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INSIDE

IN FUTURE ISSUES

Two bites of the farmer's apple

The Eleventh Circuit Court of Appeals in a recently decided case held that migrant workers who are injured as a result of violations of the Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. No. 97-470, 96 Stat. 2584 (1983) (codified at 29 U.S.C. sections 1801-1872) (MSAWPA) are not barred by state workers' compensation law from private suit for actual or statutory damages.

The court in *Barrett v. Adams Fruit Co., Inc.*, No. 88-3121, decided March 15, 1989, found that the exclusive remedy provisions of Florida's workers' compensation laws stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting MSAWPA. The Eleventh Circuit decision is in conflict with the Fourth Circuit's decision that section 1871 of MSAWPA compelled a conclusion of non-preemption in *Roman v. Sunny Slope Farms*, 817 F.2d at 1118-19 (4th Cir. 1987).

The plaintiffs in *Barrett* were injured in an accident while being transported in a van owned by their employer, defendant, Adams Fruit Company, Inc. Their suit brought under 29 U.S.C. section 1854 alleged that the accident and attendant injuries were caused by safety violations, i.e. an overloaded van that lacked seat belts for each passenger and that carried water storage containers that were not properly secured.

The court rejected defendant's assertion that the Florida Workers' Compensation law reasonably and fairly covered farm workers and was thus presumptively the exclusive remedy under *Johanen v. United States*, 343 U.S. 427 (1952). Instead the court found that Congress intended for migrant and seasonal farm workers to recover fully for injuries caused by violations of MSAWPA including private rights of action against farm owners and contractors. To prevent double dipping, "the amount of workers' benefits, however, may be considered in awarding actual damages." *Barrett* at 1644.

– Patricia Allen Conover

Editor's note: The above article expresses the analysis of the writer and not of her employer, the United States Department of Justice.

Bankruptcy courts interpret the Agricultural Credit Act of 1987

In two recently published decisions, bankruptcy courts in Iowa and North Dakota struggled with the issue of how to apply the debt restructuring provisions of the Agricultural Credit Act of 1987 to bankruptcy reorganizations. Both cases held that the Act does not mandate debt restructuring, nor does it override established bankruptcy law.

In the North Dakota bankruptcy case of *In re Kvamme*, 91 Bankr. 77 (Bankr. D.N.D. 1988), the debt restructuring issue arose in the context of a Chapter 11 plan confirmation hearing. Farmers Home Administration, one of the debtors' main secured creditors, made an election under section 1111(b) of the bankruptcy code to have its claim treated as a secured claim to the extent that it was allowed. This election places strict requirements upon the debtor's reorganization plan and, in this case, prevented confirmation of the plan proposed by the debtors. The farmer-debtors objected to FmHA's election, arguing that the debt restructuring provisions of the Agricultural Credit Act of 1987 (the Act) provided FmHA's exclusive remedy and, as such, the section 1111(b) election was unavailable.

The court rejected the debtors' argument. It stated that the Act does not in any way overrule, repeal, or make unavailable any portion of the bankruptcy code. All remedies available to creditors under the bankruptcy code remain available despite the restructuring provisions of the Act. The court stated that the Act "merely provides for a restructuring opportunity and within bankruptcy that opportunity is no more nor less than what would be available to a borrower outside of bankruptcy."

(Continued on page 2)

The court went on to interpret how the Act and the bankruptcy code may interact. The court confirmed that the Act does apply to creditors in bankruptcy cases and stated that restructuring may be a condition precedent to commencement of foreclosure proceedings. With regard to that specific issue, the court cited and limited the bankruptcy court holding in the case of *Matter of Dilsaver*, 17 B.C.D. 785 (Bankr. Neb. 1988). In that case, the court held that a creditor could not sequester rents and profits under section 552 of the bankruptcy code until it had first considered the debtors for debt restructuring. This decision was based upon the fact that sequestration of rents and profits was a first step toward foreclosure. The *Kvamme* court distinguished *Dilsaver* by pointing out that a section 1111(b) election was not part of a foreclosure proceeding, but rather was a specific remedy made available to creditors involved in bankruptcy proceedings.

The court went on to explain that the Act itself requires only that (1) FmHA provide the borrower with notice and an opportunity to apply for debt restructuring and, (2) that FmHA not foreclose until it has completed its restructuring consideration. The court states that the Act does not mandate restructuring unless FmHA determines that the cost of restructuring will be less than or equal to the cost of foreclosure.

Applying this to bankruptcy, the court stated that if FmHA decides to restructure a loan under the Act, and as a consequence, writes the borrower's loan down to the value of the collateral, a section 1111(b) election would be inappropriate. However, absent an FmHA decision to restructure the loan, the section 1111(b) election remains a viable option available to FmHA. The court does not clearly address the issue of whether FmHA must consider the borrower for restructuring prior to making the section 1111(b) election, however.

On this basis, the *Kvamme* court overruled the debtors' objection to FmHA's section 1111(b) election and ordered that the debtors' plan comply with the attendant requirements.

Although it does not appear critical to the court's overall reasoning, it should be noted that this opinion cites and quotes section 4.14A of the Agricultural Credit Act of 1987, a section that applies not to FmHA, but to the Farm Credit System (FCS). Because the FmHA and FCS restructuring portions of the Act are so different, this error may well affect the precedential value of the opinion.

The Iowa Bankruptcy Court also dealt with the interaction of the Agricultural Credit Act and bankruptcy law in the recent case of *In re Felten*, 95 Bankr. 629 (Bankr. N.D. Iowa 1988). This case, however, arose in the context of a Chapter 12 hearing, and as such, a section 1111(b) election was not at issue.

Rather the issue in *Felten* concerned the valuation of real estate mortgaged to a Production Credit Association (PCA), a lender within the Farm Credit System. This valuation was necessary for purposes of establishing the creditor's secured claim under section 506 of the bankruptcy code.

In addressing this issue, PCA argued that the court should look to the fair market value of the real estate. The farmer-debtors argued that the property should be valued at its liquidation value, citing the restructuring provisions of the Agricultural Credit Act of 1987, thus reducing fair market value by potential foreclosure costs.

The court rejected the debtors' argument. It held that valuation must be determined according to bankruptcy standards and referred to the case law interpreting the applicable provision, section 506(a) of the bankruptcy code. This case law generally supports the use of fair market value as the appropriate standard. In response to the argument that the Agricultural Credit Act changes this standard, the court stated that the remedies available to the debtor under this Act "are separate and distinct remedies" from the protection provided by Chapter 12 bankruptcy. In support of this, the court pointed out that several provisions in the Act appear inconsistent with bankruptcy law and procedure. It added that if the debtors' position were accepted and the bankruptcy court were forced to apply the terms of the Act, that court would become the "ultimate arbiter" of debt restructuring disputes. The court stated that this result is not consistent with congressional intent. In order to incorporate federal law into the code, the court stated that clearly expressed intent must be found.

On this basis, the *Felten* court held that the restructuring provisions of the Act are not incorporated into the bankruptcy code and are inapplicable to determining value for purposes of a section 506 secured claim.

– Susan A. Schneider

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assignment was solely for the protection of the government, to preclude an action against the government in the event it makes a payment to the wrong party. Although the penultimate sentence of section 590h(g) so provides, the entire section is more broadly worded and precludes assignment of the federal program payments, except as consistent with the federal law. The court, relying on *Matter of Halls*, 79 Bankr. 417 (Bankr. S.D. Iowa 1987) and *In re George*, 85 Bankr. 138 (Bankr. D. Kan. 1988), then concluded that the prohibition against assignments precludes assignments of program payments except as security for a loan in which the proceeds are to be used to finance a crop in a year in which the program payments are due.

The district court had considered "preexisting indebtedness" to mean a debt that was in existence but was unsecured prior to the creation of the security arrangement, which debt was sought to be given secured status with a later debt instrument. The court relied upon an unpublished hankruptcy court decision, *In re Holman*, 85 Bankr. 869 (Bankr. D. Kan. 1987) to reach that interpretation. The supreme court did not find that definition persuasive. The court held that "preexisting indebtedness" does not have any unusual or technical meaning and refers to indebtedness not associated with "making a crop . . . for the current crop year" 7 C.F.R. §709.3. As a result, PCA could not recover the ASCS payments from RGI. *– James B. Wadley*

Federal Register *in brief*

The following is a selection of matters that have been published in the *Federal Register* in the past few weeks:

1. Foreign Agricultural Service; Financing of commercial sales of agricultural commodities; final rule; effective date 5/25/89. 54 Fed. Reg. 14199.

2. Foreign Agricultural Service; Sunflower Seed Oil Assistance Program and Cottonseed Oil Assistance Program; notice. 54 Fed. Reg. 16143.

3. Bureau of Reclamation; Rules for emergency loans, temporary water sales, and assistance under the Disaster Assistance Act of 1988; interim rule; effective date 4/10/89. 54 Fed. Reg. 14228.

