

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

UNITED NEBRASKA BANK,) Case No. CI03-133
)
Plaintiff,)
)
vs.)
)
GIVENS FEEDLOT, INC.; MOR BEEF)
CATTLE CO., a Canadian Company; DON)
HOEKSEMA; JACK GARRELTS; WELTER)
FARMS, INC.; ED NORTH;)
ROBERT KRACL; AGRI-LIVESTOCK, CO.;)
JERRY KIRWAN; ROUSE BROS.; and)
FREDIN BROS., INC.,)
)
Defendants.)

ORDER FOR APPOINTMENT OF RECEIVER

DATE OF HEARING: September 15, 2003.
DATE OF RENDITION: September 18, 2003.
DATE OF ENTRY: See court clerk's file-stamp date.

This matter comes before Court upon the Plaintiff's verified Amended Complaint for Appointment of a Receiver. Plaintiff was represented by John M. Guthery. Defendant Givens Feedlot, Inc. was represented by Bradley S. Shaff. Defendant Mor Beef Cattle Co., was represented by James Kube. Defendant Don Hoeksema was represented by Todd Flynn. Defendants Jack Garrelts, Agri-Livestock Co., and Robert Kracl were represented by David E. Copple. Defendant Welter Farms, Inc. was represented by Thomas H. DeLay. Defendants Ed North and Rouse Bros. were represented by John P. Heitz. Defendant Jerry Kirwan was represented by Ronald E. Temple. Defendant Fredin Bros., Inc. was represented by Roger Steele. Dennis Bartlett, whose admission pro hac vice was pending for Fredin Bros., Inc., was also present. Evidence was received and arguments of counsel were heard. The matter was taken under advisement.

Now, effective on the date of entry of this order, the Court finds and orders as follows:

1. The Defendant Givens Feedlot, Inc., has consented to the appointment of a Receiver without further notice or hearing. Upon inquiry by the Court, no objection to the Notice was raised

by any other Defendant participating in the hearing. Participation in the hearing waives notice as to such party, and such party has no standing to assert lack of notice to any other party.

2. It is necessary and appropriate to enter an Order for the appointment of a Receiver for the protection of the livestock (hereafter “livestock”) and the proceeds therefrom and the two checks hereinafter identified which represent proceeds from the sale of livestock. That in the absence of such appointment, the property is in danger of being lost, removed, or materially injured. The arguments of counsel amply demonstrate the cascade of trucks which would descend upon the feedlot in the absence of appointment of receiver and the competing claims and disruption to the peace likely to result therefrom.

3. Bond is required and the specific requirements of bond set forth below are sufficient to comply with NEB. REV. STAT. § 25-1084 and to adequately protect the parties hereto.

Based upon the Court’s findings,

IT IS ORDERED BY THE COURT THAT:

1. Clarence C. Wrede is appointed to act as Receiver for all of the livestock described in the inventory marked as Exhibit A, a copy of which is attached hereto and incorporated herein. The Receiver is charged with the following duties:

a. To **immediately** employ independent legal counsel to represent the Receiver and to assure that the Receiver is fully advised of the Receiver’s duties and responsibilities under this order, and, after receiving specific court approval of the amount thereof after notice to all parties and opportunity for hearing, to pay the reasonable attorneys’ fees for the Receiver’s counsel.

b. To protect and preserve the livestock, and as soon as possible, to determine which parties claim interest in specific lots of such animals and identify all such parties with all livestock on hand.

c. To sell livestock upon the written consent of the party or parties claiming an ownership interest in the livestock and the written consent of the plaintiff. The Receiver may rely upon written communication to the Receiver’s counsel from an attorney admitted to practice in Nebraska or admitted for this case representing any such party as the consent of such party.

d. The Receiver shall deposit the proceeds from any sale of livestock and/or any other monies received into as many separate, segregated, federally-insured deposit accounts, having demand privileges, in one or more federally-insured financial institutions within the State of Nebraska, as are necessary to provide a separate account for each instance of sale or receipt. The

financial institutions shall not include the plaintiff or any other financial institution which the Receiver is aware may be claiming a security interest or other interest in any of the said livestock. The accounts shall be held pending further order of the court or written stipulation by the plaintiff and the party or parties claiming an ownership interest in the livestock that were sold as to the disbursement of such specific proceeds.

e. To pay all bills and costs necessary to preserve and insure the livestock arising after the date of his appointment from funds advanced by the plaintiff or, only after notice to all affected parties and opportunity for hearing, from deposited funds upon specific court order.

f. To enter into such contracts and arrangements as are reasonably necessary to maximize the proceedings and products of the livestock.

g. To not co-mingle livestock, and to maintain the livestock in the same pens, unless plaintiff and the party or parties claiming an interest in the livestock are notified before relocating the livestock. Each pen of particular livestock shall be maintained on the same or equivalent feed rations until disposition except changes may be made upon consent of the party or parties claiming specific interest in such particular animals.

h. To have authority to deal with tenants, employees, packers, security firms and persons claiming the livestock relating to the livestock.

i. To negotiate leases and contracts and to collect any feed and yardage receivables and other accounts due on account of the livestock.

j. To not allow the livestock to leave its location unless all feed bills, yardage bills, and inspection fees are paid in **collected** funds, or by irrevocable assignment of sale proceeds of specific animals. The Receiver shall deposit all such payments into separate, segregated accounts as set forth above pending further order of the Court regarding disbursement. Such disbursement shall be accomplished only upon determination of the issues regarding the claims of the respective parties to any interest in such disbursements.

k. To deal with all utility service providers for the livestock.

l. To have authority to retain Givens Feedlot, Inc. facilities and employees to assist in the care of the livestock, and to enter into new contracts and continue existing contracts for feed and care of the livestock in such terms as the Receiver determines fair.

