

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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In re) Bankruptcy Case No. 80C-02316
)
L. W. GARDNER COMPANY, a)
partnership, dba GARDNER)
LIVESTOCK EXCHANGE,)
) MEMORANDUM DECISION ON JUNE 23,
) 1982. MOTION OF UTAH FARM
Debtor.) PRODUCTION CREDIT ASSOCIATION
) FOR AN ORDER FINDING
) L. W. GARDNER IN CONTEMPT

Appearances: Lowell V. Summerhays, Summerhays, Runyan & McLelland, Salt Lake City, Utah, for Utah Farm Production Credit Association; Kenneth A. Rushton, Lehi, Utah, for himself as trustee; Richard F. Bojanowski, Salt Lake City, Utah, for debtor; John H. Allen, Esq., Greene, Callister & Nebeker, Salt Lake City, Utah, for Zions First National Bank.

On June 23, 1982, Utah Farm Production Credit Association (PCA) filed a motion for an order finding L. W. Gardner in contempt of court. A second motion requesting the same order was filed by PCA on June 28. A hearing was held on the motion on July 21, 1982. The Court now enters its decision.

Debtor commenced this Chapter 11 case by filing a petition on November 14, 1980. PCA held a lien on debtor's cattle. Debtor and PCA entered into a stipulation permitting the sale of certain cattle to Victor B. Gentry, the proceeds to be applied to PCA's lien. On May 7, 1982, Mr. Gentry drew a check for \$55,000 payable to "L.W. Gardner Co. and Utah Farm Prod. Credit Ass'n."

On the check, Mr. Gentry wrote the words "complete & full payment on all cattle purchased from L.W. Gardner Co." Then, Mr. Gentry mailed the check to L. W. Gardner, debtor's principal.

Mr. Gardner received the check and, on advice of a Dr. Pabst of an entity located in Texas known as Centre For The Independence Of Judges And Lawyers Of The United States, Inc., had his niece endorse the check on behalf of the L. W. Gardner Co. and forge the endorsement of Utah Farm Production Credit Association. Mr. Gardner had his niece make the check payable to Centre For The Independence Of Judges And Lawyers Of The United States, Inc. Then, Mr. Gardner mailed the check to Dr. Pabst. Creditor's Exhibit 1, introduced at the July 21 hearing, shows that the check was then endorsed "for deposit only" by the Centre For The Independence Of Judges And Lawyers Of The United States, Inc.

Mr. Gardner testified that he was unwilling to accept the restrictive endorsement Mr. Gentry had written on the face of the check and that he did not give the check to the trustee in bankruptcy because he was following the instructions of Dr. Pabst.

When the Centre's bank sent the check to Mr. Gentry's bank for payment, Mr. Gentry's bank, acting on Mr. Gentry's instructions to refuse payment unless the check was accompanied by a release, refused payment. Thus, no money left Mr. Gentry's bank.

After reviewing the evidence adduced at the July 21 hearing, the Court has concluded that although Mr. Gardner acted

imprudently, sanctions for contempt are not appropriate in this instance. Mr. Gardner would be well advised to consult the trustee in bankruptcy respecting the disposition of property of the estate.

IT IS THEREFORE ORDERED that the order to show cause based on PCA's motions filed June 23 and June 28 is hereby dismissed.

DATED this 8 day of March, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE