

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

IN RE:

BIG SKY FARMS INC.
by Ernst & Young Inc.
as Its Monitor

Chapter 15

Debtor in a Foreign Proceeding

Bankruptcy No. 09-03293S

ORDER RE:
MOTION FOR RECOGNITION AND ENFORCEMENT OF
CANADIAN COURT SANCTION ORDER

The matter before the United States Bankruptcy Court for the Northern District of Iowa, Western Division (the "Court"), scheduled for hearing on February 26, 2010, is the Motion for Recognition and Enforcement of Canadian Court Sanction Order (the "Monitor's Motion") filed on February 12, 2010 [Docket No. 48], by Julie Johnson McLean of the law firm of Davis, Brown, Koehn, Shors & Roberts, P.C., 215 10th Street, Suite 1300, Des Moines, Iowa 50309, as United States counsel for Ernst & Young Inc., an international insolvency and restructuring firm, as monitor (the "Monitor") of Big Sky Farms Inc., a corporation formed under the law of Saskatchewan, Canada (the "Debtor" or "Big Sky").

Upon review of the Monitor's Motion and the two Certificates of Service filed by Monitor's counsel on February 15, 2010 [Docket No. 49] and on February 16, 2010 [Docket No. 54], the Court finds that the Monitor served copies of the Monitor's Motion on February 12, 2010, and the Notice of Hearing [Docket

No. 53] on the Monitor's Motion on February 16, 2010, upon all creditors and parties in interest of Big Sky located in the United States. The Court further finds that one objection was timely filed by 12:00 p.m. on February 25, 2010, by creditor Farmers Cooperative Company of Hinton ("Hinton") as required by the Notice.

Also before the Court is Hinton's Motion Pursuant to FRCP 60 to Expand and Clarify the December 31, 2009 Order Recognizing the Foreign Proceeding Under Chapter 15 ("Hinton's Motion") [Docket No. 42] filed on February 5, 2010, in which Hinton requests that this Court expand Paragraph 16 of this Court's Recognition Order (as hereinafter defined in Paragraph K), to provide that the livestock maintained by the Debtor in Iowa of not less than 85% of the inventory population that existed on the date of the filing of the Petition for Recognition of a Foreign Main Proceeding herein (the "Chapter 15 Petition") serve as substitute collateral for livestock that consumed the feed supplied pre-petition to Big Sky by Hinton in the event Hinton's lien claims are determined to be valid, perfected, enforceable and prior to the security interests in favor of the Senior Secured Lenders (as hereinafter defined in Paragraph N).

Prior to the hearing, the Court was advised that the parties had reached some agreements with respect to the Monitor's Motion, and Hinton's Motion, and a proposed Order Granting the Motion for

Recognition and Enforcement of the Canadian Court Sanction Order (as hereinafter defined in Paragraph R) was submitted. In view of the parties' agreements, the Court held the hearing by telephone on the morning of February 26, 2010. United States counsel for the Monitor, Julie Johnson McLean, participated by telephone and Heidi L. Oligmueller and Lance D. Ehmcke also participated by telephone as attorneys for Hinton. Bruce G. Thomas appeared as attorney on behalf of Big Sky Farms Inc. Steven J. Heim appeared as attorney on behalf of Bank of Nova Scotia in its capacity as administrative agent for certain Canadian lenders.

This Chapter 15 case relates to a foreign proceeding (the "Canadian Proceeding") pending before the Queen's Bench, Judicial Centre of Saskatoon, Province of Saskatchewan, Canada ("Canadian Court"). The foreign proceeding is styled *In the Matter of a Proposed Plan of Arrangement for the Creditors of Big Sky Farms Inc., Drycast Systems Inc. and Big Sky Management Consulting Corp.*, Case No. Q.B. 1461 of 2009. It was filed in the Canadian Court on November 10, 2009, under the Companies' Creditors Arrangement Act, R.S.C. 1985, CC-36, as amended (the "CCAA"). Ernst & Young Inc. was appointed by the Canadian Court as the Monitor of Big Sky.

