

IN THE DISTRICT COURT OF BROWN COUNTY, NEBRASKA

KENNETH L. PHIPPS and
HARRIET M. PHIPPS,

PLAINTIFF,

VS.

MARTIN C. JOCHEM and DORIS K. JOCHEM,
HUSBAND AND WIFE, and
PINNACLE BANK, N.A. OF SHELBY, NE, and
JOHN DOE and/or MARY DOE,

DEFENDANTS.

DATE OF HEARING: June 13, 2003

DATE OF RENDITION: July 2, 2003

DATE OF ENTRY: See court clerk's file-stamp date

On the 13th day of June, 2003, this cause came on for hearing upon the Plaintiffs' Application for the Appointment of Receiver. Present were Todd Flynn, counsel for the Plaintiffs without the Plaintiffs, and the Defendant Martin C. Jochem without counsel. Opening statements were made by the Plaintiffs and said Defendant. Evidence was adduced. Closing arguments were made by the Plaintiffs and the said Defendant. The matter was taken under advisement.

Now, effective as of the date of entry of this order, the court finds that the Plaintiffs have met their burden of proof to show that the mortgaged property is in danger of being materially injured, and that a receiver should be appointed to protect the property from further injury.

IT IS THEREFORE ORDERED by the Court that Dennis Bauer be, and is hereby, appointed receiver to protect the improvements and land in the SE¼ of Section 9, Township 29 North, Range 22 West of the 6th P.M. in Brown County, Nebraska.

Pursuant to this order, Dennis Bauer, as Receiver, shall abide by the following special directions in respect to his powers and duties, and the powers of the Receiver shall be limited to the following:

1. The Receiver shall control and regulate the number of livestock permitted to remain on the above-described real estate from time to time. Said control of livestock shall be for the purpose of preventing further loss, waste, destruction, or serious

impairment of the property arising from improper grazing practices, and to take restorative action to ameliorate the effects of prior overgrazing. The Receiver shall have the power, at any time during the continuance of the receivership and from time to time during such receivership, to direct the Defendants in possession to remove any livestock he deems reasonably necessary, in the application of normal grazing practices in the ranching and farming industry, to preserve the value and condition of the property and to restore any previous damage. Removal of livestock shall be completed by the Defendants within three days from the issuance of any such directive or directives by the Receiver. The Receiver shall periodically inspect the property to assure that the objectives are being accomplished. Defendants' failure to remove livestock within the time allotted shall constitute contempt of this Court, and be subject to the full enforcement powers of the Court.

2. The Receiver shall require the Defendants to spray or otherwise treat or control, in accordance with generally accepted weed control standards, any and all noxious weeds located on the property. The Defendants shall control noxious weeds upon the property utilizing recognized control practices as mandated by the laws of the State of Nebraska. Control of noxious weeds shall be commenced by the Defendants within ten days from the date of this Order, and completed in accordance with the direction of the Receiver. Defendants' failure to reasonably control noxious weeds as directed shall constitute contempt of this Court, and be subject to the full enforcement powers of the Court.

3. The Receiver may utilize the technique of allowing the Defendants to cross fence said property for grazing purposes to maximize the carrying capacity of the property by the Defendants. But if the Defendants fail to follow such cross-fencing directives, the Receiver shall protect the property by reductions in the numbers of livestock allowed.

4. This order shall not be effective until: (a) the Plaintiffs shall have given a written undertaking, in form to be approved by the court clerk, in the sum of \$25,000.00, conditioned upon the Plaintiffs paying all damages which the Defendants may sustain by reason of the appointment of a receiver in case it shall be finally decided that the order ought not to have been granted, and, (b) the receiver shall have given a written

undertaking, in form to be approved by the court clerk, in the sum of \$15,000.00, conditioned upon the Receiver faithfully discharging his duties as Receiver and obeying all orders of the Court, and, (c) the Receiver shall have made and filed his oath of office with the court clerk. The bonds shall run to the Defendants and all adverse parties in interest, with surety or sureties in compliance with Section 25-1084. The bonds shall be filed with the clerk of the district court. The expenses of obtaining such bonds shall be advanced by the Plaintiffs and shall be taxed as costs of the action.

5. The Receiver shall be entitled to reasonable compensation for his services, which shall be taxed as costs of the action.

6. The powers and duties of the Receiver may be expanded, enlarged, limited, or diminished by the Court upon further order after notice and opportunity for hearing.

7. The application for appointment of receiver is granted to the extent of the relief set forth herein and is otherwise denied.

Signed at **Ainsworth**, Nebraska, on **July 2, 2003**;
DEEMED ENTERED upon file stamp date by court clerk.

If checked, the court clerk shall:

Note the decision on the trial docket as: [date of filing] Signed "Order Appointing Receiver" entered.
Done on _____, 20____ by _____.

Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge