

IN THE UNITED STATES BANKRUPTCY COURT

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FOR THE DISTRICT OF UTAH

See #131

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In re) Bankruptcy Case No. 83A-01323
)
 JOHN CLAY & CO., INC.,)
)
 Debtor.) MEMORANDUM OPINION

On May 11, 1983, John Clay & Co., Inc. filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The case was converted to a case under Chapter 7 on May 31, 1983.

Beginning on or about May 2, 1983, and continuing until May 19, 1983, the debtor purchased sheep from various sheep producers. The dates of these transactions and the amounts involved are as follows:

<u>Name of Creditor</u>	<u>Date of Transaction</u>	<u>Amount of Claim</u>
Frank Zubeldia	5/2/83	\$ 2,399.95
John Errea	5/4/83	68,846.40
Wilaha Sheep	5/7/83	2,199.76
Frank Zubeldia	5/8/83	1,748.70
Albert Urbeltz	5/8/83	2,725.92
Wilaha Sheep	5/9/83	155,473.06
Auza Brothers, Inc.	5/11/83	62,582.80
Manterola Sheep Co.	5/11/83	39,228.64
Wilaha Sheep	5/11/83	5,325.80
Manterola Sheep Co.	5/13/83	85,037.96
Long Tom Sheep	5/15/83	15,850.00
Tony Enchandi	5/16/83	25,707.68
Jean Arriaga	5/16/83	62,643.56
Auza Brothers, Inc.	5/16/83	93,631.16
Ernest Uhalde	5/17/83	9,517.80
Ernest Uhalde	5/19/83	5,323.80
Jean Arriaga	5/19/83	24,334.30
Auza Brothers, Inc.	5/19/83	5,978.78
Jean Arriaga	5/19/83	2,181.55
Tony Enchandi	5/19/83	1,949.25
<u>Total</u>		\$672,686.87

In all of these transactions, the debtor purchased the sheep from the sheep producers for 62 cents per pound and sold the sheep to packers in Colorado for 62 cents per pound. The debtor's compensation was in the form of a commission of 50 cents per 100 pounds.

According to the debtor's schedules and the testimony presented, none of the sheep growers has been paid by the debtor. Jean Arriaga and Auza Brothers, Inc. received payment directly from the packer for their May 19, 1983 deliveries. However, the debtor or the trustee has received payment from the packers, and the trustee is currently holding in excess of \$500,000.00 from these sources.

Certain of the sheep producers filed motions with the court seeking payment from the funds held by the trustee. They asserted their right to the funds as either an administrative expense or, in the alternative, that the moneys paid by the packers constituted a trust fund and were never property of the estate.

Several unsecured creditors have asserted that the sheep producers' motions raise only the administrative expense issue. The court finds that the notice given is sufficient to enable the court to determine the movants' right to payment from funds held by the trustee. Accordingly, the court must consider all applicable law that may affect the disposition of these funds.

Having reviewed the testimony and the memoranda submitted by counsel, the court finds that the payments received from the Colorado packers constitute a trust fund and that the sheep producers are the beneficiaries of the trust fund. This result is based upon the Packers and Stockyard Act, 7 U.S.C. § 181 et. seq.

The debtor's activities of buying and selling livestock on a commission basis render it a market agency under the Packers and Stockyard Act, 7 U.S.C. § 201(c). As a market agency the debtor is subject to various regulations promulgated by the Secretary of Agriculture. 9 CFR § 201.42 states: "Each payment that a livestock buyer makes to a market agency selling on commission is a trust fund."

Property of the estate, as defined in 11 U.S.C. § 541 includes all legal or equitable interests of the debtor in property as of the commencement of the case. While the debtor may hold legal title to the moneys paid by the Colorado packers, the beneficial interest in that property belongs to the sheep producers and as such, is not property of the estate. See 124 Cong. Rec. H. 11,114 (Sept. 28, 1978); S. 17,430 (Oct. 6, 1978).

The legislative history to § 541 specifically refers to the Packers and Stockyard Act in explaining that § 541 does not affect statutory provisions which create a trust fund for the benefit of a creditor of the debtor. House Report No. 95-595,

95th Cong. 1st Sess. (1977) 368; Senate Report No. 95-989, 95th Cong. 2d Sess. (1978) 83.

Accordingly, all funds which are currently being held by the trustee that are payments from the Colorado packers must be disbursed to those sheep producers who have not yet been paid. If these funds are insufficient to pay the sheep producers in full the trustee must distribute the money on a pro rata basis.

The amount, if any, remaining as property of the estate after payment of the trust fund moneys is unknown at this time. Therefore, the court makes no determination regarding the administrative expense claims nor whether these obligations were incurred pre-petition or post-petition. The order shall authorize payment from trust fund moneys only and not from property of the estate.

The sheep producers may have other remedies under the Packers and Stockyard Act and/or the Bankruptcy Code against the debtor or other entities. These questions, however, will be resolved if and when they are properly before the court.

DATED this 23 day of January, 1984.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE