IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

IN RE:	§	
	§	
JOE ELLZEY VANDERBURG AND	§	CASE NO. 99-20547-12
KIM MARIE VANDERBURG	§	
	§	
DEBTORS	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. On April 13, 2000, Interstate Bank, ssb (Interstate) filed its Motion for Relief from the Automatic Stay, seeking relief from stay to allow it to foreclosure its security interests against "cash collateral" in the amount of $13,800.00 being held by the Debtors. On April 12, 2000[1], the Debtors filed their response, stating they had received a USDA-FSA payment in the amount of $13,800.00[2], but denying that Interstate's lien covered such funds because such funds represent a marketing loss assistance payment, which was received by the Debtors post-petition under a government farm program that came into existence after the Debtors' Chapter 12 petition was filed.

2. Upon hearing called April 18, 2000, the parties advised the court that they wished to submit the issue of the validity of the Bank's lien to the court for consideration upon stipulations announced by the parties. Given the parties' consent to the handling of the matter in such fashion, the court directed the parties to file written stipulations with the court and allowed the parties an opportunity to file briefs in support of their respective positions.

[1]The certificate of service on Interstate's motion is dated April 3, 2000, which explains how the Debtors' response was filed one day before the motion.

[2]As stipulated by the parties, the actual amount at issue is $13,831.00.

3. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding. 28 U.S.C. § 157(b).

4. On May 9, 2000, the parties filed their Stipulations of Facts, a copy of which is attached hereto as Exhibit "A" and incorporated as findings of fact by the court.

5. If appropriate, these findings of fact shall be considered conclusions of law.

Conclusions of Law

1. Section 552(a) of the Bankruptcy Code generally provides that property acquired by a debtor post-petition is not subject to a lien resulting from a pre-petition security agreement. In effect, this provision invalidates an after-acquired property clause contained in a creditor's security agreement if such after-acquired property is acquired post-petition. *In re Bumper Sales, Inc.*, 907 F.2d 1430 (4th Cir. 1990). An exception to this general rule is set forth at § 552(b)(1), providing that if a pre-petition security agreement covers pre-petition property and extends to proceeds of such property, then such security interest extends to proceeds acquired post-petition "to the extent provided by such security agreement and by applicable non-bankruptcy law...."[3]

2. The purpose of market loss assistance (MLA) payments is to "partially compensate the owners and producers for the loss of markets" for a particular crop year. 7 U.S.C.A. § 1421 (1999).

3. While the parties stipulate that the MLA payment received by the Debtors post-petition is payable "for the 1999 USDA fiscal year", it is perhaps more accurate to characterize the

[3]Section 552(b)(1) further provides an exception to the exception by stating that, while proceeds coverage is valid, the court, after notice and a hearing and based on the equities of the case, may order otherwise.

payment as being payable for a fiscal year ending at some time in 1999.[4]

4. As the Debtors did not farm in calendar year 1999, the MLA payment at issue must relate to a crop or crop year prior to March 12, 1999, the date of the Debtors' bankruptcy filing.

5. MLA payments were authorized prior to the Debtors' filing as evidenced by the Debtors' receipt of the $7,148.00 MLA payment on November 3, 1998.

6. The MLA payment at issue was paid pursuant to an *appropriations* bill, the title of which is "Appropriations 2000–Agriculture, Rural Development and Drug Administration and Related Agencies". 106 Pub.L. No. 106-78; 113 Stat. 1135; H.R. 1906, 106th Cong. 1st Sess. (1999).

7. The Debtors' eligibility to receive the MLA payment arises from the production flexibility contract signed by the Debtors October 13, 1998. 7 U.S.C.A. § 1421 (1999).

8. Interstate's security interest is very broad and covers, among other items of property, all the Debtors' crops, government farm program payments and proceeds. (*See* Exhs. 5, 6, 7, and 8.)

9. Apart from the Debtors' claim that the MLA payment constitutes property acquired post-petition and thus is not subject to Interstate's lien pursuant to § 552(a), there is no dispute on whether Interstate holds a valid lien against the property covered by the loan documents.

10. As the court concludes that MLA payments were, in general, authorized pre-petition, and that the MLA payment at issue relates to a pre-petition crop, such MLA payment does not constitute after-acquired property. The MLA payment constitutes, at a minimum, proceeds of the Debtors' pre-petition property or a pre-petition right to receive such payment. *See In re Cook*, 169 F.3d 271 (5th Cir. 1999) (stating that, "under Texas law, payments to producers under federal farming programs are proceeds of collateral"), *citing Sweetwater Production Credit Ass'n v.*

[4]The court assumes the 1999 fiscal year would constitute the fiscal year ending September 30, 1999. 145 CONG.REC. S12405-02 (October 12, 1999)(statement of Presiding Officer).

O'Briant, 764 S.W.2d 230 (Tex. 1988); *In re Sunberg*, 729 F.2d 561 (8th Cir. 1984) (holding that government payment in kind benefit was proceeds and thus subject to creditor's security interest despite fact "the parties may not have foreseen the degree of PIK benefits nor the details of the program...."); *In re Nivens*, 22 B.R. 287 (Bankr. N.D. Tx. 1982) (holding that federal subsidy payments are "substitutes" or "proceeds" of crops).

11. Interstate's lien against the MLA payment is not, therefore, invalidated under § 552(a) of the Bankruptcy Code.

12. As there is a deficiency in the Bank's collateral of $19,648.94, the Debtors have no equity in the MLA payment and, given the MLA payment is not included as part of the projected cash flow in the Debtors' Chapter 12 plan, such payment is not necessary to the Debtors' reorganization. The Debtors raise no further defenses to the Bank's motion. Accordingly, the court finds the automatic stay under § 362 of the Bankruptcy Code should be lifted to allow Interstate to proceed with foreclosure of its rights against the MLA payment. *See* § 362(d)(2).

13. If appropriate, these conclusions of law shall be considered findings of fact.

Signed June 30, 2000.

_____

Robert L. Jones
UNITED STATES BANKRUPTCY JUDGE