

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

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|---|---|--------------------------|
| <b>IN RE:</b>                           | ) |                          |
|   | ) |                          |
| <b>SHORE LIMITED, A PARTNERSHIP,</b>    | ) | <b>Case No. 99-40689</b> |
|   | ) | <b>Chapter 12</b>        |
| <b>Debtor.</b>                          | ) |                          |
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**MEMORANDUM OPINION CONCERNING  
AG SERVICES' SECURITY INTEREST IN CLDAP PAYMENTS**

This case comes before the Court on Debtor's Motion For Utilization Of Cash Collateral and Ag Services Of America, Inc.'s Motion To Prohibit Debtor's Use Of Cash Collateral And For Turnover Of CLDAP Payment. In its motion, Shore Limited ("Shore"), debtor, sought to use funds received from the Crop Loss Disaster Assistance Program ("CLDAP") post-petition to purchase cattle. Ag Services of America, Inc. ("Ag Services") objected to Shore's use of the funds, claiming it had a valid security interest in the CLDAP payment. On February 1, 2001, the Court granted Shore's Motion for Use of Cash Collateral and allowed Ag Services a replacement lien on cattle purchased with the CLDAP payment only if it could establish a lien in the payment, taking the issue of whether Ag Services had a valid lien in the CLDAP payment under advisement. Shore Limited, Inc. is represented by William E. Metcalf. Ag Services of America, Inc. is represented by Charles T. Engel. Because the CLDAP payment is a government entitlement payment and the proceeds of Shore's crop in which Ag Services had a valid security interest under its security agreements, Ag Services has a valid lien in the cattle purchased with the CLDAP payment and their proceeds.

**FINDINGS OF FACT**

The Court makes the following findings of fact based on the parties' briefs, stipulations and exhibits. In exchange for agricultural inputs, Shore granted Ag Services a security interest in its assets, including crops and governmental program payments, by executing a security agreement on March 30, 1995. Within two years, however, Shore defaulted on the loan and Ag Services filed suit to foreclose its security interest in 1997. On August 3, 1998, Shore and Ag Services appeared before the District Court of Stanton County, Kansas for trial in Ag Services v. Shore Limited, Case No. 97-C-19 and Randall R. Shore v Ag Services of America, Inc., Case No. 97-C-21. At trial the parties announced that the matters in these cases had been fully settled and outlined the terms of their agreement. The district court directed and the parties apparently agreed to the preparation of a journal entry which recited that the settlement agreement was acceptable and which foreclosed Ag Services's security interests in Shore's property. However, on August 5, 1998, prior to the entry of judgment, defendant Randall R. Shore filed his Chapter 12 petition in the United States Bankruptcy Court for the District of Kansas, Case No. 98-42169. Because of the pending bankruptcy, no journal entry was filed until March 25, 1999. The Journal Entry of Judgment ("Journal Entry") entered that day granted Ag Services a \$215,000 judgment against Shore in Case Nos. 97 -C-19 and 97-C-21 and foreclosed Ag Services' security interests in Shore's property. This Court has previously held that the Journal Entry is a final order as to debtor. On March 29, 1999, Shore filed this Chapter 12 bankruptcy case.

The funds in issue arise from Congress' enactment of the CLDAP on October 21, 1998. The purpose of CLDAP was to "make disaster payments available to certain producers who have incurred losses in quantity or quality of their crops due to disasters." 7 CFR Part 1477.101(a). After filing its bankruptcy in March 1999, Shore applied for CLDAP payments under the multi-

year option. The county committee approved and signed Shore's application on April 13, 1999. On June 4, 1999, Shore received a CLDAP payment in the amount of \$37,824. On February 1, 2001, this Court authorized Shore's use of the CLDAP payment to buy cattle, granting Ag Services a lien in cattle purchased with the CLDAP payment and their proceeds, but only to the extent Ag Services had a security interest in the CLDAP payment.

### JURISDICTION

The Court has jurisdiction to hear this matter as a core bankruptcy proceeding under 28 U.S.C. § 157(b)(2)(A) and 28 U.S.C. § 1334.

### DISCUSSION

At the core of the parties' dispute is the fact the CLDAP was not established until after Ag Services security agreements were executed. Debtor argues that, because the program payments did not become available until after the entry of the Journal Entry and after the date of filing of this case, Ag Services' security interest did not attach to them. Debtor also argues that, because Ag Services received a judgment foreclosing its security interest in state court, the "after-acquired" attributes of the security interest are no longer enforceable.

On October 21, 1998 the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, ("Act") was signed into law. Title XI of the Act, and in particular Sections 1101-1102, created the CLDAP. The CLDAP allowed the Secretary of Agriculture to "make disaster payments available to certain producers who have incurred losses in quantity or quality of their crops due to disasters." 7 CFR Part 1477.101(a) "Farmers are eligible for compensation either for losses suffered to the 1998 crops (single-year) or losses in any three or more crop years between 1994 and 1998 (multi-year)." *Id.* The maximum CLDAP payment under the multi-year option of the program was 25% of crop indemnity payments paid to the applicant

during the years covered by the program. 7 CFR Part 1477.300. To receive benefits under the multi-year option of CLDAP, applications were filed with the county FSA office. 7 CFR Part 1477.105(b). Shore filed under the multi-year option of the CLDAP and received \$37,824.

The first issue before the Court is whether the terms of the security agreement grant Ag Services a security interest in Shore's CLDAP payment. The parties dispute whether the security agreement sufficiently describes the CLDAP payment so that Ag Services' lien properly attaches.<sup>1</sup> This Court finds that Ag Services' security interest properly attaches to the CLDAP payment under two separate provisions in the security agreement which includes in its collateral description both government entitlement payments and proceeds of Shore's 1998 failed crops.

The first clause in the security agreements dated March 30, 1995, August 29, 1995 and September 19, 1996, provides Ag Services with a security interest in "... all entitlements and payments (whether in cash or in kind) arising under governmental agricultural subsidy, deficiency, diversion, disaster, conservation, or similar or related programs."<sup>2</sup> This language is identical to that found in the security agreement at issue in Drewes v. Lesmeister (In re Lesmeister), 242 B.R. 920, 922 (Bankr. D.N.D. 1999), in which the court held that the CLDAP payment was a governmental payment covered under the security agreement. "This language easily encompasses payments arising out of and in consequence of government programs like the CLDAP." Id. at 925. As the title of the program suggests, CLDAP is a disaster relief program intended "to supplement the indemnity payments previously received by [a farmer] which, in the opinion of Congress, did not fully compensate him for his crop losses." Lemos v. Rakozy (In re Lemos), 243 B.R. 96, 100

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<sup>1</sup>The parties do not dispute that value has been given or that Shore has rights in the collateral. K.S.A. § 84-9-203(b),(c).

<sup>2</sup>Response Brief of Ag Services, Inc., Exhibit A, B and C.

(Bankr. D. Idaho 1999). Because Ag Services' security agreement expressly provides a lien in payments through disaster programs such as CLDAP, Ag Services has a security interest in the CLDAP payment.

The security agreement further provides Ag Services with a security interest in all of Shore's collateral described in the security agreement including, "all accessories, accessions, parts and equipment now or hereafter affixed thereto or used in connection therewith and the proceeds (including, but not limited to, insurance proceeds) and products from all such Collateral." Historically, courts have held that disaster payments and governmental entitlement payments are proceeds of the debtor's crops. See Schneider v. Nazar (In re Schneider), 864 F.2d 683, 685 (10<sup>th</sup> Cir. 1988); White v. United States (In re White), 1989 WL 146417 (Bankr. N.D. Iowa 1989); Ring v. Kelley (In re Ring), 169 B.R. 73, 76 (Bankr. M.D. Ga. 1993) *aff'd* 160 B.R. 692 (M.D. Ga. 1993); Nivens v. Holder (In re Nivens), 22 B.R. 287, 291 (Bankr. N.D. Tex. 1982). Shore contends however that the CLDAP payment is not "proceeds" as defined in K.S.A. § 84-9-306.

The security agreement clearly provides that Ag Services' lien extends to proceeds of the crops. Ag Services had a continuing security interest in Shore's crops for the years covered by CLDAP. K.S.A. § 84-9-306 defines proceeds as "whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds..." Shore argues that the CLDAP payment is not an insurance payment because the payment did not result from an insurance contract and was not received through disposition of the collateral, but is based on an applicant's eligibility.

Contrary to Shore's argument, the security agreement's language does not limit Ag Services' lien only to proceeds received from insurance. The security agreement provides for a

lien in “proceeds (including, but not limited to, insurance proceeds) and products from all such Collateral.” This language includes the CLDAP payment which was intended as additional compensation to the debtor for crop losses occurring pre-petition. Additionally, the CLDAP payment is proceeds as defined under K.S.A. § 84-9-306 since it is consideration received on account of an “other disposition of collateral.” The CLDAP payment is “merely the substitute for proceeds of the crop which logically would have been received had the disaster or low yields not occurred.” Nivens, 22 B.R. at 291. The Court finds that the CLDAP payment is proceeds of Shore’s crops pursuant to the security agreement.

The Court rejects Shore’s second argument that entry of the Journal Entry somehow terminated the effectiveness of the security agreements as they pertained to after-acquired property. Shore’s argument takes two tracks: first, that the Journal Entry was in fact a consent decree which was essentially a novation, eliminating the after-acquired clauses; and, second, that Ag Services’ security agreements merged into the Journal Entry and no longer have any force or effect.

While the Journal Entry recites a settlement and apparently was entered by consent, it does not appear to be a “consent decree” as that term is commonly understood. In Kansas practice, a consent decree is construed as a contract but enforced as an order. Beaver v. Kingman, 246 Kan. 145, 148, 785 P.2d 998 (1990). “A consent decree is essentially a settlement agreement subject to continued judicial policing.” Beaver, 246 Kan. at 148 (quoting Williams v. Vukovich, 720 F.2d 909, 920 (6<sup>th</sup> Cir. 1983)). Consent decrees are different from ordinary judgments. A consent decree is not an act of the court, but rather the act of the parties to the suit. Chamberlin v. Chamberlin, 295 N.W.2d 391, 396 (Neb. 1980). Here, the parties agreed to the entry of a final judgment for a sum certain and foreclosing the liens which secured its repayment. Nothing contained in the Journal Entry purports to limit the operation of the security agreements.

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Were the subject matter of the security agreements real estate, Shore’s merger argument might be more persuasive. The UCC makes it clear, however, that a security agreement’s terms do not “merge” into a judgment of foreclosure. K.S.A. § 84-9-501(1) provides that a secured party may, upon debtor’s default, “may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. ... *The rights and remedies referred to in this subsection are cumulative*” (emphasis added). Moreover, K.S.A. § 84-9-501(5) explains that once a secured party’s claim is reduced to judgment, the lien of any levy relates back to the date of the security interest’s perfection. Thus, “...any judgment lien which the secured party acquires against the collateral is in effect a continuation of the original perfected security interest; the lien relates back to the date of perfection of the security interest.” K.S.A. §84-9-501, Kansas Comment, ¶5 (1996). These two sections are designed to prevent exactly the result that Shore seeks here: a merger of the security agreement into the judgment which would wipe out the after-acquired property clause. After judgment, Ag Services’ security interest in after-acquired crops and their proceeds remains intact and enforceable.

Finally, Shore suggests that some inequity would result from Ag Services’ retaining its after-acquired property lien post petition. Section 552(b) affords Ag Services’ lien continued vitality as to the proceeds, profits, or offspring of its prepetition collateral, “except to the extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.” Shore has not offered any evidence suggesting an equitable basis for this Court’s severing of the security interest. Ag Services bargained for a security interest in Shore’s government payments and crops, as well as their proceeds. Ag Services’ receipt of a lien in these payments is not a

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windfall as Shore argues, rather it is the simple consequence of Ag Services' and Shore's contractual agreement.

The Court therefore finds that Ag Services has a valid and perfected security interest in, inter alia, Shore's crops, proceeds, and government payments, and that this security interest extends to the CLDAP payment as well as any cattle purchased by debtor pursuant to this Court's previous orders with CLDAP payment and the proceeds of such cattle.

IT IS SO ORDERED.

Dated at Wichita, Kansas, this 4<sup>th</sup> day of June, 2001.

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ROBERT E. NUGENT, BANKRUPTCY JUDGE  
UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the **Memorandum Opinion Concerning Ag Services' Security Interest In CLDAP Payments** was deposited in the United States mail, postage prepaid on this 4<sup>th</sup> day of June, 2001, to the following:

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