

# Farm Bankruptcy; Sovereign Immunity; Farm Lease and Pipeline Damages

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## Introduction

Farmers and ranchers face numerous legal issues on a regular basis. The variety is vast from contract issues to income tax, estate and business planning, to real estate-related issues. Other issues come up with water, criminal matters, and environmental law. Then there are frequent issues with federal and state administrative agencies.

With today's article I look at some recent cases that illustrate issues with farm bankruptcy, sovereign immunity, farm lease law and damages from an alleged leaking pipeline.

A potpourri of legal issues facing farmers and ranchers – it's the topic of today's post.

## Farm Bankruptcy

This first case from Kansas demonstrates that a Chapter 12 bankruptcy debtor must have a legitimate basis for seeking a modification of the Chapter 12 reorganization plan. A mere hope in getting financing is not a change in circumstances that would justify reimposing the automatic stay (stopping creditors from acting). The farm debtor must be able to put a feasible plan together for paying debts. Here, the plan had been approved, but then the farm debtor couldn't make the payments.

### Debtors Lacked Reasonable Likelihood of Putting Re-Tooled Chapter 12 Plan Together

*In re Sis, No. 21-10123, 2024 Bankr. LEXIS 124 (Bankr. D. Kan. Jan. 18, 2024)*

The debtors Chapter 12 plan was confirmed in early 2022, but the debtors soon had trouble making plan payments. They managed to make an annual payment to a creditor (bank) but failed to do so the next year. The Chapter 12 trustee filed a motion to dismiss the case in late 2023, and another creditor filed a motion for relief from the automatic stay. The debtors sought to re-impose the automatic stay to get more time to modify their Chapter 12 plan and make payments to a creditor to avoid the bank foreclosing on their farm. The bankruptcy court denied the debtors' motion. The court noted the debtors' genuine efforts to secure financing and sell assets but determined that the debtors had little likelihood of success in modifying their reorganization plan in a manner allowing them to make plan payments. The court also determined that the debtors had not endured a substantial change in circumstances to support modifying their Chapter 12 plan. The debtors merely had a hope of obtaining financing was not a change in circumstances. As a result, the court denied the debtors' motion for a temporary restraining order because the debtors had not shown a substantial likelihood of prevailing on the merits or any extraordinary circumstances that would justify reimposition of the



automatic stay. In late 2023, the court dismissed the debtors' Chapter 12 case. Therefore, the court the court directed the debtors to either voluntarily dismiss the adversary proceeding or provide reasons why it should not be dismissed. The court noted that failure to file a voluntary dismissal or a statement showing cause, within fourteen days of the court's order in this case would result in the court dismissal of the case.

### **Suing the Government – Sovereign Immunity**

Recently, the U.S. Supreme Court noted the exception to the general rule that the federal government can't be sued for damages.

### **Fair Credit Reporting Act Waives Sovereign Immunity**

#### ***United States Department of Agriculture Rural Development Housing Service v. Kirtz, No. 22-846, 2024 U.S. LEXIS 589 (U.S. Feb. 8, 2024)***

The defendant received a loan from the plaintiff, a division of the U.S. Department of Agriculture, which was repaid in full by mid-2018. However, the USDA repeatedly informed a consumer credit reporting company that the defendant's account was past due. As a result, the defendant's credit score was damaged and his ability to secure future loans at affordable rates was threatened. The defendant notified the company of the error and the company, in turn, notified the USDA. However, the USDA did not correct its records and the defendant sued for either a negligent or willful violation on the Fair Credit Reporting Act (FCRA). The USDA moved to dismiss the case based on sovereign immunity. The trial court dismissed the case, the appellate court reversed on the basis that the Congress had amended the FCRA to authorize suits for damages against "any person" who violates the FCRA and that "person" includes any governmental agency. The Supreme Court agreed to hear the case to clear up contrary conclusions reached by the Third, Seventh and D.C. Circuits (holding that the FCRA authorizes suits against government agencies) and the Fourth and Ninth Circuits (holding that the FCRA bars consumer suits against federal agencies).

The Supreme Court noted that a U.S. is generally immune from suits seeking money damages unless the Congress waived that immunity by making a clear legislative statement. Here, the Court unanimously determined that the FCRA clearly waived sovereign immunity by applying its provisions to persons who furnish information to consumer reporting agencies, and that no separate provision addressing sovereign immunity was required. The Court also noted that its holding would not make the States susceptible to consumer suits for money damages because the FCRA was enacted pursuant to the Commerce Clause and, as such, does not give the Congress the power to abrogate state sovereign immunity.

### **Farm Lease Law**

The law governing farm leases differs from state-to-state. The following case from Kansas makes a couple of points. First, if the lease is in writing, the written terms control. Second, when leased land is sold, the buyer takes the land subject to the existing lease. Those are two key points that will apply in every state.



## Interpretation of Farm Lease at Issue

### ***Cure Land, LLC v. Ihrig, No. 125,709, 2023 Kan. App. Unpub. LEXIS 479 (Kan. Ct. App. Dec. 1, 2023)***

The parties entered into a cash farm lease for the calendar year 2020. The lease specified that the defendant (tenant) was allowed to harvest any wheat crop planted in the fall of 2020 (or in the fall thereafter if the lease was renewed) by the following summer. The lease also stated that the crops planted during the term of the lease was to be planted on a rotational basis rather than in a continuous crop fashion unless adequate moisture was present, and the landlord consented. The lease also stated that continuous cropping was normal on the irrigated ground. The lease renewed for 2021 and notice to terminate was given on August 27, 2021. The ownership of the leased ground then changed hands, and the tenant notified the new landlord of the tenant's intent to plant wheat on the irrigated ground and harvest it in 2022. The prior owner informed the defendant that planting wheat was not permitted in the fall of 2021, as did the new owner a few days later. In October of 2021, the defendant harvested corn from the irrigated ground while it was still "high moisture corn," a practice the tenant had not previously engaged in and planted wheat the next day. The defendant paid the 2021 lease obligation through the end of 2021 and paid the balance on June 22, 2022. The plaintiff (the new landlord) sued for breach of contract and unjust enrichment. The trial court ruled in favor of the new landlord, finding that the lease did not permit the defendant to plant fall 2021 wheat. The trial court interpreted the lease provisions, considering the distinction between wheat ground and irrigated ground, and concluded that the defendant's interpretation would result in an unintended windfall. Additionally, the court found that the purchaser of the leased land had the right to enforce its terms. The appellate court affirmed.

## The Proof and Computation of Property Damage

When you incur damage to your property being able to prove those damages and the amount of the loss is critical. A recent case involving a pipeline under an Oklahoma ranch illustrates these principles.

### **Cattle Ranch's Lawsuit Against Energy Company for Pipeline Leak Revived**

#### ***Lazy S Ranch Properties, LLC v. Valero Terminals & Distribution Co., No. 23-7001, 2024 U.S. App. LEXIS 3397 (10th Cir. Feb. 13, 2024)***

The plaintiff, an Oklahoma cattle ranch noticed a diesel fuel odor coming from a cave. The ranch hired experts to test the soil, surface water and groundwater for possible hydrocarbon contamination. The tests found trace amounts of refined petroleum products. The plaintiff sued the defendant energy company in late 2019 alleging claims of negligence, negligence per se, trespass, unjust enrichment, private nuisance and public nuisance. The defendant moved for summary judgment on the basis that its pipeline carrying gasoline and diesel fuel beneath the ranch was not leaking and that the plaintiff failed to show any injury from the de minimis presence of hydrocarbons.

The trial court analyzed the plaintiff's various tort claims together which required a minimum level of contamination to be present so as to establish injury for each claim. Ultimately, the trial court granted summary judgment to the defendant. On appeal, the appellate court held that the trial court's combining of the plaintiff's tort claims under legal injury confused the analysis because "what



constitutes a legal injury will be different based on the elements of each tort.” On the two nuisance-based claims, the appellate court noted the plaintiff owners’ testimony that they discontinued their use of the land, in part, due to an odor that induced headaches, stopped water sales, and barred others from recreational activities on the ranch. The appellate court viewed this as sufficient evidence to warrant trial on whether the defendant had committed a nuisance. On the negligence issue, the appellate court determined that the plaintiff had presented sufficient evidence to create a genuine issue of material fact concerning legal injury and causation on the private and public nuisance as well as the negligence per se claim. However, the appellate court affirmed the trial court on the plaintiff’s constructive fraud and trespass claims citing a lack of evidence that the defendant had any intent to commit a trespass or knew that its pipeline was leaking or overlooked the leak or failed to tell the plaintiff about a leak in the pipeline.

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