Having considered the record, including the Monitor's Motion and Hinton's Motion, the arguments of counsel, and the proposed

Order, the Court issues the following findings of facts and conclusions of law. There were no disputed facts with regard to the motions.

The only objection to the Monitor's Motion was filed by Hinton. The disputes as to both motions were contested matters between the Monitor and Hinton. The agreements reached between the Monitor and Hinton were submitted to the court in a proposed order prior to the telephonic hearing. Counsel for the Monitor and for Hinton told the court that they were unable to reach agreement as to whether the Monitor or Big Sky Farms Inc. had any legal or factual basis for intervening in Hinton's adversary proceeding 10-9007 against certain lenders who claim a security interest in the swine owned by Big Sky Farms Inc. located in the United States. Big Sky Farms Inc. has already moved to intervene. Hinton asserts that neither Big Sky Farms Inc. nor the Monitor has a right to intervene in that proceeding. The court recognizes that there is disagreement on this issue, and that decision on this issue is not necessary to the court's ruling on the pending motions by the Monitor and Hinton. Therefore the court will not rule in any advisory way as to whether either has an intervention right. The entry of this order on the pending motions shall not prejudice the opportunity of Monitor or Big Sky to seek intervention nor shall it prejudice

the opportunity of Hinton to oppose any such intervention motions.

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. This Court has jurisdiction to consider these matters pursuant to 28 U.S.C. §§157 and 1334. It is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(P). Venue for this proceeding is proper under 28 U.S.C. § 1410(1) because the principal assets of Big Sky located in the United States are located in the Northern District of Iowa.

B. The Canadian Proceeding is a "foreign proceeding" as defined in 11 U.S.C. §101(23).

C. The Monitor is the duly appointed and authorized "foreign representative" of Big Sky within the meaning of 11 U.S.C. §101(24).

D. This Chapter 15 case was properly commenced pursuant to Sections 1504, 1509 and 1515 of the Bankruptcy Code, and the Chapter 15 Petition satisfies the requirements of Sections 1515 and 1517.

E. The Monitor has satisfied the requirements of Section 1515 of the Bankruptcy Code and Rules 1007(a)(4) and 2002(q) of the Federal Rules of Bankruptcy Procedure.

F. Pursuant to a certain Claims Process Order entered by the Canadian Court on December 9, 2009, Big Sky, with the assistance of the Monitor, caused a Claims Process Package approved by the

Canadian Court to be sent to each known creditor of Big Sky as of the Petition Date, including creditors located in Canada and in the United States, by ordinary pre-paid mail, fax or e-mail, on or before December 11, 2009. A copy of the Claims Process Order is attached to the Monitor's Motion marked as Exhibit "A".

G. Pursuant to the Claims Process Order, the Monitor also caused a newspaper notice to be published in each of the *Saskatoon Star Phoenix*, *Regina Leader-Post*, *Winnipeg Free Press* and the *Des Moines Register* newspapers on or before December 18, 2009. A copy of the *Des Moines Register* ad published on December 14, 2009, is attached to the Monitor's Motion marked as Exhibit "B".

H. In addition, the Monitor caused the Claims Process Package to be posted on the Monitor's website at www.ey.com/ca/bigskyfarms commencing on December 11, 2009.

I. On December 18, 2009, the Canadian Court entered an Order Seeking the Aid and Assistance of the U.S. Court wherein the Canadian Court requested the assistance of this Court in hearing and determining the validity and enforceability of liens claimed by Hinton under Iowa Code Chapter 570A against the livestock of Big Sky located in Iowa and the proceeds thereof (the "Lien Claims") and the priority of the Lien Claims of Hinton in relation to the claims of other creditors of Big Sky. A copy of the Canadian Court Order Seeking the Aid and Assistance of the

U.S. Court is attached to the Monitor's Motion as Exhibit "C".

J. On or about December 29, 2009, the Monitor provided to all of the creditors of Big Sky, including Hinton and all of Big Sky's creditors located in the United States, the Second Report of the Monitor [Docket No. 29] and the Plan of Compromise and Arrangement of Big Sky (the "Plan"). Sections 4.2(h) (i) and (ii) of the Plan provide that the Plan will not compromise, release or otherwise affect any portion of any claim of an agricultural supply dealer of livestock feed or other agricultural supplies in the United States ("U.S. Feed Supplier") holding a claim for the purchase price of feed or other supplies as of November 10, 2009, secured by a lien upon the livestock consuming the feed, or the proceeds thereof, provided such U.S. Feed Supplier has filed (i) a UCC financing statement in the Office of the Secretary of State of Iowa against Big Sky that meets all applicable filing requirements; and (ii) a written notice with the U.S. Court stating that such U.S. Feed Supplier asserts an agricultural supply dealer lien claim having equal priority with, or superior priority over, the liens of certain Senior Secured Lenders pursuant to Chapter 570A of the Iowa Code ("Notice of Lien Claim") on or before a certain date. Section 4.2(h) (iii) further provides that Big Sky and the Senior Secured Lenders may file with the U.S. Court a response to the U.S. Feed Supplier's Lien Claim on or before a certain date. Section

4.2(h)(iv) of the Plan provides that the U.S. Court will determine what portion, if any, of the U.S. Feed Supplier's Lien Claim is secured by a valid and perfected agricultural supply lien with equal or superior priority with the secured liens of the Senior Secured Lenders. A copy of the Plan, as amended on February 8, 2010, is attached to the Monitor's Motion marked as Exhibit "F".

K. In the Order Recognizing Foreign Proceeding under Chapter 15 [Docket No. 33] entered on December 31, 2009 (the "Recognition Order"), this Court found that Saskatchewan, Canada is the center of main interests of Big Sky, and the Canadian Proceeding is a "foreign main proceeding" pursuant to Section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding pursuant to Section 1517(b)(1).

L. Pursuant to a certain Creditors' Meeting Order entered by the Canadian Court on January 5, 2010, Big Sky, with the assistance of the Monitor, sent the proposed Plan and Creditors' Meeting Documents to all creditors located in Canada and the United States. The Monitor also posted copies of the Plan and Meeting Documents on the Monitor's website and published the Notice of the Meeting of Creditors in each of the *Saskatoon Star Phoenix*, *Regina Leader-Post*, *Winnipeg Free Press* and the *Des Moines Register* newspapers on January 15, 2010. Copies of the Creditors' Meeting Order and the *Des Moines Register* ad are

attached to the Monitor's Motion as Exhibits "G" and "D," respectively.

M. On January 14, 2010, Hinton timely filed its Notice of Assertion of Lien Claim [Docket No. 38].

N. On January 15, 2010, Hinton filed an Adversary Proceeding No. 10-09007 [Docket No. 39] against Bank of Nova Scotia, Bank of Montreal, National Bank of Canada, and Farm Credit Canada (collectively, the "Senior Secured Lenders") in which Hinton asserts an agricultural feed supplier lien on hogs of the Debtor in Iowa that consumed feed provided by Hinton to the Debtor prior to the filing of the Chapter 15 Petition pursuant to Iowa Code Chapter 570A, and further asserts "that its feed supplier lien takes priority over and is senior to all other liens or security interests in the [Debtor's hogs] pursuant to Iowa Code §570A.5(3)." Adversary Complaint, ¶19.

O. On February 5, 2010, Big Sky and the Senior Secured Lenders timely filed an Objection [Docket No. 44] and Response [Docket No. 46], respectively, to Hinton's Notice of Lien Claim.

P. On February 5, 2010, Hinton filed its Motion to Expand and Clarify this Court's Recognition Order as discussed above.

Q. On February 8, 2010, the Monitor conducted the Creditors' Meeting in the Canadian Proceeding. Creditors could appear either personally or by proxy at the meeting. Of the Proven Claims who received the Claims Package, fourteen (14) of the

United States creditors voted in favor of the Plan. The balance abstained from voting; however, all but six (6) of the U.S. creditors submitted a Distribution Election to the Monitor pursuant to the Plan. Hinton was the only U.S. creditor who voted against the Plan. The U.S. creditors' claims, votes and distribution options are set out in Appendix "A" attached to the Monitor's Motion, and the total votes on the resolution to accept the Plan, as amended, are is set out in Appendix "B" attached to the Monitor's Motion. Over 98% in both number of creditors and dollar value of claims voted in favor of the Plan.

R. On February 11, 2010, the Canadian Court entered an Order of Sanction of Plan of Arrangement (the "Sanction Order"), a copy of which is attached to the Monitor's Motion marked Exhibit "E", in which the Canadian Court determined that the statutory requirements of the CCAA were satisfied with respect to Big Sky's Plan (see Sanction Order ¶5) and the Required Majority of Creditors under the CCAA voted in favor of the Plan. See Sanction Order ¶6.

S. Paragraph 3 of the Sanction Order finds that there was good and sufficient service and delivery of the Plan and the Creditors' Meeting Documents to the Affected Creditors. The Canadian Court approved, confirmed and sanctioned the Plan in conformity with the CCAA and provided that, effective as of the Plan Implementation Date, the Plan and all associated

transactions effected thereby shall have full force and effect in all provinces and territories of Canada. Sanction Order ¶¶ 13, 36. The Sanction Order provides that, effective as of 12:01 a.m. (Central Standard Time) on the Plan Implementation Date, the Plan and all associated transactions shall be binding and effective upon each Affected Creditor, as described in the Plan, who will be deemed to have consented and agreed to all of the provisions of the Plan in its entirety.

T. In Paragraph 36 of the Sanction Order, the Canadian Court requests the aid of the U.S. Court to give effect to the Sanction Order in the United States and to assist Big Sky, the Monitor and their respective agents in carrying out the terms of the Sanction Order.

U. Paragraph 34 of the Sanction Order provides that Hinton's claim will be heard and determined and, if applicable, enforced by the U.S. Court and its Lien Claim will not be extinguished or discharged or alternatively enforced unless and until the U.S. Court so orders.

V. This Court finds that appropriate relief for Hinton pending the resolution of its Lien Claim in the Adversary Proceeding is to continue the requirement that the Debtor maintain livestock located in the state of Iowa within 85% or more of the population of livestock owned by the Debtor and located in Iowa on the date of the filing of the Chapter 15

Petition herein.

W. On February 12, 2010, the Monitor filed its Motion for Recognition and Enforcement of the Canadian Court Sanction Order.

X. The Plan, as amended, represents the culmination of the efforts of Big Sky, the Monitor, Senior Secured Lenders, the Debtor's other creditors and parties in interest to restructure Big Sky in conformity with the provisions of the CCAA and the Orders of the Canadian Court.

Y. This court recognizes the jurisdiction of the Canadian Court over the Monitor and Big Sky Farms Inc. and its subject matter jurisdiction over the CCCA case. The Court recognizes the Canadian Court Sanction Order as a final order approving the Plan of Arrangement of Big Sky Farms Inc.

This court also recognizes the request of the Canadian Court which seeks the aid and assistance of this court in hearing and determining the lien issues raised by Farmers Cooperative Company of Hinton in livestock and proceeds located in the United States. This court accepts the request, has taken jurisdiction of the dispute, and will hear, determine and enforce its orders and judgments in the adversary proceeding filed to determine such lien issues.

The Monitor or Big Sky Farms Inc. may file such actions and proceedings in this court to seek enforcement of the Canadian Sanction Order, pursuant to the provisions of chapter 15 of the

United States Bankruptcy Code, Title 11 United States Code and other statutes to the United States which may afford full faith and credit to foreign judgments.

Z. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to Sections 1501, 1507 and 1521 of the Bankruptcy Code.

NOW, THEREFORE, THE COURT HEREBY ORDERS AS FOLLOWS:

1. The creditors of Big Sky in the United States have been duly served and provided adequate notice and opportunity to be heard with respect to the Plan and the Sanction Order.

2. This court recognizes the jurisdiction of the Canadian Court over the Monitor, Big Sky Farms Inc. and its subject matter jurisdiction over the CCCA case. The Court recognizes the Canadian Court Sanction Order as a final order approving the Plan of Arrangement of Big Sky Farms Inc.

