TRUSTEE’S MOTIONS TO DISMISS CASE AND FOR RELIEF  
FROM STAY AND OBJECTIONS THERETO**

On October 10, 2002, a number of matters came on for hearing in the above captioned case. The court entered a minute order on October 11, 2002, disposing of Debtors’ Motion to Continue Hearing; Trustee’s Motion to File Over-Length Brief; and Trustee’s Motion to Reconsider Order Filed August 9, 2002. Hearing was also held on Trustee’s Motion to Dismiss Case and Objection Thereto and Trustee’s Motion for Relief from Stay and Objection Thereto. Marta J. Day appeared for the Debtor-in-Possession Ryder Farms, Inc. of Missouri & Iowa; Paul A. Drey appeared for Trustee Donald F. Neiman; Michael J. Cunningham appeared for Maple Tree Investments; Assistant United States Trustee James L. Snyder appeared for the Region 12 United States Trustee Habbo Fokkena. At the conclusion of the hearing, the court took the matter under advisement upon a briefing schedule. Post-hearing briefs have been filed, and the court now considers the matter fully submitted.

The court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157(b)(1) & 1334 and order of the United States District Court for the Southern District of Iowa. This is a core proceeding. 28 U.S.C. § 157(b)(2)(A) & (G). The court, upon review of the

briefs, pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 9014 and 7052.

### **PROCEDURAL BACKGROUND**

Alfred and Mary Ann Ryder filed a joint chapter 7 bankruptcy petition on July 6, 1995, and the case remains open and under this court's jurisdiction over seven years later. From the outset, the chapter 7 trustee, Donald Neiman, (hereinafter Trustee) found discrepancies with Debtors' petition and their testimony at the § 341 meeting of the creditors. Upon investigation, Trustee discovered undisclosed assets consisting of farm real estate, farm equipment, and livestock.

The Ryders have argued that all these assets belong to a corporate entity. They have identified the entity at various times as Ryder Farms, Inc. of Iowa, Ryder Farms, Inc. of Illinois, Ryder Farms, Inc. of Missouri, and now Ryder Farms, Inc. of Missouri and Iowa.

On January 27, 2000, Alfred Ryder, as president of Ryder Farms, Inc., filed a chapter 12 petition with the United States Bankruptcy Court for the Western District of Missouri. That chapter 12 was subsequently transferred to the United States Bankruptcy Court for the Southern District of Iowa and ultimately dismissed.

On March 19, 2002, Ryder Farms, Inc. of Missouri and Iowa (hereinafter Ryder Farms) filed a petition for reorganization under chapter 11 again with bankruptcy court for Western Missouri. The case was transferred to the United States Bankruptcy Court for Southern District of Iowa by order entered on May 30, 2002.

Trustee filed the Motion to Dismiss Case on July 7, 2002, and a Motion for Relief from Stay on July 8, 2002. Both matters were set for hearing on July 30, 2002, and continued to August 13, 2002, along with other matters, on motion by counsel for Ryder Farms.

Alfred and Mary Ann Ryder were scheduled to testify at the August 13, 2002, hearing. John Manring appeared as counsel for Ryder Farms, and not as counsel to the Ryders individually. The court first took up Manring's motion to withdraw as counsel, and granted the motion. The Assistant United States Trustee subsequently informed the court of impending criminal action against Alfred and Mary Ann Ryder. The court determined not to allow the hearing to proceed without counsel present for either the Ryders or the corporation. It granted the corporation twenty days to retain counsel, and continued the remaining matters to October 10, 2002.

At the October 10, 2002, hearing, Trustee called both Alfred and Mary Ann Ryder to testify. After stating their names, each invoked the Fifth Amendment privilege against self-incrimination and refused any subsequent questions. Over the course of the hearing Trustee offered various exhibits and his testimony into evidence. Trustee also requested that the court take judicial notice of the all prior matters in Alfred and Mary Ann Ryder's chapter 7 case, No. 95-2000-CH and three adversary proceedings arising in that case Adv. Nos. 95-95137, 98-98049, and 99-99094. Neither the Ryders nor Ryder Farms, Inc. objected. Because the bankruptcy cases are inexorably intertwined, and no objections were presented, the court granted Trustee's request incorporating those files into the record.

## **FACTS**

A full rendition of the facts of Alfred and Mary Ann Ryder's chapter 7 case is unnecessary for this decision; however, the following summary will be useful in placing the submitted matters in context. The seven contentious years of administration of Alfred and Mary Ann Ryder's chapter 7 case are well documented in six main case files and additional adversary proceeding files. Their actions have been brought under the scrutiny of the court many times and are the subject of numerous decisions. Over the course of this case, their activities have been a veritable litany of bad acts. Early in the proceedings, Alfred Ryder squandered his credibility, making false statements and changing his testimony to suit his position at any given time. Five different attorneys have appeared for them in the chapter 7 case.

