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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

98 NOV -3 PM 12: 15

NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 98-14445
)
ZIMMERMAN AGRONOMIC) Chapter 12
SERVICES, INC.,)
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

The Standing Chapter 12 Trustee (the "Trustee") moves to dismiss this case on the ground that Debtor Zimmerman Agronomic Services, Inc. is not eligible for relief under Chapter 12 because it does not conduct a "farming operation" as defined in 11 U.S.C. § 101(21). Debtor opposes the motion. (Docket 14, 18). For the reasons stated below, the motion is granted.

JURISDICTION

This Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

FACTS

The Court held an evidentiary hearing on the Trustee's motion. The only witness was Richard W. Zimmerman, President of Debtor. He testified to these facts:

1. **Background**

Mr. Zimmerman and his wife are the officers of the corporate Debtor. Both are employed by Debtor. Mr. Zimmerman holds a B.S. degree in agricultural education. He started

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the business in 1993 because he wanted to work with soil and the people who manage soil. The Zimmermans live on a farm, but that land is owned by them personally and is not involved in this bankruptcy proceeding.

2. The Business of the Debtor

Debtor's business operations fall into two categories: (a) soil and crop management; and (b) paving.

a. Soil and Crop Management

Debtor enters into contracts with land owners and farmers to test and evaluate soil and make recommendations to the land managers as to how they should treat the soil. Once the parties decide on the nutrients to be added to the soil, Debtor either delivers them to the site for the customer to apply or Debtor does the application itself. In Mr. Zimmerman's words, the modern agricultural trend is to "disturb" the soil as little as possible when applying the nutrients in order to control erosion. Debtor does, however, disturb the soil to some degree in the application process. The portion of Debtor's operations where Debtor itself spreads the nutrients on the soil amounts to about 15-20 % of Debtor's income.

As part of the service offered by Debtor, Mr. Zimmerman walks the fields, takes soil samples, recommends crop rotations, and evaluates the conditions of crops during the growing season. Debtor also provides some consulting services when soil amendments are not purchased, although Mr. Zimmerman did not give any details as to those services. Debtor is sometimes involved in an unspecified way with the seeding of crops, but it does not plant crops, harvest crops, market crops or feed them to livestock. Debtor does not own any real estate.

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b. Paving

In the off-season, Debtor uses some of its equipment in a blacktop or paving business.

DISCUSSION

I.

The Trustee contends that Debtor is not eligible to be a Chapter 12 debtor because Debtor provides a service to farmers, but does not play an active role in a "farming operation" as that term is used in 11 U.S.C. § 101(21). In particular, the Trustee relies on the fact that Debtor does not own or farm any real estate. Debtor argues that its operations come within the phrases "tillage of the soil" and "production or raising of crops" as used in that section of the Bankruptcy Code.

II.

Only a family farmer is eligible to be a debtor under Chapter 12 of the Bankruptcy Code. 11 U.S.C. § 109(f). For a corporate debtor, a "family farmer" is a:

- (B) corporation . . . in which more than 50 percent of the outstanding stock . . . is held by one family, . . . and such family . . . conduct[s] the farming operation; and
 - (i) more than 80 percent of the value of its assets consists of assets related to the farming operation;
 - (ii) its aggregate debts do not exceed \$1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts . . . on the date the case is filed, arise out of the farming operation owned or operated by such corporation

11 U.S.C. § 101 (18)(B). Of these statutory requirements, the Trustee challenges whether Debtor conducts a "farming operation." A "farming operation" includes "farming, tillage of the soil,

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dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state[.]" 11 U.S.C. § 101(21).¹

The Bankruptcy Code does not define the terms "tillage of the soil" or "production or raising of crops." In the absence of statutory definition, courts often turn to the dictionary. See, for example, *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380 (1993). Webster's Third New International Dictionary states that "tillage" is "the operation, practice or art of tilling land: the improving of land for agricultural services." The verb "till" means "1: to turn or stir (as by plowing, harrowing, or hoeing) and prepare for seed" Webster's Third New International Dictionary 2393 (1993).² Some of Debtor's activities come within this concept; that is, when Debtor physically adds nutrients to a customer's soil, Debtor "disturbs" or turns the soil to prepare it for seeding by the land manager. While this is a starting point for the statutory analysis, it does not answer the question of whether Debtor conducts a "farming operation." To do that, one must look to a totality of the circumstances. *Watford v. Fed. Land Bank of Columbia (In re Watford)*, 898 F.2d 1525 (11th Cir. 1990).

This Debtor is in the business of analyzing soil, recommending nutrients as amendments, and in most cases selling the nutrients to the customer. The nutrients can be added by Debtor or by the soil manager. In a minority of cases, Debtor itself adds the nutrients, and in doing so

¹ This list is not all-inclusive. *Watford v. Fed. Land Bank of Columbia (In re Watford)*, 898 F.2d 1525 (11th Cir. 1990). Debtor's only argument here, however, is that its operations fall within the specific language of the statute. Based on that, it is not necessary to go beyond the phrases identified by Debtor.

² Black's Law Dictionary defines "tillage" as "a place tilled or cultivated; land under cultivation, as opposed to lands lying fallow or in pasture." Black's Law Dictionary 1482 (6th ed. 1990). This definition is less helpful in this case than the Webster's definition.

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minimally turns or tills a customer's soil. Debtor is not, however, in the business of tilling soil. There was no testimony that Debtor tills the soil on land that it owns, rents, or holds any interest in. Nor was there any testimony that Debtor adds nutrients to soil for entities that buy the supplements elsewhere or that Debtor tills soil for entities who are not adding any nutrients at all. Debtor does not conduct any operations on land that it owns because it does not own any land. While the Zimmermans live on a farm, that farm is not a part of the bankruptcy estate and there was no testimony linking it to the tillage issue. All of this leads to the conclusion that Debtor is not engaged in the farming operation of tilling the soil. Debtor instead provides a service to farmers, part of which is carried out by minimally tilling soil.

Similarly, Debtor is not in the business of producing or raising crops. Debtor itself does not plant or harvest any crops. In the course of making soil recommendations, Debtor may observe and comment on a farmer's efforts to plant and harvest crops. This is not the same as Debtor being subject "to the inherent risks and cyclical uncertainties traditionally associated with farming," such as weather, price fluctuation for crops, and insects. *Fed. Land Bank of Columbia v. McNeal (In re McNeal)*, 848 F.2d 170, 171 (11th Cir. 1988). Those production risks are not borne by Debtor, but are instead borne by the customers to whom Debtor sells its service.

As Debtor's activities do not come within the phrases "tillage of the soil" or "production or raising of crops," Debtor does not conduct "farming operations." A debtor who does not conduct such operations is not eligible for relief under Chapter 12. This conclusion is consistent with Congress' intent in enacting Chapter 12. That Chapter is "to be used only by family farmers. It is designed to give family farmers facing bankruptcy a fighting chance to reorganize their debts and keep their land." H.R. Conf. Rep. No. 958, 99th Cong., 2d Sess. at 48 (1986),

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reprinted in 1986 U.S.C.C. A.N. 5246, 5249. Debtor has not cited any authority in support of the proposition that a corporation that does not own any land or engage in any traditional farm activity on its own behalf is eligible for Chapter 12 relief based on services provided to farmers. In sum, Debtor provides an important soil management service to farmers, but Debtor itself does not conduct a "farming operation." See *In re McNeal* (debtor who offered coop cleaning service to farmers and also collected and sold the manure was not engaged in a "farming operation"); *In re Van Air Flying Serv. Inc.*, 146 B.R. 816 (Bankr. E.D. Ark. 1992) (corporation in business of aerial crop dusting for farmers provided a valuable service to farmers but did not conduct a "farming operation").

CONCLUSION

eligible for Chapter 12 relief based on services provided to farmers. For the reasons stated, Debtor is not eligible for relief under Chapter 12 of the Bankruptcy Code and the Trustee's Motion to Dismiss is granted.

A separate Order will be entered in accordance with this Memorandum of Opinion. See *In re McNeal* (debtor who offered coop cleaning service to farmers and also collected and sold the manure was not engaged in a "farming operation"); *In re Van Air Flying Serv. Inc.*, 146 B.R. 816 (Bankr. E.D. Ark. 1992) (corporation in business of aerial crop dusting for farmers provided a valuable service to farmers but did not conduct a "farming operation").

Date: 3 Nov 1998

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

CONCLUSION

Served by mail on: Thomas Pavlik, Esq.
Michael V. Demczyk, Esq.
United States Trustee

By: Joyce L. Gordon Secretary

Date: 11/3/98

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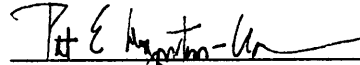
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In re:) Case No. 98-14445
)
ZIMMERMAN AGRONOMIC SERVICES,) Chapter 12
INC.,)
) Judge Pat E. Morgenstern-Clarren
Debtor.)
) **ORDER**

For the reasons stated in the Memorandum of Opinion filed this date,

IT IS ORDERED that the Trustee's Motion to Dismiss Case is granted.

Date: 3 Nov 1998



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Thomas Pavlik, Esq.
Michael Demczyk, Esq.
United States Trustee

By: Joyce L. Gordon Secretary

Date: 11/3/98