m. To obtain outstanding checks now in possession of the Holt County Sheriff and Mr. Jack Garrelts and to cash said checks and deposit the proceeds into separate segregated accounts as set forth above.

n. To maintain insurance on the livestock in an amount reasonably necessary and appropriate.

o. To borrow money or obtain advance of funds from the Plaintiff to care, feed, and maintain the livestock and to sell the livestock.

p. To take possession of all of defendant Givens Feedlot, Inc.'s books and records relating to the livestock.

q. To hire persons to care for the livestock and to guard the livestock.

r. The Receiver may hire accountants and other consultants upon the filing of a separate application and approval by the Court after notice to all parties.

s. To establish bank accounts as specifically authorized above.

t. Notwithstanding the other provisions of this order, livestock identified in Exhibit A as Lot 1768, pen 11 claimed by defendant Jack Garrelts may be sold immediately and the proceeds from such sale delivered to the Receiver for deposit into a separate segregated account as set forth above.

u. Notwithstanding the other provisions of this order, livestock identified in Exhibit A as Lot 1758, pens 2, 3, 13, and 28 claimed by Jerry Kirwan may be sold immediately and the proceeds from such sale delivered to the Receiver for deposit into a separate segregated account as set forth above.

v. Livestock shall not be removed from the Givens Feedlot facility except for: (1) sale as authorized by this order; (2) removal of individual sick animals necessary for the protection of the health of remaining animals; and/or (3) after notice to parties claiming interest in particular livestock, removal necessitated by a problem in a specific area of the feedlot.

w. To maintain **complete** and **thorough** written records of all of the Receiver's acts and doings as such Receiver.

x. To have all authority usually held by Receivers and reasonably necessary to accomplish the purposes stated herein consistent with the provisions and limitations specifically set forth in this order.

2. The Plaintiff and the Receiver and parties claiming an interest in particular livestock may from time to time enter into written stipulations for filing with the Court to exclude and remove from the receivership estate some or all of the livestock in terms and conditions stated in such stipulations. Upon filing of such stipulation, the described livestock shall be removed from the receivership and the Receiver shall bear no further responsibility for such livestock except to account for compliance with such stipulation.

3. This is a special receivership with a Receiver's duties as stated above. This is not a general receivership. The Receiver is **not** responsible for managing Givens Feedlot, Inc. business affairs, conducting meetings of Givens Feedlot, Inc. board of directors, conducting meetings of Givens Feedlot, Inc. shareholders, investigating and prosecuting potential claims by or against Givens Feedlot, Inc. or any of its officers, directors, fiduciaries or professionals, evaluating whether or not Givens Feedlot, Inc. should file bankruptcy, file any tax returns or reports including federal, state or local tax returns or workers' compensation reports (except for the weekly reports that a Receiver is required to file pursuant to this order), paying, processing, investigating or defending against any unsecured claims occurring prior to the Receiver's appointment. The Receiver's duties are to protect and dispose of the livestock as set forth above.

4. The Receiver shall file weekly written reports with this Court and shall submit a copy to the parties in this case who request such reports. The reports shall state an inventory of the livestock and the disposition or change from the preceding report, and shall identify all bank accounts maintained and the receipts to and any disbursements therefrom for such period.

5. The plaintiff and defendants, and their respective agents and employees are restrained and enjoined from: (a) interfering with the Receiver and the accomplishment of the foregoing duties; (b) transferring or selling any of the livestock to any third persons without the Receiver's consent, except as stated above; (c) removing any of the livestock from its current location without the Receiver's consent; and/or, (d) taking any action that may cause damage, waste, disposition or depreciation to the livestock.

6. Clarence C. Wrede is appointed Receiver for the livestock and is authorized to immediately take possession of all of the livestock subject to the authority and duties prescribed herein.

7. The Receiver is authorized to take all such actions with the livestock as the Receiver deems necessary or appropriate to insure, protect and preserve the livestock, and to prepare the

livestock for sale. Any sale by the Receiver shall be with the approval and consent of the plaintiff and the other party or parties claiming interest in such specific livestock. Such sale may be a public or private sale, by auction, or by honoring existing contracts for the livestock or otherwise, at the option of such consenting parties, with the proceeds therefrom to be paid into separate, segregated accounts as set forth above. In the event such consent cannot be obtained and the Receiver certifies in writing that delay would probably result in loss or damage, the matter shall be determined by court order upon written motion after faxed or other electronic notice to counsel for such affected parties at least 24 hours before hearing thereon.

8. The applicant and Receiver's bonds shall be combined in a single bond in the combined amount of One Million Dollars (\$1,000,000), to be conditioned upon all of conditions required for the applicant and the Receiver as set forth by NEB. REV. STAT. § 25-1084, with surety or sureties as required by law. Said bond shall be subject to the approval of the court and shall be filed in the office of the Clerk of the District Court.

9. The Receiver shall be compensated at the rate of Twenty-Five Dollars (\$25.00) per hour plus the Receiver's out of pocket expenses. However, no such compensation shall be paid until application is made to the court, and after hearing thereon with notice to all parties.

10. This Order shall be effective immediately upon filing of the approved bond required herein. Upon the filing of such bond, or the expiration of seven days from the date of entry of this order, whichever first occurs, the temporary order directing the Holt County Sheriff to take temporary possession of the property shall be dissolved.

11. A copy of this Order shall be served upon the parties as soon as is practicable.

Signed in chambers at **Bassett**, Nebraska, on **September 18, 2003**;
DEEMED ENTERED upon file stamp date by court clerk.
If checked, the court clerk shall:

BY THE COURT:

Note the decision on the trial docket as: [date of filing] Signed "**Order for Appointment of 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 _____.

William B. Cassel
District Judge

Mailed to: