

**UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA**

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In re:

Chapter 12

GREGORY GALSTER, d/b/a  
BREAKAWAY FARMS

Debtor

Bankruptcy No. 10-14786

KAREN GALSTER, d/b/a  
BREAKAWAY FARMS

Joint Debtor

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UNIVEST NATIONAL BANK & TRUST  
COMPANY

v.

GREGORY GALSTER, d/b/a  
BREAKAWAY FARMS

Debtor

KAREN GALSTER, d/b/a  
BREAKAWAY FARMS

Joint Debtor

FREDERICK L. REIGLE

Trustee

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***DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF THEIR RESPONSE TO  
UNIVEST NATIONAL BANK & TRUST COMPANY'S MOTION TO DISMISS  
DEBTORS' CHAPTER 12 BANKRUPTCY PETITION***

Gregory Galster and Karen Galster, Debtors, by and through their undersigned counsel, Heeney & Associates, P.C., respectfully files this Memorandum of Law (the "Memorandum") in support of their response to the Motion filed by Uninvest National Bank & Trust Company to Dismiss Debtors' Chapter 12 Bankruptcy Petition (the "Motion"), and, in support thereof, avers as follows:

## ***FACTUAL BACKGROUND***

In 1996, Gregory and Karen Galster acquired the real property in question, a twenty-two (22) acre farmstead in Tinicum Township, Bucks County from Thomas Horth and Anita Melograna, a/k/a Anita M. Horth. The Horths operated the farm as a corporation engaged in the business of breeding of horses and the premises were improved and equipped for that purpose.

The farm contains a professional quality barn with twenty stalls and a hay loft. The farm also contains five running sheds to permit livestock to wander freely outside of the barn in inclement weather. A cement-lined manure pit was later installed in accordance with health and environmental regulations. The majority of the property is open, professionally maintained pasture.

The Galsters took over the business name of “Breakaway Farms,” though they did not register it or incorporate their new enterprise. Since 1996, they have operated as an unregistered, de facto partnership engaged in a variety of equestrian services, discussed below. Currently, the Galsters provide such services for fourteen horses among their eleven clients.

In 2009, poor economic conditions began to have a profound affect on Breakaway Farms. Not only did Breakaway Farms not see a new client that year, but they lost four clients who could no longer afford the Galsters’ services due to financial problems of their own. The boarding fees of eight horses left with those four clients.

On June 9, 2010, Gregory Galster and Karen Galster, d/b/a Breakaway Farms, filed for the protection under Chapter 12 of the Bankruptcy Code.

## ***STANDARD OF REVIEW***

*Section § 1208* of the Bankruptcy Code is the law pertaining to dismissal of a Chapter 12 case. The Creditor requests the dismissal of the Debtors' petition pursuant to *§ 1208(c)(1)* and *§ 1208(c)(9)* (for "unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors" and for "continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation" respectively).

As to the Creditor's claim under *11 U.S.C. §1208(c)(1)*, this Court should note that section *§ 1208(c)(1)* is phrased in the conjunctive, so it is necessary to find both that the Debtors have engaged in unreasonable delay or gross mismanagement and that the delay or mismanagement has been prejudicial to the Creditor. *In re Block K. Associates, 55 B.R. 630* has stated that ". . . [T]he Court must examine all the facts and circumstances of the case . . . Just as in an inquiry into the bad faith of a Chapter 13 debtor, no one factor should be controlling, and the weight given to each factor will vary with the facts and circumstances of each case." *See Id. at 633.*

Creditor's claim pursuant to *11 U.S.C. § 1208(c)(9)* requires both loss to or diminution of the estate and that the Debtors lack reasonable prospects for confirming a plan and rehabilitating the farming operation. *See Id.*

## ***ARGUMENT***

### ***The Debtors Are Engaged in a Farming Operation Under the Bankruptcy Code:***

The Debtors do not operate a tax shelter. They are not a large corporate entity. What the Debtors do is not a hobby, but is their profession and the source of their entire income. The Debtors are not merely landlords to their hoofed tenants. Aside from traditional services such as boarding and training horses, Gregory Galster is an experienced farrier, both Debtors are experienced in treating and medicating the common health conditions of their charges, and both Debtors raise and groom the horses from birth for their clients. Both Debtors are also experienced horse midwives and render such services for their clients. Of the horses currently being boarded, two are foals born at Breakaway Farms. Some of the Debtor's clients wish their horses raised expertly for the purposes of reselling the animals.

Under the Bankruptcy Code, a "farming operation" is defined in *11 U.S.C. § 101(21)* to include "farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state." *See 11 U.S.C. § 101(21). Emphasis added.*

In interpreting the term "farming operation", courts have generally applied a broad or liberal construction. *In re Maike, 77 B.R. 832 (Bankr.D.Kan.1987)*. The Court in *Maike* also said that "if feeding and maintaining other people's cattle for ultimate resale is a farming operation, the same services performed with respect to dogs should also be considered farming." *See Id. at 839.*

To engage in a narrowly focused inquiry would result in excluding some debtors whom Congress sought to protect. *In re Burke, 81 B.R. 971 (1987)*. Courts should look

to the totality of the circumstances involved in the debtor's operation keeping in mind the remedial purposes behind Chapter 12. *In re Mikkelson Farms, Inc.*, 74 B.R. 280 (Bankr.D.Or.1987). Some of the factors that courts have found important are: (1) Whether the location of the operation would be considered a traditional farm; (2) nature of the enterprise at the location; (3) type of product and its eventual market; (4) physical presence or absence of family members on the farm; (5) ownership of traditional farm assets; (6) whether the debtor is involved in the process of growing or developing crops or livestock; and (7) whether or not the practice or operation is subject to the inherent risks of farming. *See In re Osborne*, 323 B.R. 489 (2005).

In answering this question, the Creditor's reliance on the Court's decision in *In re Wolline*, 74 Bankr. 208 (Bankr. E.D. Wisc. 1987) is misplaced. Looking to the Court's statement that "If the debtor owned or leased land solely for horseback riding purposes without residing on the land, this court would have no difficulty in concluding that he did not run a farming operation," one notes an important distinction between it and the present matter: Breakaway Farms does not operate "solely for horseback riding purposes." *See Id.* In fact, the entire statement was intended to state two extremes. In no instance does the Court of Wolline discuss or analyze a horse farming operation that is remotely similar to the business of the Debtors.

In the matter of *In re of Showtime Farms, Inc.*, 267 B.R. 541 (2000), the Bankruptcy Court addressed the issue of Chapter 12 eligibility for a horse farm. Showtime Farms, Inc. owned real property with improvements consisting of a house and barn with customary fencing and other small out-buildings. This is very much Breakaway Farms. The Debtor of Showtime Farms, Inc. lived in the house on the

property and operates the business from the barn. This is also similar to the Galsters' business situation. While Gregory and Karen Galster do not reside at Breakway Farms, the property possesses a furnished house that they often occupy for days at a time as necessary to oversee the horses under their care. The Galsters do conduct business out of their barn. Showtime Farms owned various farm equipment including a tractor, horse trailer, farm trucks and other related farm implements necessary to maintain pasture land and discharge farm chores. As reported on their bankruptcy petition, the Galsters also own similar farming equipment, including tractors and horse trailers.

The Debtor of Showtime Farm, Inc. explained her business as boarding horses, training horses, renting horses, raising horses for resale and giving riding lessons to the general public. Although the horses that the Galsters raise for resale are for other owners, it must be noted here that Showtime Farm's income, in determining the feasibility of a Chapter 12 Plan, was derived entirely from the horses being boarded. *See Id. at 545.* Furthermore, one of the reasons that Showtime Farms found itself in bankruptcy was due to a principal client removing his horses from Showtime Farm's premises. *See Id.*

Showtime Farms maintained a pasture for their horses and for their clients that are boarded on the premises. The Galsters care for and maintain several pastures for their horses and the horses of their clients. Showtime Farms raised Bermuda grass on a portion of the property. The Galsters specifically plant and cultivate fescue grass in their pastures, engaging in mowing and aerating practices to reduce wild growth. Varieties of fescue grass are necessary for proper grazing for livestock. Furthermore, Breakaway Farms stores the horses' manure in a cement lined bin, creating productive compost which is traded in exchange for straw for bedding.

Showtime Farm's real estate had an agricultural exemption for state tax purposes. Breakaway Farms enjoys preferential use assessment under the Clean and Green Act, more commonly known as Act 319.<sup>1</sup>

The Court of Showtime Farms concluded that "the real property owned by the Debtor contains traditional farm facilities and Debtor conducts traditional farming operations. The Debtor's operations are subject to the inherent risk of any farming operation including fluctuating market prices, feed prices, uncertain weather and risk to livestock from disease and injury." *See Id at 343.*

The Galsters and Breakaway Farms meet the requirements of eligibility for "family farmer" under the Bankruptcy Code and therefore should be afforded relief under Chapter 12.

**The Debtors' Chapter 12 Bankruptcy Petition Is Not Unreasonably Delayed and Has a Reasonable Likelihood of Rehabilitation:**

11 U.S.C. § 1208(c)(1) permits a dismissal of a Chapter 12 case for unreasonable delay or gross mismanagement and that the delay or mismanagement has been prejudicial to the Creditor. *See Id. Emphasis added.* Unreasonable delay is found from a debtor's failure to file or confirm a plan on a timely basis, from a debtor's failure to modify a plan after confirmation has been denied, or from a debtor's failure to consummate or perform

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<sup>1</sup> Section 5490.3 of the Clean and Green Act, 72 P.S. §5490.3, provides:

(a) For general property tax purposes, the value of land which is presently devoted to agricultural use, agricultural reserve, and/or forest reserve shall, on application of the owner and approval thereof as hereinafter provided, be that value which such land has for its particular land use category if it also meets the following conditions:

(1) Land presently devoted to agricultural use: Such land was devoted to agricultural use the preceding three years and is not less than ten contiguous acres in area, including the farmstead land, or has an anticipated yearly gross income of at least two thousand dollars (\$2,000).

under the terms of a confirmed plan. *See United States v. Suthers (In re Suthers)*, 173 B.R. 570 (W.D. Va. 1994); *See also Zerr v. Montezuma Credit Union (In re. Zerr)*, 167 B.R. 953 (Bankr. Kan. 1994); *See also In re Kennedy*, 181 B.R. 418 (Bankr. D. Neb. 1995); *See also In re Fern Acres*, 180 B.R. 554 (Bankr. D. Neb. 1995); *See also In re Rivera Sanchez*, 80 B.R. 6 (Bankr. D.P.R. 1987). As such, the Creditor's application of the analysis of *In re Block K. Associates, supra.*, bears little relevance to the issue of "unreasonable delay" as contemplated by 11 U.S.C. § 1208(c)(1).

More telling, the Creditor advances no argument or theory that it has been prejudiced. The Creditor goes only so far as to claim that the Debtor's bankruptcy frustrates and delays its efforts to enforce a Stipulation and Order filed in state court. The Debtors respectfully submit that the prejudice alleged, for the purposes of 11 U.S.C. § 1208(c)(1), must be something more than the statutory protection offered by the automatic stay performing its intended function.

The Creditor's protests that the Debtors should not be permitted to engage the protection of the bankruptcy court after signing an alleged Stipulation and Agreement, permitting the Creditor to pursue a foreclosure action, sound of an attempt to support its § 1208(c)(1) claim by suggesting that said Stipulation and Order is an enforceable pre-petition waiver of the automatic stay, or should at least be given the effect of such. The notion that a pre-petition waiver of a bankruptcy benefit is unenforceable is not novel. *See In re Fallon*, 244 B.R. 589, 593 (2000); *See also Assoc. of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir.1982) (*stating in dictum that a debtor cannot waive stay protection*); *In re Jenkins Court Associates L.P.*, 181 B.R. 33, 37 (Bankr.E.D.Pa.1995); *In re Cheripka*, 122 B.R. 33, 37 (Bankr.W.D.Pa.1990), *aff'd*,

*1991 WL 276289 (3d Cir. Dec. 31, 1991), vacated, No. 91-3249 (3d Cir. Jan. 22, 1992), aff'd by equally divided court en banc, No. 91-3249 (3d Cir. Feb. 24, 1992); and In re Sky Group Int'l, Inc., 108 B.R. 86, 89 (Bankr.W.D.Pa.1989); and In re Clark, 69 B.R. 885, 889, supplemented on other grounds, 71 B.R. 747 (Bankr.E.D.Pa.1987).*

Finally, the Creditor prays that the Debtors' bankruptcy petition be dismissed pursuant to *11 U.S.C. § 1208(c)(9)*. The Creditor boldly asserts that the Debtors will be unable to properly reorganize and make appropriate payments before the Debtors have even filed their Chapter 12 Plan. Furthermore, in order to dismiss a Chapter 12 case on this basis, the Court must find both that there is a loss to or diminution of the estate and that the debtor lacks reasonable prospects for confirming a plan and rehabilitating the farming operation. *See Id.*

It is important to note that the Creditor does not allege any facts relating to a diminution of the estate, as required by *§ 1208(c)(9)*. In fact, the Creditor's entire analysis of *11 U.S.C. § 1208(c)(9)* focuses on the Debtors' alleged inability to confirm a plan and rehabilitate the farming operation. This is not a foregone conclusion. *11 U.S.C. § 1222(b)(2)* permits the Debtors to modify the rights of the Creditor. By way of example, a plan could restructure the amortization period with a balloon note.

The Creditor also raises this claim for dismissal before the Debtors have had an adequate opportunity to obtain confirmation of a plan. In the past month, the Debtors have seen the proverbial "light at the end of the tunnel" of their hardships that began in 2009: Breakaway Farms has recently acquired two new boarders and their related fees. The Debtors are confident that this is the trend that will continue and lead to their economic recovery.

Debtors pray to this Honorable Court that the Creditor's claims are premature. Given that the Creditor does not allege any diminution of the estate, Debtors can see no harm to the Creditor if they are given their chance to rehabilitate their farm.

***CONCLUSION***

For the reasons set forth herein, Gregory Galster and Karen Galster, d/b/a Breakaway Farms, respectfully requests this Court deny the Creditor's Motion to Dismiss the Chapter 12 Bankruptcy Petition filed in this matter.

Dated: June 2, 2010

Respectfully submitted,

/s/ Stephen F. Gehringer, Esquire  
Stephen F. Gehringer, Esquire