AGRICULTURAL FINANCE
2020 Case Law Update

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I. UCC REVISED ARTICLE 9 [SECURED TRANSACTIONS].

A. Attachment.

No updates.

B. Perfection.

No updates.

C. Priority.

1. Statutory Liens.

a. Oklahoma landlord lien requires the landlord to file an action to enforce the lien. Keith Milacek (the "Debtor") was indebted to Bank of Kremlin (the "Bank"). The debt was secured by a security interest in the Debtor's crops. The Bank properly perfected its security interest. ARA, LP (the "Landlord") owned certain crop land. The Landlord leased the cropland to the Debtor and the Debtor planted a [crop]. The Debtor passed away and, as allowed by the lease, the Landlord took possession of the cropland, harvested and sold the crops, and applied the crop proceeds against the unpaid cropland lease. The Bank objected and commenced a legal action for conversion. The Landlord argued a landlord lien under 41 O.S. 2011 §28. The Bank disagreed and argued the Landlord failed to properly perfected its landlord lien because the Landlord never commenced a legal action. The Oklahoma Court of Appeals affirmed the trial court finding that the Landlord failed to properly perfect its landlord lien because the Landlord never commenced a legal action under the Oklahoma landlord lien statute and, therefore, the actions of the Landlord to sell the crop constituted conversion of the Bank's priority security interest. *Bank of Kremlin v. ARA, L.P., 2020 OK CIV APP 30 (Okla. Civ. App. 2020).*

b. Iowa harvester entitled to lien for services contracted for by related party. Thomas Kohn (the "Father") and his son Anthony Kohn (the "Son") farm over 14,000 acres; acres which are either owned or leased by the Father or the Son. As to the Son's cropland ("Son's Cropland"), the Father provides the farming service and, in consideration, the Son provides labor as to the Father's cropland. Father contracted with Joseph Muhr (the "Harvester") to harvest the corn on Son's Cropland and deliver the grain to an elevator in the name of the Father. The Father later transferred title to the grain to the Son. The Harvester was not paid and filed a harvester lien against the Father under Iowa 571.1B. The Father argued he was not the "person for whom the harvester renders such harvesting services" and, therefore, the lien filing as against the Father was not warranted and the Harvester should be liable for the damages caused by the UCC-1 filing. The Harvester argued the Father conducted the negotiations with the

Harvester, directed all of the Harvester's harvesting and delivering activities, and directed the Harvester to deliver significant amounts of grain under the Father's name or to the Father's grain facilities and, therefore, the Father was not merely an agent but more akin to a contractor. The Court of Appeals agreed and held the Harvester properly perfected its lien and was not liable for and damages incurred by the Father as a result of the UCC-1 filing. *Kohn v. Muhr, Case No. 18-2059 (Iowa App. 2019).*

c. The equitable remedy under a finding of alter ego is to award a priority lien to a non-filing creditor. Scott Day ("Day") farmed, in 2014, under three partnerships (the "2014 Entities"). Day made the financial decisions of the 2014 Entities. The 2014 Entities were indebted to Regions Bank ("2014 Bank") and to secure the debt the 2014 Entities granted the 2014 Bank a security interest in the 2014 Entities' crops. The 2014 Entities failed to pay the 2014 Bank $1.87 million. Due to the carryover debt the 2014 Bank would not finance the 2015 crop. AgriFund, LLC (the "2015 Bank") agreed to finance the 2015 crop but, initially, required the 2014 Bank to subordinated its liens to the 2015 Bank in the 2015 crop. The 2014 Bank would not subordinate its liens, <u>and upon the advice of the 2015 Bank,</u> Day created the 2015 Entities and obtained financing from the 2015 Bank without the requirement of a subordination agreement and to secure the debt the 2015 Entities <u>and Day</u> granted the 2015 Bank a security interest in the 2015 Entities' crops. The 2015 Entities also never paid certain landlord rent for which the 2015 Entities leased from a subtenant of the land owners (the "Landlords"). The 2015 Entities eventually owed $6 million to the 2015 Bank secured by only $2.9 million of crops for which the 2014 Bank, the 2015 Bank and the Landlord asserted a priority lien in the 2015 crop. The trial court held the various entities had "no relevance", were "merely alter egos of Scott Day used to qualify for government payments and to move credit around", the substitution of the 2015 Entities was a sham, that the 2015 Bank participated in the sham, that the Landlords held a valid lien under Ark. Code Ann. §18-41-101(a) even though the Landlords did not own the cropland and; therefore, the Landlords held a first lien, the 2014 Bank a second lien, and the 2015 Bank a third position lien. On Appeal the Arkansas Supreme Court held: (1) as between the 2014 Bank and the 2015 Bank, the Court affirmed: (a) that because the various partnerships were alter egos of Day that the 2014 Bank lien was the priority lien, (b) that even though the 2015 Bank was the only creditor with a security interest from Day, individually, the Court affirmed that the equitable principles of piercing the corporate veil (and the action of the 2015 Bank) did not warrant a finding that the 2015 Bank's lien was superior, and (c) the 2015 Bank was not entitled to some equitable relief because the 2014 Bank did not contribute to the 2015 crop; and (2) as to the landlord liens under Ark. Code Ann. §18-41-101(a), the party asserting the landlord lien does not need to be the property owner only the party for which had the contractual right to lease the cropland to the debtor. *AgriFund, LLC v. Regions Bank*, 2020 Ark. 246 (Ark. 2020).

Comment 1. *AgriFund (the 2015 Bank) raises a strong argument that only AgriFund had a security interest in the personal property of Day and because the 2015 Entities were the alter ego of Day, AgriFund would still prevail over Regions Bank (the 2014 Bank). The Court obviously is concerned with the actions of AgriFund to advise Day to create the new entities to circumvent the 2014 Bank UCC-1 filing and without the need of a subordination agreement in holding that "[t]he doctrine of piercing the corporate veil is founded in equity and is applied when the facts warrant its application to prevent an injustice." However, the Court is either indirectly holding that: (a) the 2015 Entities were the alter ego of the 2014 Entities or, (b) the 2014 Bank should be entitled to an equitable lien in the assets of Day without requiring the 2014 Bank to have filed a lien as to Day; both of which would prevent, in the Supreme Court of Arkansas' mind, an injustice.*

Comment 2. *A dissent to the decision took a different direction and asserted that it is not fair to award a priority lien to a creditor that did not contribute to the subsequent crop. It is well-settled law that an Article 9 security interest is a continuing lien and the secured creditor does not have to finance the subsequent crop to obtain the benefit of the lien. This argument can be spun; in that, the subsequent lender had actual notice of the prior lien and elected to finance the 2015 crop with notice that the earlier lender would have a priority lien under Revised Article 9.*

Practioneer Note. Take a security interest in the farming entity and the principals of the farming entity to secure the debts of the farming entity.

d. Consequential damages awarded as a result of meritless defenses of lien creditor. True Blue Holsteins (the "Debtor"), a partnership of Kevin Ihm and Gerald Ihm (the "Partners"), as indebted to CHS Capital, LLC (the "Creditor"). The debt was secured by the Debtor's and the Partners' crops. Hellenbrand Farms, LLC (the "Lien Claimant") performed custom harvesting for the Debtor. The Debtor failed to pay $143,573,90 to the Lien Claimant and the Lien Claimant filed an agricultural lien under Wis. Stat. § 779.50, which provides that "[t]he lien created by this section shall be preferred to all other liens and encumbrances" (the "Ag Lien"). The Debtor sold $256,778.82 in crops and the Creditor made demand on the grain buyer to make the check jointly payable to the Debtor, the Creditor and the Lien Claimant. CHS alleged that the Ag Lien was not recorded in the office of the register of deeds where the services were performed within 15 days from the date of the completion of the service as required by Wis. Stat. § 779.50, subd. (3). The Lien Claimant asserted that Wis. Stat. § 779.50, subd. (3) could only be invoked as a defense by "an innocent purchaser for value" – for which the Creditor was not. The Creditor subsequently asserted that the Lien Claimant failed to enforce its lien within the six month requirement under the Wisc. Stat. § 779.50, subd. (3). The Creditor commenced a legal action seeking a declaration action that the Creditor had a first and priority

lien in the crop proceeds. The Lien Claimant disputed and the Court agreed that the Creditor was not an innocent purchaser for value and the Wisc. Stat. § 779.50, subd. (3) states an ag lien claimant may commence the action within 6 months. The Court also awarded the Lien Claimant (as against the Creditor) 5% interest during the period in which the Creditor refused to endorse the checks, its legal costs and expenses and potentially three times its actual damages. *CHS Capital, LLC v. Hellenbrand Farms, LLC, 420 F.Supp.3d 872 (W.D. Wis. 2019).*

2. Buyer of Farm Products (Federal Food Security Act).

No updates.