4. FmHA; Suspension and debarment proceedings; final rule; effective date 4/11/89. 54 Fed. Reg. 14333.

5. FmHA; Drought and Disaster Guaranteed Loans; correction; effective date 4/13/89. 54 Fed. Reg. 14791.

6. FmHA; Farm Labor Housing Loan and Grant Program; proposed rule. 54 Fed. Reg. 14822.

7. FmHA; Semiannual regulatory agenda. 54 Fed. Reg. 17502.

8. FmHA; Credit reports on individuals; effective date 5/30/89. 54 Fed. Reg. 18097.

9. FmHA; Adverse decisions and administrative appeals; proposed rule. "FmHA proposes to amend its regulation to provide for a review of a hearing officer's decision when the decision is based on a clear misinterpretation or error of law or regulation. . . . The major effect will be to establish an Agency review of a hearing officer's decision in exceptional cases." 54 Fed. Reg. 20395.

10. PSA; Poultry regulations and policy statements; final rule; effective date 5/24/89. 54 Fed. Reg. 16353. Relates to Poultry Producers Financial Protection Act of 1987.

11. PSA; Amendment to certification of central filing system; Idaho; 5/11/89. 54 Fed. Reg. 21266.

12. USDA; Semiannual regulatory agenda. 54 Fed. Reg. 16446.

13. USDA; IRCA; Implementation; rural labor; SAWs; temporary residence; final rule; effective date 6/19/89. 54 Fed. Reg. 21398.

14. EPA; FIFRA Amendments of 1988; Schedule of implementation; notice; comments due 7/25/89. 54 Fed. Reg. 18076.

15. APHIS; Horse protection; designated qualified persons, pre-show inspection guidelines for sore horses; advance notice of proposed rulemaking; comments due 7/11/89. 54 Fed. Reg. 20605.

16. FCIC; General crop insurance regulations; final rule; effective date 6/12/89. "The premium reduction gained by insured through good insuring experience will extend beyond the present 1989 crop year expiration." 54 Fed. Reg. 20503.

17. FCIC; General crop insurance regulations; final rule; effective date 6/12/89. Concerns late planting agreement option.

18. FCIC; General crop insurance regulations; interim rule with request for comments by 7/10/89; effective date 5/11/89. 54 Fed. Reg. 20368.

19. FCIC; General crop insurance regulations; final rule; effective date 6/12/89. "(1) Deletes a subsection which provides that insurance is not available on land located between any body of water and a primary flood control structure; (2) amends a subsection to clarify that acreage on which a crop has not been planted and harvested in at least one of the three previous crop years is insurable if that land has been in a soil conserving legume or is considered "cropland" by ASCS; (3) provides a definition for "cropland." 54 Fed. Reg. 20369.

20. IRS; Limitations on passive activity losses and credits; definition of activity; temporary regulations; effective for taxable years beginning after 12/31/86. 54 Fed. Reg. 20527; 54-20606.

21. IRS; Special lien for estate taxes deferred under section 6166 or 6166A; procedure and administration; correction to final regulations. 54 Fed. Reg. 23209.

22. CCC; Targeted Export Assistance Program; FY 1990; notice. 54 Fed. Reg. 18916.

23. CCC; 1989 Common program provisions for wheat, feed grains, rice and upland cotton programs; notice of determination to make additional advance deficiency payments; effective date 5/8/89. 54 Fed. Reg. 19927.

24. CCC; Emergency livestock assistance; Indian owners eligibility; proposed rule; comments due 8/17/89. 54 Fed. Reg. 21625.

25. CCC; Export credit guarantee program (GSM-102) and intermediate export credit guarantee program (GSM-103); imported agricultural products; notice of request for comments due 8/21/89. 54 Fed. Reg. 21960.

– Linda Grim McCormick

AG LAW CONFERENCE CALENDAR

Third Annual Northeast Bankruptcy Law Institute

July 28-Aug. 1, 1989, Le Chateau Frontenac, Quebec City, Quebec, Canada.

Topics include: setoff/recoupment; debtor in possession financing; lender liability.

Sponsored by Norton Institutes on Bankruptcy Law.

For more information, call 404-535-7722.

Ag Law Summer Institute at Drake University

July 10-13; July 17-20; Drake University's Agricultural Law Center.

Topics include: Legal aspects of biotechnology and agriculture (7/10-13) and legal aspects of horsebreeding and syndication (7/17-20).

Sponsored by Drake University's Agricultural Law Center

For more information, call 515-271-2947 or 271-2065.

Land Use Institute – Planning, Regulation, Litigation, Eminent Domain and Compensation

August 14-18, 1989, Hyatt on Union Square, San Francisco.

Topics include: update on transfer of development rights, update on wetlands regulation, and update on hazardous materials and hazardous wastes.

Sponsored by ALI-ABA and the Florida Atlantic University/Florida International University Joint Center for Environmental and Urban Problems

For more information, call 215-243-1630 or 1-800-CLE-NEWS

Impact of Environmental Law on Real Estate and Other Commercial Transactions

Sept. 21-22, 1989, Hyatt on Union Square in San Francisco.

Topics include: Regulatory obstacles to development of real property; wetlands; disclosure of environmental liabilities to governmental agencies and third parties; and lender liability.

Sponsored by ALI-ABA

For more information, call 215-243-1630 or 1-800-CLE-NEWS

Ag Law Update

July 13, 1989 and Jan. 18, 1990. Telephone CLE.

Topics include: For the July session – Ag Credit Act of 1987, farm bankruptcy, farm income taxes, farm business planning; for the January session – government programs, farm economics, farm credit, farm business planning, income taxation, and estate and gift taxation.

Sponsored by American Bar Association Section of General Practice, American Agricultural Law Association, and USDA Cooperative Extension Service

For more information, call 312-988-5648

Canada / United States Free Trade Agreement

by Professor Larry A. Bakken

The Canada/United States Free Trade Agreement was signed on January 2, 1988, and went into effect January 1, 1989.[1] This agreement is expected to encourage a greater exchange of goods and services between the two countries. In 1987, the bilateral trade between Canada and the United States amounted to approximately 161 billion dollars worth of goods and services.[2] This amount represents the greatest bilateral trade volume in the world and, with the adoption of the Free Trade Agreement (FTA), future volume should be even greater.

The FTA covers more trade related issues than any other such agreement and it suggests new standards for agreements made under the General Agreement on Tariffs and Trade. The FTA is broader in scope than past agreements between Canada and the United States and it is more liberal. The FTA establishes binding trade related commitments in investments, business, travel services, and agriculture. It confronts the difficult issues of subsidies, dumping, and countervailing measures. The specific objectives of the FTA can be found in Chapter One under objectives and scope of the FTA and are as follows:

1. Eliminate barriers to trade in goods and services between the territories of the parties;
2. Facilitate conditions of fair competition within the free trade area;
3. Liberalize significant conditions for investment within this free trade area;
4. Establish effective procedures for the joint administration of this agreement and the resolution of disputes; and
5. Lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of this Agreement.

The Preamble suggests that the FTA will strengthen the unique and enduring relationship currently existing between the two countries. In addition, the FTA is seen as promoting greater productivity, fuller employment, and a general increase in the living standards of citizens in both Canada and the United States. The Preamble also suggests that the FTA will provide mutually advantageous trade rules, more secure markets for Canadian/United States businesses, and greater predictability in the commercial and industrial community of the two countries, and finally it will reduce government created trade distortions.[3]

With the adoption of the FTA, duties on nearly 8,000 different categories of goods and services will be reduced or eliminated over a ten-year period. The following examples are representative agricultural and farm-related products that will have their tariffs reduced or eliminated immediately, within five years or within ten years.[4]

Category A: Immediate tariff elimination

Leather
Whiskey and rum
Fur and fur garments
Animal feed
Some pork

Category B: Tariff elimination over five equal annual stages

Paper and paper products
Hardwood plywood

Category C: Tariff elimination over ten equal annual stages

Most agricultural products
Most wood products
Most finished products
Alcoholic beverages

The adoption of the FTA does not, however, remove all restrictions on imports and exports between the two countries. There are remaining restrictions in the area of logging, fishing, and agriculture.[5] In general, the FTA has had to recognize the uniqueness of the Canadian and United States farm economies and therefore many special provisions exist in Chapter 7 of the FTA which address the particular problem areas of fresh fruits and vegetables; grain and grain products; and finally, poultry and eggs. Likewise, special consideration is given to various government support programs in both countries.

Both Canada and the United States are significant producers of the same farm products and, therefore, it was necessary for the two countries to go slowly in their efforts to achieve a free trade program in most farm product areas. Free trade arrangements must consider the real market strengths that each country has in world agricultural markets, and because of these many complicating factors, initial FTA efforts concentrated on the more technical standards and barriers rather than confronting the major problems that total free trade would expose. Since the FTA tariff reductions are not scheduled to be completed for up to ten years, the two countries have agreed on the process of negotiating solutions for most of these bilateral agricultural issues.

Like the United States, Canada's agricultural community depends on international markets. Canada has, like the United States, suffered from the declining commodity prices in the world market. The world agricultural market has been negatively influenced by a number of factors such as the agricultural policies of industrialized economies and the improvement of agricultural technology. These factors and other factors have contributed to unstable farm prices and uncertain farm product markets.

In recent years, Canada has found that the United States market for Canadian farm products has been growing steadily. In fact, Canada has further found that because of the proximity of the United States, higher U.S. economic growth rates, similar grading and distribution systems, and an open trade environment, the United States shows greater potential for Canadian farm products than do other world-wide farm markets.[6]

In recent years, the United States has become Canada's leading export market. In 1986, the United States purchased thirty-two percent of Canada's total farm exports. Between 1981 and 1987, the percentage of Canadian farm products purchased by the United States nearly doubled.[7] Because of the growing importance of United States markets, Canada appears to be anxious to expand these markets even further. The Canadian agri-food sector is a major contributor to Canada's national economy. When all aspects of the agri-food sector are considered, it contributed, in 1985, 9.1 percent of Canada's gross domestic product and 13.5 percent of the total work force, and in 1986, it alone accounted for a 1.8 billion export surplus.[8] The Canadian government has several objectives for agriculture. The government wishes to improve access for exports to United States markets, and to make secure the already existing share of United States farm markets, and if possible to maintain its current agricultural policy instruments.[9]

Specifically, the Canadian government sees the following opportunities for:

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Grains and oilseed

Potential for increased exports of canola oil, soybean oil, and high quality wheat and oats;

Opportunities for increased canola oil exports to the United States through the phasing out of U.S. tariffs on that product. After three years, the decrease in the U.S. tariff on canola will more than offset the removal of Western Grain Transportation Act (WGTA) benefits to west coast ports; and

Increased potential markets for sales of milling and pasta wheats in the United States immediately upon the Agreement coming into force.[10]

Livestock and red meats

Increased export market opportunities for high quality finished cattle for slaughter and for high quality beef and pork; and

Some possible opportunities for increased imports of feeder cattle to Canadian feedlots, which will improve capacity utilization and create a larger domestic market for feed grains.

Dairy

No effect on the milk supply management system. Existing import controls on a broad range of dairy products remain in place and steps were recently taken to widen the scope of import controls in support of the milk supply management system.[11]

Horticulture

Benefits for some specific commodities, no effect on most other commodities and adjustments for a very few (e.g., grapes);

Secure access to a large market in the United States for both fresh and processed potatoes, benefitting the maritime provinces;

Expanded export opportunities for cold crops, including broccoli, brussels sprouts, and cauliflower; and

Increased sales of such fresh vegetables as cabbages, carrots, onions, onion sets, and sweet corn, and increased sales of English greenhouse cucumbers from Ontario.[12]

Poultry and eggs

No effect on primary producer returns for chicken, turkey, and eggs from tariff reductions since import controls are maintained, although the import quotas for chicken, turkey and eggs will be revised to reflect actual recent import levels; and

Some export opportunities for hatching eggs and day-old chicks.[13]

It appears that the United States does not, in the agricultural sector at least, benefit as quickly or as comprehensively as Canada. In some areas, especially grape, wine, and meat processing, there will be improved or new markets for United States products.[14] Other benefits and more substantial benefits will not be experienced by farmers and food processors until all tariffs are removed from agricultural products. Many agricultural products will not be freely exchanged between both countries until the ten-year phase-in period has been completed. Nevertheless, there may be some regional or local products that will benefit more quickly from the new agreement. Other sectors of the United States economy such as financial services, telecommunications, and computers will benefit in more immediate terms.

The United States agricultural sector is capable of competing aggressively in Canada's agricultural markets and therefore the immediate tariff benefits to Canadians are probably seen as a reasonable trade-off in order to obtain new benefits in other areas of the United States economy. Likewise, since American agriculture is capable of competing in most world markets, the new trade agreement will not have a detrimental impact on the United States food supply or on American agricultural long-term competitive prospects. Because of these facts, little appears to be lost by the initial concession to Canada in the first year of this agreement.

In addition to removing duties or tariffs, Canada and the United States have agreed to address related agricultural issues such as use of offshore materials, quantitative restrictions, and technical standards. Each of these issues are important individually but when combined with the tariff reductions they represent a significant shift in national agricultural policy for both countries. Canada and the United States have by the terms of the FTA recognized the benefits of a binational free trade zone. The FTA establishes a common goal for both countries which benefit themselves and which will begin to establish common ground in future multilateral trade negotiations.[15] The FTA allows both countries to retain their GATT rights relative to concerns not dealt with in the agreement. By adopting a common attitude in regard to agricultural trade policy, Canada and the United States will be advocates for further trade reductions among GATT trading members and more specifically the Common Market countries of Europe as they move towards their own free trade agreement, which is to be in effect by 1992.

Canada and the United States have also, through the FTA, found common ground regarding agricultural subsidies. Both countries have agreed to remove export subsidies on goods shipped from one country to the other and each will take into account the interests of the other when using export subsidies to support agricultural products being shipped to third-country markets.[16]

Both countries have also agreed to minimize their differences in the area of technical regulations and standards. Each country will begin to reduce the various technical barriers that interfere with Canada/United States trade.[17] The agreement specifically addresses feed, fertilizer, means of conveyance, pest pesticide, plant, plant pest and veterinary drugs.[18] In a more general way the FTA calls for a harmonizing of regulatory requirements and procedures, establishment of common quantitative restrictions, creation of a common accreditation procedure for inspection, establishment of reciprocal training programs, and the development of common data and information requirements.[19] The primary goal of the FTA regarding trade barriers and standards is to reduce the regulatory differences between the two countries without reducing the existing protection relating to human, animal, or plant health.

Finally, the two countries have established a system that encourages ongoing consultation regarding agricultural issues and a new binational panel has been created to review trade disputes. Each country has agreed to consult on agricultural issues semi-annually and at other times when both parties agree.[20]

Canada and the United States will continue to apply their old countervailing duty and antidumping duty laws to goods shipped in from the other country. However, independent binational panels will review final countervailing duty and antidumping duty decisions made by U.S. and Canadian administrative agencies, supplanting the jurisdiction of national courts.[21] The panels will consist of five members, two chosen by the two governments and the fifth mutually agreed on or selected by the other four

(Continued on next page)

panel members.[22] Decisions will be made based on the arguments heard by the panel subject to time limitations and other procedural requirements.[23] The goal of the binational panel is to insure a degree of fairness to the decision making process and to eliminate any potential appearance of corruption. The panel mechanism will be used for seven years, during which time a bilateral working group will seek to develop new approaches to resolve matters of government subsidies, anticompetitive pricing practices, and associated countervailing duty and antidumping duty issues.

With the adoption of the FTA, many new markets have opened to each country. In fact, the current tariff reductions have already benefitted Canadians and Americans. However, there is still a cautious attitude in both countries as to its impact on particular industries. Less competitive industries will be negatively affected in the long run, but with these exceptions most agriculturally related industries should benefit from the agreement. The exact impact on the agriculturally related markets having to do with increased productivity, greater efficiency, larger investment, and lower prices, still remains to be seen. The FTA has, however, created a new environment in which Canadian and American agricultural interests must operate, and only over a period of time will one be able to render a judgment as to the FTA's real success.

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1. The Canada-United States Free Trade Agreement, Dec. 12, 1987, 27 I.L.M. 281 (1988). U.S. legislation implementing the Free Trade Agreement (FTA) was passed by Congress and signed by President Reagan on September 28, 1988. Canada-United States Free Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, 19 U.S.C. § 2112. For further reference, see Baker & Bertram, *The Canada-United States Free Trade Agreement*, 23 Int'l Law 37 (1989).

2. *Statistics Canada (1987)*, New York Times, Jan. 2, 1989, at 21.

3. See n.1, Preamble.

4. See n.1, Art. 401 Annex.

5. *Id.* See n.1, Art. 12 & 7.

6. The Canada-United States Free Trade Agreement and Agriculture: An Assessment.

7. *Id.* at 6, Agriculture Canada, Ottawa, Canada: (1988), p. 7.

8. *Id.*

9. *Id.*

10. *Id.* at 1.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 55-56.

15. *Supra*, n.1, at Art. 701.1.

16. *Id.* at Art. 701.

17. *Id.* at Art. 708.

18. *Id.* at Art. 708.1.

19. *Id.*

20. *Id.* at Art. 709.

21. *Id.* at Art. 1900.

22. *Id.*

23. *Id.* at Art. 1904.

STATE ROUNDUP

IOWA. *Forfeiture ineffective for failure to provide notice to tenant with recorded lease.* In a somewhat surprising decision, the Iowa Supreme Court ruled in *Jamison v. Knosby*, 423 N.W.2d 2 (1988) that an attempt to forfeit a land contract was ineffective because the vendor failed to provide notice to the tenant, whom the court found to be the "person in possession," as required under Iowa Code Ann. section 656.2. The case is unusual because of the circumstances of the tenancy.

The facts indicate that the vendee entered into a three-year written lease to his brother-in-law in October of 1984. The lease was recorded in the county recorder's office six days before the vendee-landlord failed to make an interest payment that was due. The vendor initiated a forfeiture proceeding but did not provide notice to the brother-in-law tenant, even though the vendor was asked by the tenant to honor the lease. The vendee did not satisfy the forfeiture notice and in the spring a dispute arose between the reclaiming vendor and the vendee's tenant over who had possession of the land. The vendee's tenant eventually planted the 1985 crop but in September, the vendor obtained an injunction that prevented the tenant from harvesting the crop, which was eventually harvested by the vendor.

The vendor brought an action to quiet title to the property and the vendee's tenant counterclaimed for rent and damages. The vendee also counterclaimed to declare the forfeiture void and to obtain his landlord's share of the rent. The trial court found for the vendor on all counts and the defendants appealed.

On review, the Iowa Supreme Court noted that equity abhors a forfeiture and thus forfeiture statutes must he strictly construed. On this basis the court reviewed the wording of Iowa Code Ann. section 656.2, which requires that notice of the forfeiture be given to the "person in possession of the real estate, if different than the vendee." The question for the court was whether the brother-in-law who had obtained a lease on the farm in October was a "person in possession" so that he should have received notice for the forfeiture to be effective. The vendor argued that because the "tenant" had not yet entered onto the farm, he was not in possession. The court rejected this argument, noting that although the farmer had not actually occupied or entered the farmland during the winter months, that did not dilute his claim, as there was nothing to do on the land during that time. The court noted that "we do not find it necessary to require a farm lessee to carry on activities atypical to the nature of farming cropland in order to demonstrate possession." The court also noted that the recording of the lease put the vendor on constructive notice of the tenant's claim to possession of the land.

On this basis, the court held that the forfeiture was ineffective and thus the vendee was still the owner of the farm and the tenant was entitled to his two-third share of the crop under the lease. The court rejected the tenant's claim for lost profits for the 1986 growing year as being speculative.

– Neil D. Hamilton

KANSAS. *Competing claims to ASCS payments.* In a recent Kansas decision, *Rural Gas, Inc. v. North Central Kansas Production Credit Corp.*, 755 P.2d 529 (1988), the state Supreme Court considered competing claims to ASCS payments. A sum, a deficiency payment in the amount of $42,721.75, was paid to Rural Gas, Inc. (RGI) despite claims by the PCA that it had a prior perfected security interest in the payments. The major issues in the case were 1) whether federal law, rather than state law, determined the nature and extent of any property interest in federal farm program payments (including specifically the right to assign or encumber such payments); 2) whether 16 U.S.C. section 590(h)g and 7 C.F.R. section 709.3(a) limit a producer's right to assign or encumber as security the producer's right to receive federal farm program payments; and 3) whether the lower court, which had granted judgment to the PCA on a conversion claim, had erred in defining the term "preexisting indebtedness" as used in 16 U.S.C. section 590h(g) and 7 C.F.R. section 709.3(a), which prohibit the assignment of certain farm program payments to pay or secure preexisting indebtedness.

The Supreme Court held that the farmer's interest in the federal program payments are property interests controlled by the federal statute that created them. These interests are subject to state law only to the extent that the state law does not conflict with the federal statutes and regulations. The PCA argued that the prohibition against

(Continued on page 2)

STATE ROUNDUP

IOWA. *Homestead redemption relief act.* In the case of *Federal Land Bank of Omaha v. Arnold,* 426 N.W.2d 153 (1988), the Federal Land Bank had challenged the constitutionality of 1987 Iowa Acts ch. 142, which provided foreclosed farmer borrowers with a two-year right to redeem a homestead at fair market value. The FLB specifically challenged the reasonableness of the distinction made in the law between "member institutions" (banks, savings and loans, and credit unions) and "non-member institutions" (all other mortgagees, including the FLB). Constitutional challenges to the operation of the act, in particular the retroactive application of the provision to all foreclosure sales occurring after June 4, 1986, were also made. The district court held that the act was constitutional and the FLB appealed.

The court addressed two issues:

1) the constitutionality of the member/non-member distinction under equal protection analysis, and

2) the constitutionality of the retroactive application, on impairment of contract grounds.

The court held that on both issues the act was unconstitutional, but crafted an interesting remedy to address the problem.

