

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 12 Case
)	Number <u>90-60174</u>
ROGER JACKSON)	
GLADYS M. JACKSON)	
)	FILED
Debtors)	at 4 O'clock & 49 min. P.M.
_____)	Date:	11-1-90
)	
JAMES D. WALKER, JR.)	
CHAPTER 12 TRUSTEE)	
)	
Movant)	
)	
vs.)	
)	
ROGER JACKSON)	
GLADYS M. JACKSON)	
)	
Respondents)	

ORDER OF DISMISSAL

On April 4, 1990 Roger Jackson and Gladys M. Jackson, husband and wife, filed their petition under Chapter 12 of title 11 United States Code. In their petition, the debtors contend they are a partnership eligible for relief. James D. Walker, Jr., the Chapter 12 trustee disputes the debtors' eligibility. Based upon the evidence presented at hearing on confirmation, this court determines that Roger Jackson and Gladys M. Jackson are not eligible for relief under Chapter 12.

The debtor, Roger Jackson, owns approximately 100 acres of land. Of the 100 acres, 18 acres are tillable for row crop farming, 20 acres are dedicated to pine trees and the balance of the acreage is woodlands. The debtors reside on the 100 acre tract. In calendar year 1989 the farming operation generated income of

Three Thousand Five Hundred and No/100 (\$3,500.00) Dollars from row crop farming on 7 acres. The debtors' nonfarm related income from other regular employment totaled Twenty-Four Thousand and No/100 (\$24,000.00) Dollars. The debtors annually filed a joint tax return but have never filed a separate partnership return on the farming operation. The income from the farming operation and the debtors' other nonfarming income are co-mingled in a single bank account used to pay not only the expenses of the farming operation but also the living expenses of the debtors' family and other nonfarm related debts and expenses. There is no evidence that the debtors ever held themselves out as a partnership operating a farm.

The debtors are not a "family farmer" as defined under the Bankruptcy Code for eligibility purposes under Chapter 12. A family farmer is an

(A) Individual or individual and spouse engaged in a farming operation whose aggregate debt do not exceed \$1,500,000.00 and not less than 80% of whose aggregate noncontingent, liquidated debts, (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of farming operation owned or operated by such individual or such individual

and spouse, and such individual or such individual spouse receive from such farming operation more than 50% of such individual's or such individual and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50% of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80% of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed \$1,500,000.00 and not less than 80% of its aggregate noncontingent, liquidated debt, (excluding the debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or partnership; . . . 11 U.S.C. §101(17).

The burden of proof in establishing eligibility for bankruptcy relief rests with the party seeking the relief. In re: Morgan's Strawberry Farm, 98 B.R. 584 (Bankr. M.D. Fla. 1989). From the evidence presented the debtors are not a

"family farmer" for Chapter 12 purposes as an individual and spouse engaged in the farming operation. It is undisputed that the debtors received from their farming operation less than 50% of the gross income for the taxable year preceding the taxable year in which this case was filed. The debtors claim that they are a partnership. As a partnership, they would qualify as a family farmer because partnership status does not

take into consideration the individual partners nonfarm related income. There is no prohibition against the formation of a partnership between a husband and wife.¹ In re: Seabloom, 78 B.R. 543, 544 (Bankr. C.D.Ill. 1987).

Generally speaking, a partnership is a voluntary agreement between two or more persons to contribute their money, property, or skill to the operation of a joint business or common enterprise for the common benefit and to divide the profits and bear the losses in certain proportions. (citations omitted) A partnership may be created for a single venture or enterprise. An agreement to form a partnership need not be in writing for the true determinant of a partnership is the objective intent of the parties involved. The language which is used is a primary factor in determining the intent of the parties with respect to any agreement, and when ascertained, it will prevail over all other considerations (citations omitted).

In re: LLL Farms, 111 B.R. 1016, 1018 (Bankr. M.D. Ga. 1990)

quoting Hayes v. Irwin, 541 F.Supp 397, 415 (N.D. Ga. 1982), aff'd, 729 F.2d 1466 (11th Cir. 1984) cert. denied 464 U.S. 857, 105 S.Ct. 185, 83 L.E.2d 119 (1984).

As in Seabloom "[t]he record in the present case is void of any objective indicia of a partnership." In re: Seabloom supra at p. 545. In this case, the debtors did not separate heir farm operation from their nonfarm income, debts, and expenses. While the debtors filed a joint tax return, no separate farm related

¹To the extent that this determination is contrary to the findings set forth by this court at the close of the evidence at hearing, this final order takes precedence.

partnership return was prepared. There is no evidence that the debtors at any time held themselves out as a partnership in the farming operation.

"The [debtors], as husband, and wife, and parent, engaged in the joint venture of supporting, rearing and educating a family. The funds for this purpose, part of which were kept in a common account, were derived from farming . . . and the personal endeavors of both . . . aside from the farming effort" In re: Seabloom, supra at 545 quoting Olson v. Olson, 66 Ill. App. 2d 227, 213 N.E.2d 95 (2d Dist. 1965).

The debtors in this case are "partners" in their life together just as any married couple making a home together but are not a partnership as defined under the Bankruptcy Code for determination of "family farmer" status for Chapter 12 eligibility.²

It is therefore ORDERED that this Chapter 12 proceeding is dismissed.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 1st day of November, 1990.

²The balance of the trustee's question of whether the percentage of aggregate farm debt meets the eligibility requirement for family farmer status and Chapter 12 relief is not reached in this decision.