Alfred and Mary Ann Ryder are farmers, who, depending on whom and when asked, live either in Lineville, Iowa, or Princeton, Missouri. They moved to this part of the country from Illinois sometime around 1960. They come from farming families, and have relatives in Illinois who, at least at one time, were engaged in farming.

Over the years, the Ryders accumulated a great deal of farmland and equipment. However, like many other farmers in the Midwest, the 1980s were difficult financial times for them, and they lost at least one tract of land at foreclosure. Consequently, and at least in part on the advice of an accountant, Alfred and Mary Ann Ryder formed a corporation named Ryder Farms, Inc. of Iowa. The first meeting of incorporation was held on February 26, 1986. The minutes of the meeting indicate the address of the corporation to be Route 1, Box 183, Lineville, Iowa. The Articles of Incorporation

indicate Alfred and Mary Ann Ryder as the only directors. Alfred was the President and Secretary, and Mary Ann was the Vice-President and Treasurer. The articles of incorporation were filed with the Iowa Secretary of State on February 27, 1986.

On February 27, 1986, Ryder Farms, Inc. issued 10,000 shares of stock, 5,000 to Alfred and 5,000 to Mary Ann. The Ryders paid no money for this stock. Documents indicate that on or about November 26, 1986, Alfred Ryder transferred 5,000 shares of stock to Thomas Ryder and Mary Ryder transferred 5,000 shares of stock to Lucille Ryder. The documents indicate that the transfer was for value; yet, the Ryders claimed that the shares were gifted.

The Ryders have been less than meticulous in maintaining Ryder Farms, Inc. as a separate entity. They failed to keep separate accounts for the corporation and failed to observe corporate formalities. The Ryders have failed to produce corporate records even when ordered by the court. What records that have been produced are in disarray and appear to be formulated for litigation and not as a true record of the corporation. At various times, reports show the corporation to own farmland and at other times to own nothing. Others show Thomas Ryder as a director and stockholder, although he has disavowed any interest in this corporation.

In a 1993 case brought by Hullinger Trucking, Inc., Case No. CV392-146CC, the Circuit Court of Linn County, Missouri, determined that “Alfred K. Ryder dominated and controlled” Ryder Farms, Inc. such that the corporation “was the alter ego of Defendants Alfred K. Ryder and Mary Ann Ryder.” (Ex. E at 2). It also determined that Alfred

falsely represented himself as Thomas Ryder. (Ex. E at 6). The Missouri court entered a total judgment in excess of \$37,000.00 against the Ryders and Ryder Farms, Inc.

Shortly after entry of the judgment, Alfred and Mary Ann Ryder commenced their chapter 7 bankruptcy case. Along with their petition, the Ryders submitted schedules indicating that they owned no real property, and a small amount of personal property valued at \$3,420.00. They scheduled monthly income of \$560.00 from social security payments and \$466.66 from employment with Ryder Farms, Inc. as their only sources of income.

Notably absent from the schedules is any interest in Ryder farms, Inc. However, on or about July 31, 1995, Alfred Ryder filed farm program documents in Mercer County, Missouri, indicating among other things, that Alfred and Mary Ryder had a 50% interest in Ryder Farms, Inc. The documents also stated, "Mary Ann Ryder receives no payments from Scott County, Illinois. She cash rents her farm."

Needless to say, Alfred and Mary Ann Ryder's bankruptcy schedules contain a number of errors and omission. At a hearing some five years into the administration of the case, Alfred finally conceded that the schedules were inaccurate on the date that they were filed. Even as late as the date of this hearing, Trustee testified that he continues to have potential assets brought to his attention.

As Trustee became aware of potential assets, he sought the turnover of the property. The Ryders testified that Ryder Farms, Inc. of Iowa owned no assets, and all the property identified by the Trustee belonged to Ryder Farms, Inc. of Illinois. Trustee contacted representatives of the Illinois corporation who indicated that it had no interest

in any farm property located in Iowa or Missouri, and executed a quit claim deed to Trustee conveying any and all its interest in such property to Trustee. Further, Thomas Ryder provided an affidavit stating that he had no interest in any Iowa or Missouri property.

Trustee sought court approval to administer the property that he had identified as estate property, including renting some of the farmland while the case proceeded. The Ryders then changed their story and informed Trustee and the court that the property belonged to Ryder Farms, Inc. of Iowa.

On October 13, 1995, the United States Department of Agriculture commenced an adversary proceeding, Adv. No. 95-95137, objecting to discharge under 11 U.S.C. § 727. Trustee intervened in the proceeding on October 27, 1995, and joined in the objection to discharge.

On March 23, 1998, Trustee commenced Adv. No. 98-98049 requesting the turnover of money or property and the determination of the extent, validity, and priority of a lien. On June 4, 1999, Trustee commenced Adv. No. 99-99094 requesting the accounting and turnover of property.

In response to actions by Trustee, the Ryders converted their case to one under chapter 13, but then converted back to chapter 7 when Trustee objected. They filed a motion to convert the case to chapter 12, but withdrew the motion when Trustee objected, pointing out that they claimed they owned no equipment and no real property, and had no farm income. The Ryders attempted to dismiss the case on two separate occasions. However, the court found that they had not shown cause for dismissal in light of their

abuse of the bankruptcy process by using it to forestall the collection of their debts. The court determined that their creditors would be prejudiced by a dismissal, and it was not in their best interests.

The Ryders also proposed a compromise and settlement of their debts, but the United States Trustee objected to the proposal. The court sustained the objection finding that given the Ryders' lack of candor and honesty, particularly when under oath, there was no reason to believe that they had listed all their known creditors or had provided accurate information to those listed. Further, the waiver of discharge included in the proposal was rendered valueless by the requirement that their creditors accept the settlement as full satisfaction of the debt.

In a continuing effort to frustrate creditors and remove themselves from this court's jurisdiction, Alfred Ryder, as president of Ryder Farms, Inc., filed a chapter 12 petition with the United States Bankruptcy Court for the Western District of Missouri. The accompanying schedules show real property owned by the corporation identified as 1000 acres in Harrison County, Missouri, valued at \$300,000.00; 120 acres in Sullivan County, Missouri, valued at \$36,000.00; 3,000 acres in Mercer County, Missouri, valued at \$900,000.00; and 700 acres in Wayne County, Iowa, valued at \$210,000.00. Also scheduled were an inventory of farm machinery valued at \$100,000.00; and 128 head of cattle, 125 cows and 3 bulls, valued at \$51,500.00. The statement of financial affairs shows farm income for 1998 of \$119,247.00, and for 1999 of \$120,000.00.

The debtor scheduled three secured creditors, Hullinger Trucking, Inc., Maple Tree Investments, and Mercantile Bank of Trenton, holding judgment liens totaling \$218,307.00. It also scheduled four unsecured creditors with claims totaling \$11,106.00.

In response to the corporate control disclosure item, four shareholders, four directors, and two officers were named. Alfred Ryder was identified as president, director, and holder of one share; Mary Ann Ryder, as secretary, director, and holder of one share; Jane Ann Ryder of Yakima, Washington, as director and holder of 500 shares, and Thomas Ryder of Roodhouse, Illinois, as director and holder of 500 shares.

Upon motions by Trustee and the United States Trustee for Region 13, the Missouri bankruptcy court transferred the Ryder Farms, Inc. chapter 12 case to the Southern District of Iowa. Prior to the transfer, Ryder Farms counsel filed a motion to withdraw from the case. He informed the court that Alfred Ryder did not disclose the chapter 7 case, or Trustee's interest in the property.

On May 5, 2000, trial commenced in the three adversary proceedings that were pending in the Ryder's chapter 7 case. Upon return from the noon recess, the parties informed the court that they had reached a "global" settlement of all the issues surrounding the bankruptcy case. The agreement was read into the record. The court questioned Alfred Ryder and Mary Ann Ryder, individually and under oath, as to their understanding of the agreement. Each understood the agreement and voluntarily accepted the terms. They pointedly conditioned their acceptance on the provision that no real property would be sold without giving them the opportunity to supply additional funds to the estate. Trustee expressly agreed to this condition, and it was incorporated

into the settlement agreement. The court approved the settlement agreement and directed Trustee to memorialize the agreement in writing.

Of particular significance to this matter is Section 6 of the settlement agreement, which provides:

The Debtors, Alfred K. and Mary Ann Ryder, and Ryder Farms Inc., an Iowa Corporation, and all other entities of the Debtors hereby agree to the payment of all Trustee fees, attorney fees, expenses, taxes, and all allowed claims, including any interests, if allowed by the Court. The creditors, including the creditors identified in the Chapter 7 proceeding brought by Alfred K. and Mary Ann Ryder as well as the Chapter 12 proceeding brought by Ryder Farms, Inc., an Iowa corporation, shall be given notice to file claims in this matter. A claims hearing, if necessary, shall be held to determine the validity and amounts of said claims.

The Ryders refused to sign the writing and reneged on the agreement. At Trustee's request, the court conducted a show cause hearing and ultimately ordered specific performance of the settlement agreement. The court subsequently authorized Trustee to proceed with the administration of the estate under the terms of the settlement agreement.

The court found both Mary Ann and Alfred Ryder in contempt. Mary Ann Ryder purged herself of contempt when she signed the writing, and complied with provisions of the settlement agreement. Alfred Ryder steadfastly refused to sign the agreement, personally or as an officer of Ryder Farms, Inc., or comply with its terms. He maintained he did not have the authority to bind Ryder Farms, Inc. to the agreement, even though he had been exercising the power of a designated representative. The court ultimately ordered Alfred incarcerated until he purged himself of the civil contempt. Alfred remained in detention for approximately 5 months, until the matter became moot upon resolution of various matters addressed by the settlement agreement.

On September 25, 2001, Trustee sent a letter to the Ryders setting forth an estimate of the amount of funds required to pay all the allowed claims and the known costs of administering the estate. Acting pursuant to the terms of the stipulated settlement agreement, Trustee provided the Ryders with the opportunity to pay the allowed claims and costs, thereby preventing the necessity of liquidating any of the real property. The Ryders responded by objecting to the letter. The court subsequently denied the objection as moot because Trustee was merely complying with the agreement and had not filed any document to which the Ryders could object.

Since the Ryders did not propose any method of paying the estimated amount, Trustee proceeded to sell the real property identified in the settlement agreement. On January 11, 2002, Trustee filed a motion seeking court approval to accept bids on the identified real estate. The Ryders objected to the bidding procedure and the sale of the real estate.

On March 13, 2002, the court held a hearing on the sale of the real property and the Ryders' objections. The court granted Trustee's motion and overruled the objection. The court authorized the sale of all the identified parcels for \$2,390,289.70. Aware of the Ryders' propensity to appeal virtually every ruling along with the rapidly approaching crop season, the court informed them that it would require a supersedeas bond to be posted upon appeal in order to delay the consummation of the sale. The Ryders appealed the order without posting the bond.

On March 19, 2002, Alfred Ryder filed a chapter 11 petition for reorganization with the United States Bankruptcy Court for the Western District of Missouri identifying

the debtor as Ryder Farms, Inc. of Missouri and Iowa. Alfred Ryder signed the petition as the authorized individual, indicating that he was president of the corporation.

Alfred Ryder's signature also appears on a "Statement Regarding Authority to Sign and File Petition." This document indicates that on 3/8/02, Alfred Ryder, Mary Ryder, and Thomas Ryder adopted a resolution stating that it is in the best interests of the corporation to file a voluntary bankruptcy petition. However, Thomas Ryder was deceased on that date. The document sets forth the text of the resolution, which purportedly provides the authority for an individual to file the petition and other documents necessary for the bankruptcy, to appear in all bankruptcy proceedings on behalf of the corporation, and perform all acts and deeds in connection with the bankruptcy. However, the resolution fails to provide the name of the individual so authorized.

The accompanying schedules show real property valued at \$1,572,000.00. The property consisted of 1,000 acres located in Harrison County, Missouri, valued at \$300,000.00; 1,120 acres located in Wayne County, Missouri, valued at \$336,000.00; 120 acres in Sullivan County, Missouri valued at \$36,000.00; and 3,000 acres in Mercer County, Missouri valued at \$900,000.00. All the real property is scheduled as free of security interests.

Also scheduled is personal property valued at \$163,500.00. Some 55 pieces of machinery, including 7 John Deere 4020 and larger tractors, 3 Stieger tractors, and two John Deere combines, contributed a conservative \$100,000.00 to this total. This is essentially the same list scheduled with the previous chapter 12 case. The balance of

personal property includes 155 head of cattle valued at \$62,500.00, and \$1,000.00 in a checking account.

Only four creditors are identified: Hullinger Trucking, Inc. with a claim of \$25,940.00; Maple Tree Investments with a claim of \$19,500; Keleher and Eastman with a claim of \$3,540.00; and Mercantile Bank of Trenton \$172,687.00. The chapter 7 trustee's claim based on the stipulated settlement agreement is not scheduled, either as secured or unsecured.

On April 4, 2002, the United States Trustee for Region 12 filed a motion requesting the transfer of the chapter 11 case to the Southern District of Iowa. Ryder Farms, Inc. did not file an objection to the motion. However, the Ryders filed a motion to transfer their chapter 7 case to the Western District of Missouri. Trustee and the United States Trustee filed objections to the motion.

Hearing was held on the transfer motions on April 30, 2002. At that hearing, Alfred Ryder testified that his sole reason for filing the chapter 11 was to stop the sale of the real property. The court subsequently, granted the United States Trustee's motion to transfer the chapter 11 case, and denied the Ryders' motion to transfer the chapter 7 case.

On October 15, 2002, Ryder Farms, Inc., filed its plan of reorganization. The plan is a "form" document, and no attempt has been made to tailor it to this debtor's circumstances. It did not file a disclosure statement although the plan refers to such a document.

On October 18, 2002, Trustee filed a proof of claim in the amount of \$2,390,289.70, based on the stipulated settlement agreement entered into by Alfred

Ryder, Mary Ann Ryder, and Ryder Farms, Inc. Debtors objected to the proof of claim on October 28, 2002. The substance of the objection is that the real property does not belong to Alfred and Mary Ann Ryder, but to Ryder Farms, Inc.

## DISCUSSION

### **Motion to Dismiss**

Section 1112 provides that a chapter 11 case may be converted to a chapter 7 case or dismissed for cause shown. 11 U.S.C. § 1112(b). However, the court may not convert the case to chapter 7 if the debtor is a farmer. 11 U.S.C. §1112(c). “Farmer” is defined as a person that received more than 80 % of its gross income in the previous taxable year from a farming operation owned or operated by the person. 11 U.S.C § 101(20). The definition of “person” includes a corporation. Accordingly, the court may not convert the case of a corporation, that meets the farm income standard, to one under chapter 7. See In re Cattle Complex Corp., 54 B.R. 50 (Bankr. D. N.M. 1985).

The burden of establishing the existence of cause is on the moving party. In re Econ. Cab & Tool Co., Inc., 44 B.R. 721, 724 (Bankr. D. Minn. 1984). Once cause is shown, the bankruptcy court has broad discretion in determining the ultimate disposition of the case. Lumber Exch. Bldg. Ltd. P’ship v. Mut. Life Ins. Co. (In re Lumber Exch. Bldg. Ltd. P’ship), 968 F.2d 647, 648 (8th Cir. 1992);

“Cause” is not defined in the Code; however, § 1112 provides a non-exhaustive list of examples. The section provides in relevant part:

(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee or bankruptcy administrator, and after notice and a hearing, the court may convert a case under this chapter to a case under

chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including--

- (1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;
- (2) inability to effectuate a plan;
- (3) unreasonable delay by the debtor that is prejudicial to creditors;
- (4) failure to propose a plan under section 1121 of this title within any time fixed by the court;
- (5) denial of confirmation of every proposed plan and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or a modified plan under section 1129 of this title;
- (7) inability to effectuate substantial consummation of a confirmed plan;
- (8) material default by the debtor with respect to a confirmed plan;
- (9) termination of a plan by reason of the occurrence of a condition specified in the plan; or
- (10) nonpayment of any fees or charges required under chapter 123 of title 28.

11 U.S.C. § 1112(b).

The legislative history of the section explains that “[t]he court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.” H.R.Rep.No. 595, 95th Cong., 1st Sess. 405-06 (1977), U.S.Code Cong. & Admin.News 1978, pp. 5963, 6362. Most courts that have considered the issue have determined that bad faith or the absence of good faith constitutes cause under § 1112. First Nat. Bank of Sioux City v. Kerr (In re Kerr), 908 F.2d 400, 405 (8th Cir. 1990) (citing In re Jartran, Inc., F.2d 859, 867 (7th Cir. 1989); Carolin Corp. v. Miller, 886 F.2d 693, 698-700 (4th Cir. 1989); In re Natural Land Corp., 825 F.2d 296, 298 (11th Cir. 1987); Matter of Little Creek Development Co., 779 F.2d 1068, 1071-72 (5th Cir. 1986); In re Winshall Settlor’s Trust, 758 F.2d 1136, 1137 (6th Cir. 1985); Marsch v. Marsch (In re Marsch), 36 F.3d 825, 828 (9th Cir. 1994); In re SGL

Carbon Corp., 200 F.3d 154, 162 (3d Cir. 1999); C-TC 9th Ave. P'ship v. Norton Co. (In re C-TC 9th Ave. P'ship), 113 F.3d 1304, 1310 (2d Cir. 1997).

The terms “good faith” and “bad faith” do not turn on the subjective intent of the debtor. In re Marsch, 36 F.3d at 828. Rather, the concepts encompass equitable limitations placed on debtors by the courts to insure that their reasons for filing lie within the “legitimate scope of the bankruptcy laws.” Id.