3. Statutory Trusts.

a. Sale of goods is required under Article 2 for a "creditor" to be considered an unpaid seller of produce. Spiech Farms, LLC (the "Debtor") raised and sold produce. The Debtor was indebted to Chemical Bank (the "Lender") and the debt was secured by the produce and accounts of the Debtor. The Debtor and Produce Pay, Inc. ("Produce Pay") were parties to an involved distribution agreement that provided for a combination of the sale of produce to Produce Pay, the factoring of accounts receivable to Produce Pay and the consignment of produce to Produce Pay – which enabled the Debtor to obtain financing from Produce Pay. The Debtor became insolvent and filed a Chapter 11 bankruptcy. Produce Pay asserted a claim of more than $1 million against the Debtor under the Perishable Agricultural Commodities Act, 7 U.S.C. §499 *et seq.* ("PACA"). Produce Pay argued that it was an unpaid seller of produce because the Debtor sold the produce to Produce Pay, and then, the Debtor sold the produce to its customers on behalf of Produce Pay. The failure of the eventual buyers of the produce to pay Produce Pay (via the Debtor) entitled Produce Pay to the PACA claim. The Debtor and creditor disagree and argued that there was no transfer of title of the produce to Produce Pay under UCC §2-403. The Court agreed and held that title did not pass to Produce Pay prior to title passing to the eventual buyers of the produce and, therefore, the Debtor did not own the produce at the time title was purportedly passed to Produce Pay. The Bankruptcy Court concluded the arrangement constituted a financing arrangement and not a sale of goods. *In re Spiech Farms, LLC, 592 B.R. 152 (Bankr. W.D. Mich. 2018).* The Court of Appeals affirmed. *In re Spiech Farms, LLC*, Case No. 18-CV-1366 (W.D. Mich. Dec. 17, 2019)

b. Agreement did not constitute a factoring agreement because the seller remain obligated to the creditor on the customer accounts. Spiech Farms, LLC (the "Debtor") raised and sold produce. The Debtor was indebted to Chemical Bank (the "Lender") and the debt was secured by the produce and accounts of the Debtor. The Debtor and Produce Pay were parties to an involved distribution agreement that provided for a combination of the sale of produce to

Produce Pay, the factoring of accounts receivable to Produce Pay and the consignment of produce to Produce Pay – which enabled the Debtor to obtain financing from Produce Pay. The Debtor became insolvent and filed a Chapter 11 bankruptcy. Produce Pay argued that the agreement was a factoring agreement and Produce Pay purchase the accounts of the Debtor free of any security interests. The Debtor and committee argued that Produce Pay did not purchase the accounts of the Debtor because the Debtor retained the risk of loss associated with the accounts under the "transfer-of-risk" test articulated by the Second, Third, Fourth, Fifth and Ninth Circuit. *See S & H Packing & Sales Co., Inc. v. Tanimura Distributing, Inc.*, 883 F.3d 797, 808 (9th Cir. 2018), *Nickey Gregory Co., LLC v. AgriCap, LLC*, 597 F.3d 600-603 (4th Cir. 2010), *Reaves Brokerage Co., Inc. v. Sunbelt Fruit & Vegetable Co., Inc.*, 336 F.3d 410 (5th Cir. 2003). The Court agreed and held that under the distribution agreement the Debtor remained obligated to Produce Pay even if the Debtor's customers failed to pay on for the produce. *In re Spiech Farms, LLC, 592 B.R. 152 (Bankr. W.D. Mich. 2018).* The Court of Appeals affirmed. *In re Spiech Farms, LLC*, Case No. 18-CV-1366 (W.D. Mich. Dec. 17, 2019).

II. UCC ARTICLE 2 [SALE OF GOODS].

A. Title, Creditors and Good Faith Purchasers. (UCC § 2-401 *et seq.*)

1. Sale of goods is required under Article 2 for a "creditor" to be considered an unpaid seller of produce. Spiech Farms, LLC (the "Debtor") raised and sold produce. The Debtor was indebted to Chemical Bank (the "Lender") and the debt was secured by the produce and accounts of the Debtor. The Debtor and Produce Pay, Inc. ("Produce Pay") were parties to an involved distribution agreement that provided for a combination of the sale of produce to Produce Pay, the factoring of accounts receivable to Produce Pay and the consignment of produce to Produce Pay – which enabled the Debtor to obtain financing from Produce Pay. The Debtor became insolvent and filed a Chapter 11 bankruptcy. Produce Pay asserted a claim of more than $1 million against the Debtor under the Perishable Agricultural Commodities Act, 7 U.S.C. §499 *et seq.* ("PACA"). Produce Pay argued that it was an unpaid seller of produce because the Debtor sold the produce to Produce Pay, and then, the Debtor sold the produce to its customers on behalf of Produce Pay. The failure of the eventual buyers of the produce to pay Produce Pay (via the Debtor) entitled Produce Pay to the PACA claim. The Debtor and creditor disagree and argued that there was no transfer of title of the produce to Produce Pay under UCC §2-403. The Court agreed and held that title did not pass to Produce Pay prior to title passing to the eventual buyers of the produce and, therefore, the Debtor did not own the produce at the time title was purportedly passed to Produce Pay. The Court concluded the arrangement constituted a financing arrangement and not a sale of goods. *In re Spiech Farms, LLC, 592 B.R. 152 (Bankr. W.D. Mich. 2018).* The Court of

Appeals affirmed. *In re Spiech Farms, LLC*, Case No. 18-CV-1366 (W.D. Mich. Dec. 17, 2019).

2. Violation of express warranty voids contract. Greenway Equipment, Inc., is a farm-equipment dealer (the "Dealer"). Boyce Johnson is a farmer (the "Buyer"). The Buyer asked the Dealer for a used tractor with no more than 500-550 hours on the engine, and the Dealer sold the Buyer a tractor for which the purchase order stated "500-600 hours." When the Dealer delivered the tractor, the tractor had 886 hours. The Buyer refused to take possession and commenced a legal action when the Dealer made demand on the Buyer to take possession of the tractor. The Buyer asserted damages in excess of $96,000 for lost profits because of reduced yields. The Dealer argued that there was no express warranty and the hours were just sales talk. The Court disagreed and held that pursuant to Arkansas Code Annotated section 4-2-313, a seller who makes any affirmation of fact or promise to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise and, therefore, the Buyer had no obligation to accept deliver of the tractor; however, the Buyer was not entitled to any monetary damages based on speculative damages. *Greenway Equip., Inc. v. Johnson, 2020 Ark. App. 336 (Ark. App. 2020).*

Comment. UCC 2-313 relates is a post-delivery remedy; in that the buyer discovers <u>after accepting the good</u> that the good does not conform to the discussions as between the buyer and seller; and, therefore, the buyer is entitled to return the goods based on the seller's breach of its express warranty. However, in this case, <u>the Buyer never accepted the tractor</u>. The result may be appropriate, but the legal issue is one of offer (e.g. to buy a tractor with less than 500 hours) and acceptance (e.g. the failure to deliver a tractor that satisfies the offer) under UCC 2-206; not as to a breach of any warranties.

B. Remedies. (UCC § 2-701 *et seq.*).

No updates.

III. UCC ARTICLE 1 [GENERAL PROVISIONS], ARTICLE 2A [LEASES], ARTICLE 3 [NEGOTIABLE INSTRUMENTS] AND ARTICLE 7 [DOCUMENTS OF TITLE].

No updates.

IV. OTHER STATE LAW.

A. Unjust enrichment; Statute of Limitations.

Buyer of farm products may not deduct costs against encumbered farm products. Justin Harker and his spouse Ashley Harker are corn and soybean farmers (the "Debtors"). The Debtors were indebted to MidWestOne Bank (the "Bank") and the debt was secured by the crops of the Debtors. The Debtors harvested delivered and later sold (in some cases, years later) corn and soybeans to Heartland Coop (the "Grain Buyer"). Iowa is a direct notice state and the Bank properly gave the Grain Buyer notice of its security interest. The Grain Buyer issued the grain checks jointly payable to the Debtors and the Bank after deducting its costs of drying and storing the grain; which totaled $79,895.68. The Bank made demand on the Grain Buyer for the deducted costs. The Grain Buyer argued that the statute of limitation to assert the claim for conversion was two years and the affirmative defense of unjust enrichment. *MidWestOne Bank v. Heartland Co-op,* 941 N.W.2d 876 (Iowa 2020).

B. Lender Liability.

Louisiana Credit Agreement Statute precludes action for breach of oral promises. SMI Companies Global, Inc. (the "Borrower"), an equipment fabricator, and its president and loan guarantor, Vaughn S. Lane ("Guarantor") had two loans with Whitney Bank (the "Bank"); a $1,500,000 ("Loan 1") and $900,000 ("Loan 2") revolving line of credit. Loan 2 was issued in anticipation of a certain $2,000,000 project of the Borrower that required the Borrower have additional credit to complete. The project was delayed – and in the time being - Loan 2 matured. The default on Loan 2 triggered a default on Loan 1. The projected was eventually canceled. The Bank commenced a legal action. The Borrower and Guarantor asserted several counterclaims against the Bank for breach of the loan agreements, negligent misrepresentation, and tortious interference with its business relations as a result of the allegations that the Bank failed to fund Loan 2 through completion of the project. The trial court ruled in favor of the Borrower as to Loan 2 and in favor of the Bank as to Loan 1. The Bank appealed to the 5th Circuit. On appeal, the 5th Circuit reversed the trial court on the basis that any oral promises to fund the loan through the completion of the project is inconsistent with the Louisiana Credit Agreement Statute (La. Rev. Stat. 6 §1121 *et seq.*), is not enforceable as against the Bank and, therefore, reversed the breach of contract and negligent misrepresentation rulings as against Note 2. Furthermore, there was no evidence of malice to support the judgment for tortious interference by the Bank. The 5th Circuit upheld the trial court ruling that the Bank could not collect its legal fees as against the Borrower and Guarantor on the basis of the discretion afforded the trial court. *Whitney Bank v. Smi Cos. Global, 949 F.3d 196 (5th Cir. 2020).*

C. Conversion

Actions of financial institutions to handle converted borrower funds may constitute fraud, conspiracy to commit fraud, racketeering, unfair trade practices and conversion. Radar Ridge Planting Company, Inc. and Dickenson Ag (collectively the "Borrowers") were indebted to Agrifunds, LLC (the "Lender") and the indebtedness was secured by a security interest in the crops of the Borrowers. The Borrowers sold the harvested crops, converted the sale proceed checks into cashier's checks issued by Franklin State Bank and Trust Company, Commercial Capital Bank and Caldwell Bank and Trust Company (collectively the "Banks") to individuals related to the Borrowers. The cashier's checks were subsequently deposited into accounts with various financial institutions for which the payees on the cashier's checks withdrew the funds. The Lender commenced a legal action and asserted causes of action for fraud, conspiracy to commit fraud, racketeering, unfair trade practices and conversion. The trial court dismissed the various actions and, on appeal, the Louisiana Court of Appeals reversed and remanded back to the trial court the cause of action for conversion. The Court of Appeal held that the Lender did not need to show that the Banks knew or intentionally benefited from the crop proceeds but; instead, that the Banks exercised dominion or control over the proceeds. *Agrifund, LLC v. Radar Ridge Planting Co.,* 278 So.3d 1025 (La. App. 2019). The Louisiana Supreme Court affirmed, in part, and reversed, in part, the Court of Appeals, and reserved, in full, the trial court; effectively preserving all of the causes of action alleged by the Lender. *Agrifund, LLC v. Radar Ridge Planting Co.,* 283 So.3d 492 (La. App. 2019). The Louisiana Supreme Court opinion was limited and did not address any substantive issues in detail.

Comments. The facts are complex including allegations of bank employees making management and cashflow decisions for the Borrowers. As to the cause of action for conversion, the Court of Appeals recites the applicable provisions of the UCC as to Article 9 security interests and the continuation of the security interest as to the proceeds of the goods. However, either the parties did not argue or the Court of Appeals did not appreciate the distinction of Revised Article 9 as to farm product and, specifically, that under the Food Security Act, a buyer of farm products acquires the farm products free and clear of any encumbrances for which the secured party either (depending on state law) filed a CNS filing or gave direct notice to the buyer. The original grain checks were not made payable to the Lender. The Lender may or may not have a remedy under the Food Security Act as to the grain buyers; however, the Lender would not have a remedy as against a financial institution that deposited the grain check after the joint payee(s) endorsed the checks. What happens next (which, in this case, involved the Bank issuing cashier's checks to related parties) should not matter. Although a security interest attaches to the proceeds of the collateral, once the proceeds become commingled (e.g. the cashier's checks deposited by the related parties) the security interest is effectively severed. This is exactly why the Food Security Act

was enacted – to protect secured creditors by requiring crop proceeds to be made payable to the secured creditor (and to not allow the crop proceeds to be commingled). As to the conversion claim, absent knowledge or other misdoing by the Banks, the Banks did nothing wrong. The Banks accepted grain checks endorsed by the payee(s) and issued cashier's checks to the party for whom the Bank was instructed to issue the cashier's checks to.

V. BANKRUPTCY.

A. General. (11 U.S.C. § 101 *et seq*.).

No updates.

B. Case Administration. (11 U.S.C. § 301 *et seq*.).

No updates.

C. Creditors, Debtors and the Bankruptcy Estate. (11 U.S.C. § 501 *et seq*.).

No updates.

1. Non-dischargeability actions. (11 U.S.C. § 523)

a. *Agrifund, LLC v. Stephenson (In re Stephenson) (Bankr. S.D. Ind. 2020).*

b. *Busey Bank v. Cosman (In re Cosman) (Bankr. N.D. Ill. 2020).*

2. Preferential Transfers. (11 U.S.C. § 547)

No updates.

3. Fraudulent Transfers. (11 U.S.C. § 548)

No updates.

4. Unauthorized Post-Petition Transfer (11 U.S.C. § 549).

A material issue of fact exists as to whether a crop tenant obtained any benefit or profit as to an unauthorized post-petition lease because of depressed crop prices. Morrison Family Trust (the "Landlord") leased 110 acres of farmland to McMartin Family Partnership under a lease with a five-year term, 2013 through 2018. McMartin Family Partnership was reorganized and renamed McM, Inc (the "Debtor"). On February 2, 2017, Ronald G. McMartin, Jr., a principal of Debtor, wrote a $22,000 personal check to the Landlord for the 2017 land rent under the lease. On February

10, 2017, McM, Inc. filed a Chapter 7 bankruptcy. On March 22, 2017, the Landlord and Elkhorn Farms, LLC (the "New Tenant") entered a two-year (2017 and 2018) lease for the same land Debtor leased from the Landlord. On April 26, 2017, the New Tenant paid the Debtor $22,500, issuing a check notated "Land Rent Reimbursement." The trustee asserted that the post-petition lease of the cropland by the Debtor to the New Tenant was an authorized transfer under 11 U.S.C. § 549. The trustee moved for summary and the court denied the motion on the basis that there was a material issue of fact as to whether the New Tenant obtained any benefit or profit as to the lease because of depressed crop prices. *Ahlgren v. Morrison (In re MCM, Inc.),* 609 B.R. 511 (Bankr. N.D. 2019).

D. Chapter 7. (11 U.S.C. § 701 *et seq*.).

Legal fees of lender not chargeable against Debtor in 11 U.S.C. 727 action. Wyatt Livestock, Inc. (the "Borrower Livestock") and Wyatt Feeding LLP ("Borrower Feeding") were indebted to Banner Bank (the "Lender") and the debt was secured by the livestock of the Borrowers. Borrower Livestock was wholly owned and controlled by Wells Wyatt (the "Debtor"). Borrower Feeding was partially owned by the Debtor. The Debtor filed a Chapter 7 bankruptcy. The Lender commenced an adversary action, in relevant part, under 11 U.S.C. 727 to have the Chapter 7 dismissed. The court agreed and dismissed the case after finding the Debtor committed fraud. The Lender then moved for the Court to award its legal fees and costs totaling $138,985.00. The Court declined to award legal fees to the Lender on the basis that the bankruptcy code and applicable law does not allow for fee shifting under 11 U.S.C. 727. *In re Wyatt*, 609 B.R. 530 (Bankr. Idaho 2019)

Comment. The court decision providing limited factual background as to the relationship between the Lender and the Debtor. Presumably the Debtor had not guaranteed the debt obligations of the Borrowers to the Lender; otherwise, the Lender would have a contractual relationship with the Debtor so as to warrant reasonable legal fees and costs. Yet another reason to have the principals of the borrower guaranty the debt obligations of the borrower.

E. Chapter 11. (11 U.S.C. § 1101 *et seq*.)

No updates.

F. Chapter 12. (11 U.S.C. § 1201 *et seq*.)

Appropriate interest rate under *Till*. Key Farms, Inc. (the "Debtor") raised and sold apples, cherries, alfalfa, seed corn and other crops. The Debtor was indebted to HomeStreet Bank (the "Bank") and the debt was secured by certain real estate and its crops. The Debtor filed a Chapter 12 bankruptcy and proposed to pay or cramdown the claim of the Bank over twenty years at an interest rate of 4.50%

(the prevailing "prime" rate of 3.25% plus 1.25%). The Bank objected to the proposed interest rate and asserted the interest rate fails to adequately account for the credit risk under the U.S. Supreme Court decision in *Till v. SCS Credit Corporation*, 541 U.S. 541 (2004). The Court agreed and held that 1.25% did not adequately account for the credit risk and the interest rate should be at least 1.75% over the prime rate. *In re Key Farms, Inc. (Bankr. E.D. Wash. 2020).*

Denied confirmation based on plan feasibility. Dale Acker (the "Debtor") is a produce and livestock producer. The Debtor is indebted to the Farm Service Agency ("FSA"), Skyline National Bank ("Skyline"), and Farm Credit of the Virginias, A.C.A ("Farm Credit") and the debt is secured by the livestock of the Debtor. The Debtor is in a general partnership with his son, Ryan Akers (the "Son") in which the partnership buys and sells cattle. The Debtor filed a Chapter 12 bankruptcy. The Court denied the Chapter 12 plan based on feasibility under 11 U.S.C. 1225 and that his "records and projected revenue and expenses [were] inaccurate and unpersuasive such that they [did] not demonstrate the Debtor's probable compliance with the plan terms." *Akers v. Micale*, 609 B.R. 175 (W.D. Va. 2019)

Conversion to Chapter 7.

Pre-petition fraud is not basis to convert Chapter 12. Hunter Olson (the "Debtor") started farming in 2017. The Debtor was indebted to Farm Service Agency ("FSA") under a beginning farmer program and the debt was secured by a security interest in the personal property of the Debtor including 14 items of farm equipment. The loan agreement required approval by FSA prior to making any capital purchases. In March 2018 the Debtor, and FSA agreed to subordinate its security interest to Western bank of Wold Point (the "Bank") for an operating loan. It was discovered the Debtor violated the loan by selling and purchasing farm equipment without the consent of FSA. The Debtor also subsequently deposited by mobile deposit into its operating account with the Bank several crop checks made payable to the Debtor, the Bank and FSA with, what appeared to be forged signatures of FSA. The Debtor filed a Chapter 12 bankruptcy. FSA moved to convert the Chapter 12 to Chapter 7 on the basis of fraud and a bad faith filing under 11 U.S.C. §1208. The Court disagreed and held that the actions of the Debtor were not made in connection with the bankruptcy (but, instead, were pre-bankruptcy actions). *In re Olson, 609 B.R. 339 (Bankr. Mont. 2019).*

G. Chapter 13. (11 U.S.C. § 1301 *et seq*.)

No updates.

H. Judicial Procedure (28 U.S.C. § 151 *et seq*.)

No updates.

V. OTHER FEDERAL LAW.

A. Packers and Stockyard Act. (7 U.S.C. § 192 *et seq*.)

No updates.

LGPM 4813-2731-7954 v2