This court also recognizes the request of the Canadian Court which seeks the aid and assistance of this court in hearing and determining the lien issues raised by Farmers Cooperative Company of Hinton in livestock and proceeds located in the United States. This court accepts the request, has taken jurisdiction of the dispute, and will hear, determine and enforce its orders and judgments in the adversary proceeding filed to determine such

lien issues.

The Monitor or Big Sky Farms Inc. may file such actions and proceedings in this court to seek enforcement of the Canadian Sanction Order, pursuant to the provisions of chapter 15 of the United States Bankruptcy Code, Title 11 United States Code and other statutes to the United States which may afford full faith and credit to foreign judgments.

3. This Court shall retain jurisdiction with respect to the enforcement of this Order pending a resolution of Adversary Proceeding No. 10-9007 commenced by Hinton against the Senior Secured Lenders.

4. Until further order of this Court, Big Sky shall continue to maintain livestock located in the state of Iowa within 85% or more of the livestock population owned by the Debtor and located in Iowa on the date of the filing of the Chapter 15 Petition which was 53,060 head as of November 10, 2009. In the event a final non-appealable order is entered in Adversary Proceeding No. 10-9007 that declares Hinton held, with respect to all or any part of its claim against Big Sky, a valid first-priority perfected security interest and lien in the Debtor's hogs arising from the consumption of feed provided by Hinton pre-petition, and such lien and security interest is equal to or senior to all creditors, including the liens of the Senior Secured Lenders, pursuant to Iowa Code §570A.5(3) or otherwise, then said lien,

to the extent of such value, shall be deemed transferred to the hogs which continue to be maintained by the Debtor in Iowa as required by this Paragraph, and the proceeds thereof, for the purpose of serving as substitute collateral for livestock that consumed the feed supplied pre-petition to Big Sky by Hinton and for the purpose of providing payment in satisfaction of Hinton's claim in the event Hinton's lien claim is determined to be valid, perfected, enforceable and prior to the security interest in favor of Senior Secured Lenders. If this Court determines that with respect to all or any part of Hinton's claim against Big Sky, Hinton's lien is junior to the liens of the Senior Secured Lenders, unperfected or invalid for any reason, then with respect to such portion of Hinton's claim, the 10% distribution under the Plan deposited into the Disputed Claims Reserve will be paid to Hinton in accordance with the terms of the Plan, or within seven (7) days of this Court's Order becoming final and non-appealable, whichever date is later.

5. Notwithstanding any terms of the Plan or the Sanction Order, Hinton's claim will not be compromised, discharged or released and any lien claimed by Hinton in respect of its claim shall not be discharged or extinguished or alternatively enforced until the disposition of the Adversary Proceeding.

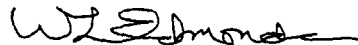
6. Except where inconsistent with orders entered by this Court, the Canadian Proceeding and Orders of the Canadian Court

will be granted comity and given full force and effect, pursuant to 11 U.S.C. Chapter 15 and United States laws.

7. Notwithstanding Bankruptcy Rules 7062 and 1018, this Order shall be immediately effective and enforceable upon its entry and, upon its entry, this Order shall become final and appealable. This Order constitutes a judgment as required by Fed. R. Bankr. P. 9021.

8. A copy of this Order shall be served, within three (3) business days of entry of this Order, by first-class U.S. mail, postage prepaid, upon: (i) all creditors of Big Sky known to the Debtor within the United States; (ii) the Office of the United States Trustee; and (iii) any other person who has filed a notice of appearance in this Chapter 15 case. Such service shall be good and sufficient service and adequate notice for all purposes. United States counsel for the Monitor shall file a certificate of service of this Order in compliance with this Paragraph 10 in this Chapter 15 case. A copy of this Order shall also be made available upon the Monitor's website at www.ey.com/ca/bigskyfarms.

DATED AND ENTERED March 1, 2010



William L. Edmonds, Bankruptcy Judge