

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: CROSTHWAIT COTTON AND PLANTING COMPANY	CHAPTER 12 CASE NO. 02-17101
IN RE: POPLAR FLAT FARMS, INC.	CHAPTER 12 CASE NO. 02-17102
IN RE: A.E. CROSTHWAIT AND COMPANY FARMING, INC.	CHAPTER 12 CASE NO. 02-17103
IN RE: CROSTHWAIT FARMING COMPANY, INC.	CHAPTER 12 CASE NO. 02-17139
IN RE: GRAY ROCK FARMS, INC.	CHAPTER 12 CASE NO. 02-17140
IN RE: CHICKASAW FARMING AND PLANTING CO.	CHAPTER 12 CASE NO. 02-17142

OPINION

On consideration before the court is a motion to reconsider this court's previous order, entered April 29, 2003, the said motion having been timely filed by Vardaman Farmer's Gin, Inc., (Vardaman Gin) on May 7, 2003. Following a hearing in open court and considering the issues raised, the court hereby finds as follows, to-wit:

I.

The court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A), (B), (K), and (O).

## II.

### Procedural History

The order, which is the subject matter of the motion to reconsider, was entered by this court on April 29, 2003, and essentially concluded that Vardaman Gin did not have a secured claim in these six Chapter 12 bankruptcy cases because its attempted lien perfection occurred one day after the bankruptcy cases had been filed in technical violation of the automatic stay. The Chapter 12 petitions were filed on November 18, 2002, and the lien filings occurred on November 19, 2002. The court was of the opinion that Vardaman Gin held a potential administrative expense claim applicable to its post-petition ginning services. The court was also seriously concerned as to why Vardaman Gin had failed to respond and participate in several earlier proceedings before this court which will be listed and discussed hereinbelow.

At the initial hearing on the debtors' Second Supplemental Motion to Enforce Agreed Order and Order of December 11, 2002, etc., (Second Supplemental Motion), which was conducted on April 21, 2003, and which prompted the entry of the order now being reconsidered, the primary focus centered on the effectiveness of a series of motions and orders which had been previously entered during the course of the administration of these cases. While Vardaman Gin pled and discussed §85-7-1, Miss. Code Ann. (MCA), at this hearing, there was no mention of §362(b)(3) of the Bankruptcy Code. This latter section was first raised in a subsequent telephone conference conducted by the court and the attorneys representing the parties, and its implication was then more fully developed in the motion to reconsider.

III.

Status of Vardaman Gin Claim

From Vardaman Gin's Exhibit 1, the following information was extracted:

Only four of the debtor corporations had ginning services performed by Vardaman Gin prior to November 19, 2002, the date of the Vardaman Gin UCC filings. These services represented 2,277 bales ginned at \$10.00 per bale for a total of \$22,770.00. The identity of the corporate entities, the dates of the ginning services, the number of bales ginned, and the respective claims are identified as follows:

<u>Corporate Entity</u>	<u>Applicable Dates</u>	<u>Bales Ginned</u>	<u>Total Amount</u>
Chickasaw Farming and Planting Company, Inc.	10/03/02-11/17/02	438	\$4,380.00
Crosthwait Cotton and Planting Company, Inc.	10/11/02-11/17/02	847	8,470.00
A.E. Crosthwait and Company Farming, Inc.	10/15/02-11/17/02	949	9,490.00
Crosthwait Farming Company, Inc.	no dates specified	43	<u>430.00</u>
Total			\$22,770.00

Two debtor entities, Poplar Flat Farms, Inc., and Gray Rock Farms, Inc., had no ginning services performed prior to or the date of the lien filings.

According to Vardaman Gin's answer and response to the debtors' Second Supplemental Motion, the ginning services performed for all six of the debtor entities, occurring post-petition and post-lien filing, totaled \$22,110.00, representing 2,211 bales ginned at \$10.00 per bale.

Vardaman Gin's claims against non-debtor corporate entities, owned or controlled by A.E. Crosthwait, are not involved in this proceeding. Consequently, of the total ginning charges of \$61,810.00, \$44,880.00 applies to the debtor entities. This does not include the unginned cotton left at the Vardaman Gin premises which would represent approximately forty to fifty bales, if ginned.

Section 85-7-1, MCA provides, in part, as follows:

(1) . . . .

