

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

IN RE: §
§
GEORGE ALVIS MULLINO AND § CASE NO. 01-10472-RLJ-11
SHARON REID MULLINO, §
§
DEBTORS §

MEMORANDUM OPINION AND ORDER

On August 14, 2003, Sharon Reid Mullino, debtor, filed her objection to the claim of FarmPro Services, Inc. (“FarmPro”), asserting that FarmPro’s claim had been paid in full, that FarmPro should, therefore, be required to release its lien against the Mullinos’ property, and that a refund of any amounts that have been overpaid should be ordered. FarmPro filed its response to the motion on September 4, 2003. FarmPro’s response denies any overpayment and states that it holds an independent claim against GS&F Farms, Inc. that is secured by real property owned by the Mullinos¹ and that the Mullinos’ plan specifically preserves FarmPro’s lien against the Mullinos’ real property to the extent it secures Mullinos’ claim against GS&F Farms, Inc.

The court has jurisdiction of this proceeding pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A), (B), and (O). This Memorandum Opinion contains the court’s findings of fact and conclusions of law. FED. R. BANKR. P. 7052 and FED. R. BANKR. P. 9014.

¹The court refers to both Mr. and Mrs. Mullino, although, as noted below, George Mullino died during this bankruptcy case.

George Mullino and Sharon Mullino filed a Chapter 12 petition on May 31, 2001. The case was subsequently converted to Chapter 11 on October 29, 2001. George Mullino died on December 11, 2002. The Mullinos' Chapter 11 plan of reorganization was confirmed on July 31, 2003.

The following facts are not in dispute. Prior to the filing of bankruptcy, FarmPro provided financing for the farming operation of the Mullinos and the Mullinos' wholly owned corporation, GS&F Farms, Inc. The Mullinos and GS&F Farms, Inc. both executed security agreements in favor of FarmPro that granted liens upon crops, proceeds, equipment, and land. FarmPro filed a proof of claim in the Mullinos' bankruptcy case reflecting a secured claim of \$103,068.83. FarmPro collected various monies throughout the bankruptcy case on its claim. A dispute arose between FarmPro and another creditor, American State Bank, over the priority of liens on crops and equipment. FarmPro and American State Bank resolved this dispute through mediation. FarmPro has apparently collected more money during the pendency of the bankruptcy case than is claimed in its proof of claim.

FarmPro admits that its claim against the Mullinos has been satisfied, but contends that GS&F Farms, Inc. is still obligated to FarmPro, and thus FarmPro is entitled to retain its lien against property owned the Mullinos. Ms. Mullino argues that FarmPro has been paid in full on its proof of claim and is no longer entitled to retain its lien.

There is no dispute that FarmPro's direct claim against the Mullinos has been satisfied and that FarmPro still asserts a claim against GS&F Farms, Inc. for approximately \$39,200. The parties have not asked this court to determine the validity of the claim against GS&F Farms, Inc.

The parties are requesting a determination of whether FarmPro is required to release its lien on the Mullinos' property that secures FarmPro's claim against GS&F Farms, Inc.

This question is answered by reviewing the confirmed plan and the parties' exchange in connection with the plan. Initially, FarmPro's treatment under the Chapter 11 Plan, proposed on June 3, 2002, provided as follows:

The Debtors contend that the claim of FarmPro has, therefore, been paid in full and that the Debtors are entitled to a refund. However, if the FarmPro claim is not fully satisfied from the auction proceeds, FarmPro will retain its liens until its allowed claim is fully satisfied, and such claim will be paid, together with interest at the rate of 7% A.P.R. from Confirmation Date, in three (3) equal installments beginning September 1, 2003. *The Plan and treatment of FarmPro therein, shall not effect FarmPro's rights as to its loans and security interests with GS&F Farms, Inc.*

Second Amended Chapter 11 Plan of Reorganization Proposed by Debtors-in-Possession, page 9, ¶ 4.3. On July 11, 2003, FarmPro filed its objection to the plan. By the objection, FarmPro asserted that the plan did not contain the correct amount owed to FarmPro, the proper interest rate, and an adequate description of the collateral securing the debt. FarmPro Services' Objection to Confirmation of Plan, page 2-3, ¶ 2-4. The parties eventually entered into an agreed order that changed FarmPro's treatment as follows:

The Debtors contend that the claim of FarmPro has, therefore, been paid in full and that the Debtors are entitled to a refund. FarmPro, however, contends that certain real property belonging to the Debtors secures FarmPro's claim against GS&F Farms, Inc. and that such claim survives the Debtors' bankruptcy. Should it be determined that the FarmPro claims against the Debtors and GFS&F Farms, Inc. are not fully satisfied from the auction proceeds, FarmPro will retain its lien until its allowed claims are fully satisfied. . . . *The Plan and treatment of FarmPro therein, shall not affect FarmPro's rights as to its loans with GS&F Farms, Inc. or its rights to exercise its security interest against property of the Debtors.*

Agreed Order Confirming Debtors' Second Amended Chapter 11 Plan of Reorganization, page 7,
¶ 26 (emphasis added).

The language of the agreed order specifically provides that FarmPro retains its lien to the extent that GS&F Farms, Inc. remains liable to FarmPro. FarmPro must be allowed to retain its lien on the Mullinos' property until the GS&F Farm, Inc. debt is satisfied. Based on the foregoing, it is hereby

ORDERED that the Debtor's objection to FarmPro's claim against the Debtors is granted;
it is further

ORDERED that all other relief requested, including the request that the court order a release of FarmPro's lien against the Debtors' property, is denied.

SIGNED December 16, 2003.

s/ Robert L. Jones
ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE

The Clerk shall furnish copies to:

Attorney for Debtors: Charles Dick Harris, Law Office of Dick Harris, PC, P.O. Box 3835, Abilene, TX 79604;

Attorney for FarmPro Services, Inc.: Max Ralph Tarbox, Law Offices of Max R. Tarbox, 3223 S. Loop 289, Suite 414, Lubbock, TX 79423; and

U.S. Trustee's Office: William S. Parkinson, 1100 Commerce St., Room 9C60, Dallas, TX 75242-1496.