The Eight Circuit does not subscribe to a single test for determining when a case is filed in bad faith. Rather, it instructs the courts to consider the totality of the circumstances, “including the court’s evaluation of the debtor’s financial condition, motives, and the local financial realities.” In re Cedar Shore Resort, Inc., 235 F.3d 375, 379 (8th Cir. 2000). Courts should also consider whether the debtor concealed assets, has been evasive toward the court and creditors, violated the Bankruptcy Code, or violated court orders. In re Kerr, 908 F.2d at 404. Evasion includes the failure to provide honest and complete information concerning financial affairs and feigned loss of memory during hearings. Id. It also includes self-dealing and the filing of frivolous motions in an effort to frustrate creditors. Id.

Bad faith alone is sufficient cause to dismiss a chapter 11 case. In re Cedar Shore Resort, Inc., 235 F.3d at 381. The court need not consider whether a successful reorganization is possible. Id. “[S]uch a rule protects the integrity of the bankruptcy courts by limiting the availability of their ‘powerful equitable weapons’ to parties filing in good faith.” Id. A debtor who files in bad faith will not be permitted to enjoy the protections of chapter 11 even if a successful reorganization is possible.

The court notes that at the hearing, Trustee called Alfred Ryder to testify in his capacities as corporate officer, director, shareholder, employee, and individual with personal knowledge of Ryder Farms, Inc. and its purported operations. After giving his name and address, Alfred Ryder invoked the Fifth Amendment privilege against self-incrimination in response to each subsequent question. Trustee also called Mary Ann Ryder to testify in her capacities as corporate officer, director, shareholder, employee, and individual with personal knowledge of Ryder Farms, Inc. After giving her name and address, Mary Ann Ryder invoked the Fifth Amendment privilege against self-incrimination in response to each subsequent question. Trustee asks the court to infer, that had the Ryders responded truthfully to the questions, their answers would have been adverse to Ryder Farms, Inc.

When considering if any inference may be drawn from a witness invoking the Fifth Amendment, federal courts make a distinction between criminal and civil cases. Rosebud Sioux Tribe v. A & P Steel, Inc., 733 F.2d 509, 521 (8th Cir. 1984). The prevailing rule in federal courts is that the Fifth Amendment's privilege against self-incrimination asserted in a civil action does not prohibit the finder of fact from drawing an adverse inference from parties' refusal to testify in response to evidence offered against them. Baxter v. Palmigiano, 425 U.S. 308, 318 (1976); Rosebud Sioux Tribe, 733 F.2d at 521. Further, the adverse inference may be drawn from non-party witnesses invoking the Fifth Amendment. Brinks Inc. v. City of New York, 717 F.2d 700, 707-10 (2d Cir. 1983); but see id. at 715 (Winter, J. dissenting). Accordingly, under the appropriate circumstances, bankruptcy courts may draw an adverse inference from a

witness' claim of Fifth Amendment privilege. See e.g. In re Hanson, 225 B.R. 366, 372 (Bkrcty. W.D. Mich. 1998); General Motors Acceptance Corporation v. Bartlett, 154 B.R. 827 (Bankr. D.N.H. 1993); and In re Metzgar, 127 B.R. 708 (Bankr. M.D. Fla. 1991).

Before such an inference may be made, the party requesting the inference must establish its prima facie case by providing evidence that tends to prove each element of its case. Trustmark Nat'l Bank v. Curtis (In re Curtis), 177 B.R. 717, 720 (Bankr. S.D. Ala. 1995). Without other probative evidence, the invocation of the Fifth Amendment is insufficient to prove a case. Id. After other proof of each element is offered, the trier of fact may add to the weight of evidence the inference. Id.

In this case, Trustee has provided sufficient evidence that cause exists to dismiss this chapter 11 case. The court is without doubt that Alfred Ryder acted in bad faith by causing the petition for Ryder Farms, Inc. to be filed.

Initially, the Ryders presented themselves as elderly farmers living on social security payments and burdened with large debts incurred from a failed farming operation, two of the victims of the farm economy collapse of the mid-1980s. Their schedules showed few assets, no real property, or retirement funds, and certainly no ownership interest in a farm corporation with thousands of acres of farmland.

However, the tenor of their case quickly changed as more and more potential assets came to Trustee's attention. The Ryder's immediately asserted that the property belonged to Ryder Farms, Inc. of Illinois. When Trustee disproved that assertion and obtained a quitclaim deed from Ryder Farms, Inc. of Illinois transferring any interest it

had in real property in Iowa and Missouri to Trustee, the Ryders changed their story and stated that the property belonged to Ryder Farms, Inc. of Iowa.

The Ryders' chapter 7 case is filled with many more such examples of perjured testimony, evasiveness, manipulation, and outright deceit. Relevant to this matter, they have never presented Trustee or the court with complete corporate records, even though they were under a court order to do so. They have asserted that an accountant in Kellogg, Iowa, has possession of the records; however, they cannot provide an address or telephone number for him. Trustee finally determined that the individual sold the business in Kellogg several years ago, and the accountant has since passed away.

The Ryders claim that they do not have any ownership interest in Ryder Farms. They have claimed that Lucille Ryder owns either 500 or 5,000 shares. They have claimed that she is an active director and presented minutes of a corporation meeting when she was present. However, the meeting was held several months after her death certificate states that she passed away.

The Ryders claim that Thomas Ryder, Alfred's brother, is also a director of Ryder Farms, Inc. of Iowa, and owns either 500 or 5,000 share of the corporation. On March 8, 2002, Thomas Ryder purportedly approved the resolution on authorizing the filing of the chapter 11 case. However, Thomas passed away sometime prior to that time. The court also notes that both this court and the Circuit Court of Linn County, Missouri, have received evidence and determined that Alred Ryder has represented himself to be Thomas Ryder.

The chapter 12 schedules show Jane Ann Ryder of Yakima, Wahington, as a director owning 500 shares of the corporation. Jane Ann may be Lucille Ryder's offspring. The court cannot say with certainty because it cannot believe Alfred Ryder's sworn statements. Jane Ann is not listed on the chapter 11 schedules.

At this point, the court cannot say who has legal title to the shares of the corporation. Notable, however, is the fact that no one other than Alfred and Mary Ryder have ever appeared before the court to defend the interests of Ryder Farms, Inc. The court finds it incredible that no shareholders have taken an interest in the proceedings over the years, particularly when millions of dollars worth of land and equipment is at stake. The most logical conclusion is that the Alfred and Mary Ann Ryder own and completely control all the property; they also own and completely control Ryder Farms, Inc.

Ownership of assets aside, the most damaging fact going to the issue of the bad faith filing is the Ryders' failure to identify Trustee's claim against the corporation. At the May 5, 2000 trial, the parties reached a "global" settlement of all the issues in the adversary proceedings and the bankruptcy case. The agreement was read into the record, and the court verified Alfred Ryder and Mary Ann Ryder's understanding of the settlement. The chapter 7 trustee Donald Neiman, Alfred Ryder, Mary Ann Ryder, and Ryder Farms, Inc., through Alfred Ryder its president, agreed on the record and under oath to the settlement provisions. The court approved the settlement agreement. After the Ryders failed to abide by provisions of the agreement, Trustee brought the matter before the court to enforce the agreement. After trial on the matter, the court

ordered specific performance of the agreement. Of particular importance here is Section 6 whereby the “Debtors, Alfred K. and Mary Ann Ryder, and *Ryder Farms, Inc., an Iowa Corporation, and all other entities of the Debtors*” (emphasis added) agreed to the payment of all the trustee fees, attorney fees, expenses, taxes, and all allowed claims. Personal creditors of the Ryders identified in the chapter 7 case, and creditors of Ryder Farms, Inc., identified in the chapter 12 case, were to be given notice and allowed to file proofs of claim.

The court notes that Trustee has filed a proof of claim in the chapter 11 case. Ryder Farms, Inc. responded by filing an objection to the proof of claim. The substance of that objection is the assertion that Alfred and Mary Ann Ryder have no interest in the real property under the control of Trustee. The Ryders have made this argument since 1995. This court has rejected that argument and has never been overturned on appeal.

However, the argument misses the point. Ryder Farms, Inc.’s obligation to Trustee is based on the contract of settlement that it entered into at the May 5, 2000 trial. It was under no obligation to enter into the agreement. It did so voluntarily through its president Alfred Ryder, and Alfred Ryder represented the corporation through its business matters and filed both bankruptcy petitions for the corporation. The court rejected the notion that he did not have the authority to bind the corporation to the agreement when it enforced the agreement with an order for specific performance. Ryder Farms, Inc. has had its day in court, and the validity of the agreement has been adjudicated. For Ryder Farms, Inc. and its counsel, to not acknowledge the claim in its

chapter 11 schedules, speaks volumes about its lack of candor and lack of good faith in filing this bankruptcy case.

Added to the evidence provided by Trustee is the Ryders invocation of the Fifth Amendment privilege. Counsel for Trustee, and counsel for various creditors, questioned the Ryders about assets, claims, ownership of the corporation, corporate records, and the purpose of filing the chapter 11 bankruptcy. The Ryders refused to answer those questions. The court finds that had they answered fully and truthfully, their answers would have been adverse to Ryder Farms, Inc.

Further, the court notes that at hearing on the United States Trustee's motion to transfer the case, Alfred Ryder conceded that he filed the chapter 11 petition to stop the sale of the property without posting a supersedeas bond on appeal. The court acknowledges Ryder Farms, Inc.'s argument that filing a chapter 11 petition to avoid posting a bond on appeal does not per se constitute bad faith. See In re Marsch, 36 F.3d at 829 (stating that several courts have permitted the procedure if satisfaction of the judgment would seriously disrupt business). However, as illustrated above, circumventing the supersedeas bond requirement was only one factor among many in the finding of bad faith.

Finally, the court finds Ryder Farms, Inc.'s appeal to equity to be quite disingenuous. The Ryders themselves have failed to do equity with their creditors for over 6 six years. They have concealed assets, provided false testimony, and hindered the speedy administration of their bankruptcy case at each turn. The court likewise finds incredulous the suggestion that some of the difficulties that have arisen can be attributed

to the fact that the Ryders have proceeded pro se for much of their case. The simple fact is that they were represented by several capable attorneys, and through their own actions caused those attorneys to withdraw from the case. Further, this court does not find that the advice of an attorney is required by a party to know that he or she is required to tell the truth while under oath.

Accordingly, the court finds that a consideration of the totality of the circumstances shows that Ryder Farms, Inc. filed its chapter 11 petition in bad faith with the intent to delay, frustrate, and hinder its creditors, and without an honest intent to reorganize its business. Such finding constitutes sufficient cause for dismissal of the case.

Once cause is shown, the court may choose to dismiss the case, or permit the debtor to continue with its attempts to reorganize, whichever is in the best interests of the creditors and the estate. In re Western Pacific Airlines, Inc., 218 B.R. 590, 595-96 (Bankr. D. Colo. 1998).

The court finds that it is in the best interest of the creditors to dismiss this case. Upon dismissal, Trustee will close the sale transaction of the real property. The sale will generate sufficient funds to pay all the fees and allowed claims of the Ryders and the corporation. If the Ryders will provide evidence of the tax basis in the real property to Trustee, the amount of tax on the sale may be reduced. The creditors will be assured of payment as soon as possible. The court additionally notes that the Ryders still have control of a large amount of equipment, livestock, and at least the Wayne County land, be it located in Iowa or Missouri.

Trustee's motion also prays that the dismissal be with prejudice effectively barring Ryder Farms, Inc. from ever again seeking bankruptcy protection. Normally, a dismissal of a case does not forever bar a second filing. Section 349 provides:

Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

11 U.S.C. § 349(a).

Section 109(g) prohibits the filing of a second petition for 180 days if a case is dismissed for failure to abide by orders of the court.

The court will not dismiss the case with prejudice, but rather looks to § 109(g) for guidance. See In re Kerr, 908 F.2d at 405 n. 11 (bankruptcy courts should first look to the specific provision of § 109 before the more general of §§ 105 and 349). The court believes its injunction is broad enough to encompass a bad faith filing. If not, the court still believes that 180 days is sufficient time, and the court will enjoin another filing from Ryder Farms, Inc. under the authority of §§ 105 and 349. Trustee should be able to close the sale of the real property in that length of time. As mentioned above, considerable assets still remain to the Ryders, and perhaps in the future, it will be treated as a separate entity, and it may be operated in an honest forthright manner. At some point in the future, it may honestly seek bankruptcy protection with the intent to legitimately reorganize. The court will not foreclose that possibility at this time.

### **Motion for Relief from Stay**

Trustee also moved the court for relief from the automatic stay. The automatic stay does not remain in effect after the case is dismissed. 11 U.S.C. § 362(c)(2)(B).

Accordingly, the motion for relief from stay is moot.

### **ORDER**

IT IS THEREFORE ORDERED, as follows:

1. Chapter 7 trustee Donald Neiman's Motion to Dismiss Case is GRANTED.
2. Debtor Ryder Farms, Inc. of Missouri and Iowa, Case No. 02-3201 is hereby DISMISSED.
3. The supersedeas bond is hereby set in the amount of \$3,000,000.00.
4. Ryder Farms, Inc. of Missouri and Iowa, and all other entities of Alfred K. and Mary Ann Ryder are hereby enjoined from filing for bankruptcy protection for 180 days from the entry of this order.
5. Chapter 7 Trustee Donald Neiman's Motion for Relief from Stay is DENIED as MOOT.

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RUSSELL J. HILL, JUDGE  
U.S. BANKRUPTCY COURT