(2) Every employee, laborer, cropper, part-owner, overseer, or manager, or other person who may aid by his labor to make, gather, or prepare for sale or market any crop, shall have a lien on the interest of the person who contracts with him for such labor, for his wages, share or interest in such crop, whatever may be the kind of wages or the nature of the interest, which lien such employee, laborer, cropper, part-owner, overseer, or manager, or other person may offset, recoup or otherwise assert and maintain.

(3) Except as provided in subsection (4) of this Section, any lien arising under the provisions of this section shall be paramount to all liens and encumbrances or rights of any kind created by or against the person so contracting for such assistance when perfected in accordance with Uniform Commercial Code Article 9 - Secured Transactions (Section 75-9-101, et seq.), except the lien of the lessor of the land on which the crop is made, for rent and supplies furnished, as provided in the Chapter on "Landlord and Tenant" appearing as Chapter 7 of Title 89, Mississippi Code of 1972.

(4) Any lien arising under the provisions of subsection (2) of this section in favor of any person other than an employee, laborer, cropper, part-owner, overseer or manager as to crops or the proceeds thereof, shall be effective against a third party only for a period of twenty-one (21) days from and after the time the labor is completed, unless within such period of time the lien is perfected in accordance with Uniform Commercial Code Article 9 - Secured Transactions (Section 75-9-101 et seq.). Any such lien in favor of any person other than an employee, laborer, cropper, overseer or manager which has not been perfected within the twenty-one (21) day period as herein provided shall, upon subsequent perfection of such lien, have the priority against a third party to which a perfected security interest may be entitled under Uniform Commercial Code Article 9 - Secured Transactions (Section 75-9-101 et seq.)

This statute indicates that a paramount lien is effective in favor of a creditor, such as Vardaman Gin, against other creditors, excepting a landlord, for a period of twenty-one days from and after the time the labor is completed relative to a farmer's crops unless the lien is perfected within the twenty-one day period in accordance with Article 9 of the Uniform Commercial Code. If properly perfected, the lien's paramount effect continues beyond the twenty-one day period as to the labor, etc., previously performed. This statutory lien expressly does not exist until the labor is actually performed.

Section 362(b)(3) of the Bankruptcy Code provides as follows:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay--

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title

Insofar as the proceeding before this court is concerned, the "driving force" of §362(b)(3) depends upon §546(b)(1)(A) of the Bankruptcy Code which is set forth as follows:

(b)(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that--

(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; ...

Succinctly stated, this latter Bankruptcy Code section recognizes the effectiveness of state statutes which permit certain creditors to perfect a lien within a specified period of time that then takes priority over the existing liens of other third party creditors.

The combined interaction of the aforementioned three statutes constitutes a part of the dispute which has now been appropriately presented to the court. An analysis of this interaction in keeping with the pertinent facts that exist in this proceeding must now be undertaken.

As noted earlier, the paramount status of a lien granted by §85-7-1, MCA, is effective for a period of twenty-one days from and after the time the labor is completed, unless within the twenty-one day period, the lien is perfected in compliance with UCC requirements. Therefore, the lien perfected by Vardaman Gin on November 19, 2002, one day subsequent to the debtors' bankruptcy filings, could only secure the charges for ginning services occurring between October 29, 2002, and November 19, 2002, the "twenty-one day window." Ginning services provided before October 29, 2002, would not be given the same paramount effect as the services performed within the twenty-one day "window." As such, the filing of a lien for ginning services rendered before October 29, 2002, could not prime the hypothetical lien granted to the bankruptcy trustee as of the date of the bankruptcy filings pursuant to §544(a) of the Bankruptcy Code. It then follows that a lien for these services, i.e., those performed before October 29, 2002, could not be lawfully perfected subsequent to the bankruptcy filing pursuant to the §362(b)(3) exception to the automatic stay. The total of those ginning charges would constitute a pre-petition unsecured claim. The lien documents filed by Vardaman Gin, would secure only the ginning charges that occurred within the twenty-one day statutory "window." No proof has been presented to the court by Vardaman Gin specifically delineating the extent of these charges. Consequently, the court cannot determine the precise amount of the potential secured claim held by Vardaman Gin, if any.

For the ginning services provided after November 19, 2002, no lien has ever been perfected that could prime the trustee's §544(a) hypothetical lien, and thus enjoy a §362(b)(3) exception to the automatic stay. Section 85-7-1, MCA, specifically provides that the paramount lien is effective only for a period of twenty-one days from and after the labor is completed unless, within that twenty-one day period, the lien is appropriately perfected. No lien has been perfected within twenty-one days from and after any ginning services completed subsequent to November 19, 2002. Consequently, in keeping with the court's previous opinion, the charges for these services could be entitled to an administrative expense priority, but they would not be considered a secured claim.

