



**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

**The following constitutes the order of the Court.**

**Signed November 23, 2004.**

  
**United States Bankruptcy Judge**

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

IN RE:

REBECCA LILLIAN BAKER,

DEBTOR

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CASE NO. 03-50545-RLJ-12

**MEMORANDUM OPINION AND ORDER**

Lillian Baker (“Baker”), the debtor, requests that the Court approve a compromise and settlement agreement between her and the First National Bank in Munday (“FNB”). FNB objects to the settlement because the settlement has not been approved by the Farm Service Agency (“FSA”), which approval was a condition to the settlement. It is not disputed that the settlement was subject to FSA’s approval. Baker contends, however, that FNB never, in good faith, sought FSA’s approval.

At the time Baker filed this bankruptcy case, May 5, 2003, she was indebted to FNB under six notes in an approximate aggregate indebtedness of \$453,400. One note, characterized as the FSA guaranteed loan, constituted approximately \$363,000 of the total

indebtedness. The guaranteed loan was originally entered into between Baker (and her ex-husband) and FNB (or its predecessor) in 1998. The note was subject to an 80% guarantee issued by the FSA. At the hearing, it was revealed that the guaranteed loan was in fact sold to an entity named Coastal Securities and that FSA subsequently purchased the loan from Coastal Securities. From this the Court assumes that, at the time the bankruptcy was filed, Baker was indebted to FNB on the five non-guaranteed notes and to FSA on the one note purchased by FSA and which was previously subject of the 80% guarantee from FSA. FNB remained as the servicing agent on the guaranteed loan, however.

On September 16, 2004, Baker filed and served notice of her motion seeking approval of the compromise with FNB. The motion recited that Baker and FNB agreed that, to fully resolve all claims as between them, Baker would pay FNB \$225,000. The \$225,000 was to be satisfied with a cash payment up front of \$100,000 and issuance of a promissory note for \$125,000. The note accrues interest at 6% per annum, and is amortized over ten years with a balloon payment in five years for the then remaining balance. The note is to be secured by Baker's 13.3% partnership interest in Howell Ranch and Farms, specifically in certain mineral interests owned by Baker.

The settlement was reached on February 24, 2004. FNB submitted the settlement to FSA for approval by letter from FNB's counsel dated March 17, 2004. FNB Ex. 59. The letter provides an analysis of the indebtedness, and the likely recovery upon liquidation of all remaining collateral, as well as an estimate of the potential recovery in the bankruptcy on the unsecured portion of the indebtedness. The letter requested approval of the settlement as a means to resolve any claims between FNB and FSA. *Id.* By letter dated April 9, 2004, FSA

basically declined to approve the settlement, stating its regulations did not provide it with authority to settle and that, before it would provide any “guidance” on the issue, it needed additional information.

Among the items of additional information needed was an accounting of all collateral securing the guaranteed loan. In this regard, efforts were made to provide an accounting of all livestock sold since the inception of the loan. This effort was unsuccessful because Baker did not maintain the necessary documentation to establish the specifics of all cattle sales. Baker contends that FNB was more concerned with resolving its so-called “loss” claim with FSA than with obtaining approval of the settlement. At the time the settlement was entered, no loss claim existed because FSA had purchased the loan from Coastal Securities. Therefore, Baker and FNB’s settlement would have resolved both Baker’s debt to FNB and Baker’s debt to FSA. It would simply be a matter of determining an equitable distribution of the proceeds under the settlement. The settlement was, in effect, a global agreement regarding all debt without necessarily distinguishing the indebtedness held by FNB and the debt held by FSA.

The evidence indicates that the cattle count was perhaps too low and that FSA may therefore assert a claim against FNB as servicing agent for the manner in which FNB monitored the collateral. From the Court’s review of the evidence, it appears that there may have been some confusion or misunderstanding as between FNB and FSA concerning their respective positions on the guaranteed loan. Reference is consistently made to a so-called “loss” claim, which does not exist. FSA, by its April 9, 2004 letter, was also insistent on receiving an 80% distribution of all payments. FNB Ex. 62. This reflects a fundamental

misunderstanding of the settlement proposal. FSB would presumably be entitled to all proceeds derived from liquidation of collateral that specifically secured the guaranteed loan, and a pro rata distribution of proceeds derived from liquidation of unencumbered assets. The indebtedness under the guaranteed loan was approximately 67.5% of the total indebtedness owed by Baker to FSA and FNB. *Id.* The Court fails to see the relevance of the 80% figure demanded by FSA.

With respect to Baker's claim that FNB has not, in good faith, sought approval of the settlement, the Court finds that FNB was indeed attempting to resolve any dispute or claim that existed as between it and FSA. Though it appears there was some confusion regarding the settlement, the Court is convinced that FSA would have demanded an accounting of the cattle sales before approving the settlement. The Court also assumes that FSA and, to a lesser extent, FNB are guilty of typical bureaucratic delay. The Court is not convinced, however, that FNB's actions in seeking approval of the settlement constitutes bad faith or any actionable lack of diligence. The settlement was specifically made subject to FSA's approval and the Court does not find that FNB's attempt to resolve any claims as between it and FSA was so improper as to dictate a finding that it must go forward with the settlement. The relief requested by Baker is denied.

So ORDERED.

### End of Memorandum Opinion and Order ###