Recent Happenings in Ag Law and the Courts

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Overview

The field of agricultural law is broad and dynamic. There is always something happening. That's a function of the many varied ways that the law intersects with land ownership, land use, economics and the production of food and fiber. Below is my commentary on a few recent cases involving farmers and ranchers – farm bankruptcy; veterinarian's lien; confined animal feeding operations and an injury sustained while assisting a downed heifer.

Some recent court cases involving ag – it's the topic of today's post.

Chapter 12 Plan Could Be Modified – Substantial Change in Circumstances Must be Shown

In re Swackhammer, 650 B.R. 914 (Bankr. S.D. Iowa 2023)

Chapter 12 bankruptcy is exclusively for family farmers. A creature of the farm crisis of the 1980s, it became a permanent part of the bankruptcy code in 2005. A key feature is the ability to restructure debt and put together a reorganization plan that allows the farm debtor to pay off creditors over time. But a significant question is whether that reorganization plan can be modified and, if so, how many times it can be modified. A recent case shed some light on those questions.

In *Swackhammer*, the debtors filed Chapter 12 bankruptcy in 2018, and a second modified plan was confirmed in 2019. In 2020, the debtors move to modify their confirmed plan to extend the time to make payments to secured creditors based on changed circumstances such as weather, equipment failure, employee illness or losses due to delayed financing. Each time the creditors objected, but each time the court allowed the modification. In 2022, the debtors motioned to approve a third modified plan to extend the deadline for payments to creditors because of unforeseen revenue loss from the 2021 crops. The debtors, for the first time, claimed that nothing in 11 U.S.C. §1229 required them to prove changed circumstances. The creditors objected, claiming that the court had plenty of evidence that none of the debtors' plans were feasible. The creditors also asserted that the debtors had to prove that their revenue loss was due to a substantial and unanticipated change in circumstances. The creditors motioned to dismiss the debtors' Chapter 12 case.

The bankruptcy court directed the parties to discuss whether they could agree to the terms of a fourth modified plan. Ultimately, a fourth modified plan was approved with the bankruptcy court noting that this would be the last modification allowed. A secured creditor appealed on the basis that 11 U.S.C. §1229 required a debtor to show "unanticipated, substantial change in circumstances" before confirming a proposed modified plan. The appellate court noted that the circuit courts of appeal were split on the issue and that it had not yet addressed the issue. The appellate court held that 11 U.S.C.

§1229(a) requires a showing, at a minimum of a "substantial change in circumstances" but that it didn't need to take a position on the issue in the case because the evidence illustrated that the debtors had met the burden. Accordingly, the bankruptcy court had not erred in allowing the fourth modification because, in any event, the evidence showed an unanticipated substantial change in circumstances.

Veterinarian's Lien Fails for Lack of Proof.

In re Kern, No. 22-40437-12, 2023 Bankr. LEXIS 1392 (Bankr. D. Kan. May 26, 2023)

Every state has numerous statutory liens that, when properly "perfected" can beat out a prior perfected secured lien. Common ones include a mechanic's lien, an agister's lien, and a landlord's lien. Some states, including Kansas, also have a statutory veterinarian's lien. That lien was at issue in a recent case.

In *In re Kern*, the debtor had pastured cattle for third parties until February of 2022. During that time, a veterinarian provided medications and veterinary care for the cattle. After shipping the cattle at the direction of the owner, the third party's check was dishonored, and the debtor couldn't pay the veterinary bill. Ultimately, the veterinarian came into possession of some of the debtor's cattle and the veterinarian cared for the cattle for slightly over two months. It was unclear and disputed how the veterinarian came into possession of the cattle. The veterinarian filed a veterinary lien under Kan. Stat. Ann. §47-836 with the local county Register of Deeds and a copy of the lien from mailed to the debtor and printed in the local newspaper. The debtor's primary lender then intervened, claiming a first-priority lien on the cattle. The county Sheriff sold the cattle for $18,714.83. That amount was deposited with the county court.

The veterinarian then sought payment pursuant to the lien, and the primary lender objected. The debtor then filed Chapter 12 bankruptcy. The parties stipulated that the primary lender held a valid perfected lien in the cattle and cattle proceeds, that could be beat out by a valid veterinarian's lien. The debtor claimed that he didn't request veterinary services for the cattle, but that the cattle owner must have. Ultimately, the court concluded that the veterinarian could only establish that someone with lawful possession of the cattle delivered them to him for veterinary services, but that it couldn't be established that it was the debtor. Thus, the veterinarian couldn't establish it was the debtor that requested his services and the veterinarian failed to meet his burden of proof by a preponderance of the evidence and the veterinarian's lien was invalid.

Court Vacates Medium-Sized CAFO Rule

Dakota Rural Action v. United States Department of Agriculture, No. 18-2852 (CKK), 2023 U.S. Dist. LEXIS 58678 (D. D.C. Apr. 4, 2023)

The plaintiff, a non-profit organization that was initially formed during the farm debt crisis of the 1980s to provide various forms of assistance to smaller-sized family farming operations, acting on behalf of various farm and animal rights groups, challenged a rule promulgated by the Farm Service Agency (FSA) in 2016. That rule exempted medium-sized confined animal farming operations (CAFOs) from environmental review for FSA loans. A medium-sized CAFO can house up to 700 dairy cows, 2,500 55-pound hogs or up to 125,000 chickens. The plaintiff challenged the rule as being implemented without

complying with the National Environmental Policy Act (NEPA) [42 U.S.C. §4332(2)(C)] which requires all federal agencies to undertake a certain degree of environmental review before effecting an agency decision or policy. In addition, the NEPA specifies that "an agency will inform the public that it has indeed considered environmental concerns in its decision-making process." Alternative, an agency can provide an environmental impact statement (EIS). An EIS requires agency review before any action is taken that will "significantly affect the quality of the human environment." Another alternative is for an agency to prepare an "environmental assessment" (EA) when environmental impact is not clearly established, an EIS is not necessary and there will not be any significant environmental impact. But, no analysis need be made public is the agency determines that its proposed action will not individually or cumulatively have a significant effect on the human environment. The FSA concluded that it didn't need to do any environmental analysis before making loans to medium-sized CAFOs, categorically exempting them from NEPA review. The court disagreed and vacated the rule. The court noted that FSA had provided no rationale for the exemption or the data upon which it relied except a 2013 discussion of a proposed categorical exemption. FSA conceded that it made no finding as to environmental impact. The court determined that to be fatal, along with providing no notice that it was going to categorically exempt all loan actions to medium-sized CAFOs. Thus, the rule was procedurally defective. The court vacated the rule and remanded to the FSA.

Domesticated Animal Activity Act Doesn't Provide Immunity for Feedlot Operator

Vreeman v. Jansma, No. 22-1365, 2023 Iowa App. LEXIS 492 (Iowa Ct. App. Jun. 21, 2023)

The defendant operated a feedlot and discovered a downed heifer in an area where he couldn't get tractor or equipment to assist the heifer in getting up. He called the plaintiff to come and help him with the task, something the plaintiff has assisted with in the past. While trying to get the heifer to her feet, the plaintiff's leg was severely injured. The plaintiff sued for negligence and the defendant motioned for summary judgment, citing the Iowa Domesticated Animal Activity Act (Iowa Code Ch. 673) (Act) as providing him with immunity from suit. The Act states that "A person, including a domesticated animal professional, domesticated animal activity sponsor, the owner of the domesticated animal, or a person exhibiting the domesticated animal, is not liable for the damages, injury or death suffered by a participant or spectator resulting from the inherent risks of a domesticated animal activity." The plaintiff asserted that the Act was inapplicable because standing up a downed heifer is not a "domesticated animal activity." The trial court granted summary judgment to the defendant and the plaintiff appealed. The appellate court reversed, noting that the statute provided a specific list of definitions for "domesticated animal activity" and that standing up a downed heifer was not in the list.

Conclusion

There's never a dull moment in agricultural law and taxation. Stay tuned for more developments in future posts.

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