To summarize the above discussion, without considering the events described in Paragraph IV hereinbelow, Vardaman Gin would have the following claims in these cases:

General unsecured claim - ginning charges for services performed between 10/3/02 and 10/29/02.

Potential secured claim - ginning charges for services performed between 10/29/02 and 11/19/02.

Potential administrative expenses priority claim - ginning charges for services performed after 11/19/02.

#### IV.

##### Previous Motions and Orders

The following is a listing of the motions and orders that have been entered previously during the administration of these bankruptcy cases:

(A) Debtors' Exhibit 1 - Debtors' motion to incur debts, etc., dated November 22, 2002, requesting the use of \$650,000.00 in 2002 crop proceeds, as well as, requesting the authority to borrow an additional \$250,000.00 from BancorpSouth, all of which was to be

utilized to pay the remainder of the 2002 harvesting expenses in an estimated amount of \$900,000.00.

The motion indicated that the 2002 crops were subject to the liens of First National Bank of Rosedale and BancorpSouth, and that the \$650,000.00 in proceeds, already realized from the crop sales, were being held by Staplcotn, Inc., the corporate entity which had purchased the debtors' 2002 crops.

This motion was not noticed to Vardaman Gin which had filed its lien only three days earlier.

(B) Debtors' Exhibit 2 - An Order, dated December 11, 2002, following a modification to the motion to incur debts, etc.

This order authorized the debtors to increase their loan with BancorpSouth to the sum of \$600,00.00, which was to be secured by a lien on the 2002 crops, the government payments related thereto, crop insurance, and the debtors' machinery and equipment.

(C) Debtors' Exhibit 3 - An Agreed Order, dated December 11, 2002, which authorized the payment of \$150,000.00, plus accrued interest, to satisfy the claim of First National Bank of Rosedale.

(D) Debtors' Exhibit 4 - Debtors' motion to disburse crop proceeds, dated December 18, 2002, which specifically mentioned the claim of Vardaman Gin, as well as, asserted that Vardaman Gin had filed a lien in violation of the automatic stay. This motion also noted that Vardaman Gin was not originally listed in the debtors' bankruptcy matrix.

The motion also mentioned the claim of the Mississippi Department of Agriculture and Commerce in connection with the Boll Weevil Eradication Program.

The motion requested authority for Staplcotn to release sufficient 2002 crop proceeds to satisfy the claim of First National Bank of Rosedale.

The motion was noticed to both Vardaman Gin and the Mississippi Department of Agriculture and Commerce in addition to other affected creditors.

(E) Debtors' Exhibit 5 - An Agreed Order granting the motion to disburse proceeds, dated January 6, 2003.

The Mississippi Department of Agriculture and Commerce filed an objection to the motion to disburse the crop proceeds and, as a result, successfully negotiated the payment of its claim satisfying the Boll Weevil Eradication Program assessment.



This Agreed Order also authorized Staplcotn to make the necessary disbursements to First National Bank of Rosedale in order to satisfy its claim in keeping with the Agreed Order dated December 11, 2002.

Although Vardaman Gin, through its President, Joe Edmondson, at a later hearing, acknowledged the awareness of this particular motion, it filed no objection or response and did not appear at the court hearing. Edmondson explained that he thought that this motion was applicable only to the payment of the First National Bank of Rosedale claim to which he had no objection.

(F) Debtors' Exhibit 6 - Debtors' initial Supplemental Motion to Enforce Agreed Order and Order of December 11, 2002 and to Authorize Further Distribution of Crop Proceeds, dated February 26, 2003.

This motion specifically delineated the orders which had been previously entered by the court, as well as, described the lien conveyed to BancorpSouth on the 2002 crops, etc. The motion indicated that the Farm Service Agency (FSA) had possession of certain government payments owed to the debtors and requested that these payments be forwarded by FSA to BancorpSouth.

The motion noted that Staplcotn was forwarding all proceeds of the 2002 crop to BancorpSouth, and specifically requested the enforcement of the December 11, 2002 Agreed Order and the December 11, 2002 Order (denominated in the motion as the Financing Order).

A review of the court file indicates that this motion was also noticed to Vardaman Gin, but it again elected not to respond or appear at the hearing.