On the issue of equal protection, the court noted that the inquiry concerned the means chosen to forward an end that the parties agreed was legitimate. The court held that there was no rational basis for the distinction drawn by the legislature. The court specifically rejected the state's arguments that "member institutions" have a greater stake in the community. Second, the court did not agree that all member institutions are subject to restrictions on the length of time in which they are obligated to dispose of acquired farmland. It noted that an out-of-state bank lending in Iowa would not be so governed. Further, the court said it was unable to "conceive – or impute to the legislature – a rational relationship between the length of time given the holder of a sheriff's deed to dispose of acquired real estate and the length of time given a mortgagor to redeem a designated homestead. Discrimination in redemption periods based solely on the identity of the purchaser at the foreclosure sale simply bears no rational relationship to the public purpose of providing relief to farmer-mortgagors in financial distress by keeping them in their homes, on the land."

To remedy this constitutional infirmity, the court decided to extend the redemption period to two years for all farmer-mortgagors. The effect of this ruling was that the FLB did not gain any shorter period of redemption but instead banks and other member institution lenders lost the benefit of the one-year period.

The second issue considered by the court concerned the impairment of contract argument levied against the retroactive application of the Act. The court engaged in a lengthy analysis of this issue and reviewed the U.S. Supreme Court's and its own rulings on the subject. The court also looked at recent opinions of the supreme courts of Kansas and Montana, which have addressed similar challenges in the farm debtor relief context.

The court concluded that the Iowa statute falls somewhere between the "benign, narrowly focused relief" that has been found constitutional in cases such as *Blaisdell,* 290 U.S. 398 (1934), *Nordholm,* 217 Iowa 1319 (1934), and *Neel,* 675 P.2d 96 (Montana 1984), and the "oppressive and unnecessarily destruct[ive]" conditions found unconstitutional in *Worthen,* 295 U.S.56 (1935) and *Bott,* 732 P.2d 710 (Kan. 1987).

The main challenge in this case was the FLB's claim that giving a mortgagor the opportunity to redeem a homestead at fair market value after it had already been sold was unfair to the mortgagee who may have bid an amount based on the debt as opposed to the value of the property. If the fair market value were established prior to the sale, then the bid could be adjusted accordingly, but that was not possible in cases subject to the retroactivity provision.

The court noted that since there was undoubtedly an impairment of the parties' contract, the issue was whether it was based on reasonable conditions and of a character appropriate to the public purpose. The court concluded that the retroactive provision could not satisfy the constitutional test and ruled that "the uncertainty created by the retroactive application of sections 4 and 5 of the Act unreasonably impairs the integrity of the judgment secured by the mortgage foreclosure decree. At best, only prospective application of the statute's terms will comport with the constitutional standard of "reasonable conditions" established for the contract clause challenges.

The result of the holding was that the court struck down the retroactive application of sections 4 and 5 of the Act but preserved the right to redeem at fair market value if applied prospectively. As a result, all foreclosure sales that have happened since the effective date of the Act in June 1987 should not be affected. The exact effect of the ruling on those sales that occurred during the retroactive period is somewhat uncertain, but it would appear that the right to redeem would be available but only for the bid amount. The losers in this section of the court's opinion are those farmers who had homesteads sold at foreclosure during the retroactive period.

The court did not address the issue of whether the extra one-year right of first refusal to repurchase a designated homestead that was made applicable to member institutions, in part as a trade-off for the one-year redemption provision, is in any way affected by the ruling.

The court only briefly considered another of the FLB's procedural concerns, which was the question of whether the redeeming mortgagor has to pay interest on the redemption amount. The court noted that while Iowa Code Ann. section 628.13 would require that, the act was silent on the issue, thus creating the possibility the interest accruing on the bid amount would be lost to the mortgagee or other successful bidder. Unfortunately, the court did not answer the question of whether Iowa Code Ann. section 628.13 requires the payment of interest when there is the fair market value redemption of a designated homestead.

– Neil D. Hamilton

AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

JOB FAIR. The American Agricultural Law Association's Fifth Annual Job Fair will be held concurrently with the 1989 Annual Meeting, November 3-4, 1989, at the Nikko Hotel, San Francisco, California.

Prior to the annual meeting, known positions and information regarding scheduled on-site interviews will be circulated to ABA-approved law school placement offices by the Job Fair Coordinator. Placement offices will forward resumes to interested firms and organizations. Employers may schedule interviews for any time during the conference.

To obtain further information or to arrange an interview, please contact: William P. Babione, Office of the Executive Director, Robert A. Leflar Law Center, University of Arkansas, Fayetteville, AR 72701, 510-575-7389.

ELECTION REMINDER. By now, all members should have received their ballots for election of the President and two Directors of the American Agricultural Law Association. Ballots should be returned to William P. Babione, Office of the Executive Director, Robert A. Leflar Law Center, University of Arkansas, Fayetteville, AR 72701. The deadline is July 15, 1989.