FILED

MAY 3 - 2005

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re	)	
	)	Chapter 7
SERGIO RENTERIA AND	)	
SANDRA L. RENTERIA,	)	No. 4-02-01943-TUC-EWH
	)	
Debtors.	)	**MEMORANDUM DECISION**
	)	

INTRODUCTION

Because the Debtors retained effective control over certain livestock which they assert they traded to their daughter, the livestock (and any cash proceeds derived from its sale) are property of the bankruptcy estate. The reasons for this conclusion are explained in the balance of this decision.

FACTUAL BACKGROUND

Mr. and Mrs. Renteria ("Renterias" or "Debtors") filed for relief under Chapter 12 of the Bankruptcy Code on April 26, 2002 and the case was subsequently converted to a Chapter 7 on June 18, 2004.

In February of 2001, the Renterias purchased 11 head of cattle using money they borrowed from the Farm Services Administration ("FSA"). Thereafter, they were informed by the FSA that they could not use money from their operating loan to feed the cattle. Mr. Renteria testified that when he learned about the FSA prohibition, he borrowed hay from his daughter Amber, then age 16, to feed the cattle. According to both Mr. Renteria and Amber,

she used money she had saved from birthday gifts, from her participation in 4H Club activities, and/or saved up allowances to buy hay in order to learn about alfalfa as part of her preparation to begin farming alfalfa in August of 2001. She further testified that until she opened an account with her parents at Cochise Credit Union ("Cochise Account") on December 13, 2002, she kept all her savings in cash. Amber testified that in addition to using her savings to buy hay, she also used her own money to start her alfalfa planting operation in the summer of 2001. She could not recall how much money she spent on acquiring hay. She estimated planting the alfalfa cost about $1,000.

In July of 2001, the Renterias claim that they traded 8 of their cattle to Amber for 700 bales of hay. Mr. Renteria testified that the trade was made in order to compensate Amber for the hay used to feed the cattle after February and in order to obtain more hay to keep feeding the cattle.

Between when the trade to Amber was made and November of 2004, the 8 head of cattle increased to 26. During that time period, Mr. Renteria testified that the Renterias lost all of their remaining cattle to illness or accidents. During that same time period, Amber moved away from home and started college. She testified that she left both her parents powers of attorney to deal with her farming activities, including her cattle. The cattle remained either on land leased by Amber or the Renterias. The Renterias denied using any of their assets to pay for feed for the cattle traded to Amber.

On November 30, 2004, the 26 head of cattle were sold to a third party (Daniel Skinner) who wrote a check to Amber for $19,950. The sale was negotiated by Mr. Renteria. Although

Amber could not remember if the check was cashed or deposited, the check was endorsed by Amber Renteria and deposited into the Cochise Account. Amber testified that she was using the $19,950 to pay her expenses. She also testified that she had not used the Cochise Account in years, had not written a check against the account since the $19,950 was deposited, and had no idea how much of the $19,950 remained in the account.[1] Because the Debtors were joint owners of the Cochise Account, the Debtors had control of the account and could make deposits and withdrawals without Amber's involvement or consent.

STATEMENT OF JURISDICTION

Jurisdiction is proper under 28 U.S.C. § 157(A) and (O) and 28 U.S.C. § 1334 (a).

DISCUSSION

The FSA brought this matter before the court as a Motion for Turn Over presumably pursuant to 11 U.S.C. § 542. Only a trustee has standing to bring such a motion. See In re Kill, No. 01-20418-DRD, 2004 WL 2980738 (Bankr. W.D. Mo. Dec. 14, 2004).

FSA's motion has been treated by the parties as a request for declaratory relief in which FSA seeks a determination that the 26 head of cattle sold in 2004 were property of the bankruptcy estate. Such a proceeding should, arguably, be brought as an adversary proceeding under Rule 7004(2) and (9). The Renterias did not, however, object to the form of the

[1] No credit union statements were offered into evidence.

proceeding. While it is important that the proper rules of procedure be followed, it is not absolutely clear that an adversary proceeding must be filed in order to determine if property is property of the bankruptcy estate. See In re Popp, No. BAP CC-04-1071MCMAMO, RS 0127670DN, 2005 WL 857537, at *6 (9th Cir. B.A.P. (Cal.) Feb. 24, 2005) (Noting that it is unclear under current 9th circuit law if a bankruptcy court is prohibited from determining whether property is estate property in a contested matter.) Other courts have noted that because, under Fed. R. Bankr. P. 9014(c) a contested matter is subject to most of the same rules that govern adversary proceedings, that it is not a fatal error to permit a matter normally governed by Fed. R. Bankr. P. 7001 to proceed as a contested matter. See In re Munoz, 287 B.R. 546, 551 (9th Cir. B.A.P. 2002).

In this case, I find that the record in this matter would not be substantially different if FSA had filed a complaint rather than a motion. Therefore, little purpose would be served by requiring the FSA to start over by filing and serving a complaint. I will, therefore, turn to the merits of FSA's motion.

As the movant, FSA bears the burden of proving that the 26 head of cattle were property of the Renterias. In re Wolff, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982), FSA met it's initial burden when Mr. Renteria testified that he and or his wife acquired the cattle, with FSA funds, in February of 2001.

Once the movant has established a prima facie case, the burden of explaining shifts to the other party. Gorenz v. Illinois Dept. of Agric., 653 F.2d 1179, 1184 (7th Cir. 1981). The burden then shifted to the Debtors to prove that the cattle were transferred to Amber for fair

consideration. The Renterias failed to meet that burden. After the conclusion of the evidentiary hearing, with the Court's permission, the Debtors supplemented the record by filing various documents dated between 1997 and 1999 to demonstrate that Amber had sold a horse and other livestock she raised in 4 H projects, won 4H cash prizes, had a credit union account in Oregon, received money for her quinceñera and worked selling raspberries. The Debtors' supplemental filing asserts that Amber's income from all those sources totaled $6,777.50. Amber, however, testified that she did not remember the amount of her cash savings in 2001. There is, therefore, no evidence that Amber actually had $6,777.50 in cash in the summer of 2001.

Even if I were to assume that Amber never spent a penny of her money before 2001, when she allegedly bought hay to learn more about raising alfalfa, the only evidence offered to support that claim was the testimony of Amber and Mr. Renteria, neither of whom are impartial witnesses. Significantly, no receipts were offered into evidence to support the claim that Amber spent about $1,000 on planting her first alfalfa crop.

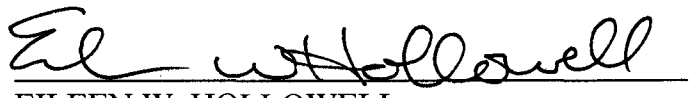
The supplemental documentation submitted by the Debtors includes a summary which lists 600 bales of hay at $5 a bale for a total of $3,000, but that is a document created by the Debtors. No independent evidence in the form of receipts or testimony of third parties who sold hay to Amber was offered to support the Debtors' claim that the 8 head of cattle were traded to Amber for fair consideration. Furthermore the testimony of Amber and Mr. Renteria was that Amber traded 700 bales of hay for the 8 head of cattle which is 100 more than the 600 bales listed in the supplementary summary submitted by the Debtors.

More troubling was Amber's testimony about what happened to the $19,950 check made out to her for the 26 head of cattle. She endorsed the check but could not remember if it was deposited or cashed. A copy of the check was admitted into evidence (Exhibit 4) indicating that it was deposited into the Cochise Account on December 1, 2004. Given the short time period between the date of the check's deposit and the evidentiary hearing in March of 2005, it seems unusual that Amber could not recall if or where the check was deposited. Amber also testified that she was using some of the $19,950 to pay her expenses, but she could not specify how much she had used. Her testimony about using the money was inconsistent with her admission that she had no idea how much of the $19,950 remained in the Cochise Account and was completely inconsistent with her testimony that she had not written a check against the Cochise Account in years.

Considering the evidence as a whole, I find that there was insufficient credible evidence offered by the Debtors to establish that Amber paid consideration for the cattle. Indeed, the evidence indicates that after the date of the alleged transfer, the Renterias and Amber continued to treat the cattle as the Renterias' property as demonstrated by Mr. Renteria's negotiation of the sale of the cattle to a third party and the deposit of the $19,950 check into an account which the Debtors could control. I find, therefore, that the 26 cattle were property of the bankruptcy estate on the November 30, 2004 sale date and the proceeds from that sale are also estate property subject to any valid lien claim of the FSA may establish in those proceeds.

The foregoing constitute my findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052. A separate order will be entered this date holding that the 26 cattle sold on November 30, 2004 were property of the bankruptcy estate.

Dated this 3rd day of May, 2005.



EILEEN W. HOLLOWELL
UNITED STATES BANKRUPTCY JUDGE

Copy of the foregoing served as indicated below this 3 day of May, 2005, to:

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