(G) Debtors' Exhibit 7 - Order, dated March 17, 2003, which specifically provided that the December 11, 2002 Agreed Order and Order (Financing Order) were to be enforced. It authorized further distribution of the 2002 crop proceeds by Staplcotn to BancorpSouth.

(H) Debtors' Exhibit 8 - A Supplemental Agreed Order, dated February 3, 2003, was entered pursuant to an ore tenus motion and agreement between the First National Bank of Rosedale and the debtors. In this order, First National Bank of Rosedale agreed to release its lien in reliance on the commitment that the debtors would pay the 2002 landlords' claims or file causes of action to avoid the landlords' liens. The order also reiterated that the Boll Weevil Eradication Program assessment would be paid.

Thereafter, as noted hereinabove, the debtors' Second Supplemental Motion was filed on April 7, 2003. Since it was specifically directed at the claim of Vardaman Gin, it finally drew an answer and response. The entire litany of events, set forth hereinabove, is now before the court on the motion for reconsideration.

The remaining question before the court is whether Vardaman Gin should have entered its appearance and filed appropriate pleadings prior to the filing of the debtors' Second Supplemental Motion on April 7, 2003. There were two occasions when this could have, and perhaps should have, occurred. The first was the filing of the debtors' motion to disburse crop proceeds, dated December 18, 2002. The motion contained the following language, to-wit:

5. Staplcotn is ready, willing and able to make payment to the Bank with two (2) notable exceptions. First, Vardaman Gin filed (or attempted to file) a lien against the 2002 cotton crop on or about November 19, 2002, one day after the Movant had filed its Chapter 12 petition. The filing of the lien violates the automatic stay and the entity filing the lien has only an unsecured - not a secured - claim in any event. Staplcotn is unable to disburse the sales proceeds from the 2002 cotton crop absent further Order of the Court, or consent of the entity filing the aforementioned lien. The entity was not listed in the Debtor's original matrix.

Initially, the court thought that this "red flag" was certainly sufficient to require Vardaman Gin to respond and protect its interest. However, the "Bank" that is referred to in the motion is not BancorpSouth, but rather First National Bank of Rosedale. As noted hereinabove, Joe Edmondson, the President of Vardaman Gin, indicated that he had no objection to the First National Bank of Rosedale being paid, and that he thought that this particular motion was applicable only to that disbursement. His testimony was confirmed by Kenneth Downs, a representative of Staplcotn. The order sustaining this particular motion does not mention the Vardaman Gin claim, but rather discusses the payment of the Boll Weevil Eradication Program

assessment, and then authorizes Staplcoctn to make disbursements to First National Bank of Rosedale consistent with the previous order entered on December 11, 2002. Consequently, the court does not feel that this proceeding precludes Vardaman Gin's right to assert a potential secured claim at this time.

The second occasion was the filing of the debtors' first Supplemental Motion to Enforce Agreed Order and Order of December 11, 2002, etc., dated February 26, 2003. While this motion was noticed to Vardaman Gin, it does not seek to deny or classify the gin's claim. Although it clearly requests the enforcement of the two previous court orders entered on December 11, 2002, its primary focus was to require the Farm Service Agency (FSA) to submit certain government payments directly to BancorpSouth. Ordinarily, a cautious and alert creditor might react and respond to a motion such as this in order to protect its rights. However, the motion is not so specific that it sufficiently warns a creditor that the status of its claim might be in jeopardy. Indeed, in paragraph VIII, the motion states, "[I]n enforcing the Agreed Order and the Financing Order entered herein, the debtor will be able to consummate and fulfill its obligations to BancorpSouth and to all creditors and parties-in-interest herein." This sentence implies that the claims of all creditors will be fully paid. Consequently, this proceeding also cannot preclude Vardaman Gin from asserting a potential secured claim.

#### IV.

Based on the foregoing analysis, the court is of the opinion that the motion to reconsider filed by Vardaman Gin is well taken, in part. Vardaman Gin shall be permitted an opportunity to calculate and submit evidence to the court relative to the charges for ginning services performed between October 29, 2002 and November 19, 2002. These charges would represent the

maximum secured claim that would be allowable by law in these bankruptcy cases. Counsel for Vardaman Gin shall submit a written calculation to the court within twenty (20) days from the date of the entry of this opinion along with any underlying documentation that would support the calculation. Thereafter, if an evidentiary hearing is necessitated, it will be scheduled by the court.

This the 3rd day of July, 2003.

/s/  
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DAVID W. HOUSTON, III  
UNITED STATES BANKRUPTCY JUDGE