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Wednesday, August 21, 2019 - Issue 425

HIGHLIGHTS

- * The Saskatchewan Court of Queen's Bench considered the definition of farmer within the Saskatchewan Farm Security Act ("SFSA") in the context of a bankruptcy and a claimed exemption of the homestead. The Court considered the factors provided by Klebuk J. in *Naber Seed & Grain Co. (Receivership) v Prairie Pulse Inc.*, [2004 SKQB 518](#) in determining whether the bankrupt fell within the definition of "farmer" under the SFSA. The bankrupt had retired from farming. The bankrupt had previously been married to the farmer who carried on the farming operations before the operation was passed down to the son. Much of the debt which resulted in the bankruptcy was related to the farming operations. The bankrupt continued to provide book keeping services, fuel transportation, and equipment storage to her son who carried on the farming operation. The bankrupt showed a long standing financial commitment and contribution to the farming operations. The bankrupt's diminished farming activity was not sufficient to "sever" her from the farming operation and render the farming exemptions under the SFSA inapplicable. Decision for the applicant, bankrupt. (*Hryciuk (Re)*), [CALN/2019-016](#), [\[2019\] S.J. No. 251](#), Queens' Bench of Saskatchewan in Bankruptcy and Insolvency)

NEW CASE LAW

Hryciuk (Re);

Queens' Bench of Saskatchewan in Bankruptcy and Insolvency,

Registrar C.E. Thompson,

July 8, 2019.

[CALN/2019-016](#)

[\[2019\] S.J. No. 251](#) | [2019 SKQB 159](#)

homestead — definition of farmer — bankruptcy — exemption.

Laura Hryciuk ("Hryciuk") assigned into bankruptcy on December 20, 2016 due to an economic downturn resulting from high input costs and low commodity prices. At the age of 86, she was discharged from bankruptcy.

Hryciuk claimed that her homestead was not property divisible among her creditors in her bankruptcy. Richardson International Limited ("Richardson"), a creditor in Hryciuk's bankruptcy, claimed that Hryciuk did not qualify as a "farmer" within the meaning of Part V of the Saskatchewan Farm Security Act ("SFSA") and therefore her homestead was not exempt from being distributed in her estate.

Hryciuk submitted that once an individual establishes themselves as a farmer, little is required to demonstrate the claim to the homestead exemption. Hryciuk submitted the following factors should be considered:

1. The debtor's history of farming;
2. Continuity of residence on the land;
3. The purpose of the incurred debt; and
4. The reasons why farming operations ceased, if applicable.

Hryciuk further submitted that the extent of farming operations is less of a concern once a bona fide farm residence is established. In these circumstances, there is no contention that the nature of Hryciuk's residence or the farming purposes the land is used. Hryciuk involvement with farming operations, now carried on by her son, diminished as she aged. However, Hryciuk was a principal debtor, co-signor and guarantor for many debts incurred in support of the family farming operations. Accordingly, the farm has continued in part due to her significant financial contributions over the years. Her bankruptcy was caused by farm related debts.

Richardson submitted that Hryciuk had not demonstrated sufficient engagement in farming operations to enjoy the homestead exemption under the SFSA. Richardson submitted that Hryciuk's involvement is best characterized as passive management to the extent that she provided bookkeeping, transporting fuel and food to those farming. Hryciuk described herself as retired and her son is responsible for all activities related to sale of farm land and the farming operations. Although Hryciuk was the spouse of a one time farmer, Richardson submitted that the degree of Hryciuk's farming involvement on the date of bankruptcy was not sufficient to meet the requirement of active management required by the SFSA.

Issues:

1. Was Hryciuk engaged in the business of farming within the meaning of the SFSA at the date of bankruptcy?
2. If Hryciuk was engaged in the business of farming, was the degree of her engagement sufficient to trigger the homestead exemption under the SFSA?

Analysis:

For the purposes of this matter the factors to consider to ascertaining the debtor's status as a farmer, as established by Klebuk J. in *Naber Seed & Grain Co. (Receivership) v Prairie Pulse Inc.*, [2004 SKQB 518](#)., are as follows:

1. Evidence that the debtor's equipment was used for farming the land;
2. Evidence that the debtor cultivated the land for the purposes of producing a field-grown crop;
3. Evidence that the debtor had a permit book;
4. Evidence the debtor applied for farm tax and fuel rebates;
5. Evidence of the debtor's indebtedness having been incurred in relation to the purchase of farm lands or a farm operation;
6. The nature of the relationship between a farmer and the debtor;
7. Evidence that the debtor paid for chemicals, insurance or services of a farm;
8. Evidence of the nature of the relationship of the debtor and farm income (in this case tenant or partner)

Hryciuk identified herself as a self-employed farmer who was involved in a farming partnership. Hryciuk's yard contained her son's farming equipment as well as bins. It was not contended that she historically had been involved in the family farming operation. Hryciuk had permit books; applied for and received tax and fuel rebates and loans available to farms; and, paid farm insurance premiums. The majority of Hryciuk's bank debt was incurred to support the family farming operation.

Hryciuk's son actively farmed with Hryciuk's assistance and financial support. She had not received a recent financial benefit from the operation, but demonstrated a long-term financial commitment to the farming operation and provided services in support of the operation, including fuel delivery, bookkeeping, and equipment storage. This is sufficient to demonstrate a history of farming within the meaning of the case law of the SFSA.

In most of the case law where a history of farming the land is established, the debtor may avail themselves to the exemptions under the SFSA. However, once an individual has established that he or she is a farmer who is a producer engaged in the business of farming, diminished farming activities must be sufficient to "so sever" the individual from the farming operation to render the homestead exemption under the SFSA inapplicable.

While Hryciuk's involvement in the farm operations was undoubtedly diminished at the time of her bankruptcy assignment, all of her debts and activities were farm related. There was no evidence of her intent to sever her involvement in the farm operation.

CREDITS

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