

The Dustin Sherwood Case: Bankruptcy Abuse of Process

by Sidney J. Perceful

Question: How does an apparently successful grain farmer – with assets in excess of \$10 million and liabilities around \$3 million – end up as a broke, federal prisoner deemed a “menace to society” ... in just two short years?

That’s Dustin Sherwood’s situation. His family’s fortune has been entirely wiped out by Deere Credit, a related financial institution Deere turned loose on the Sherwood family, and a “wolfpack” of Kansas City lawyers ... all with the brutal connivance of a vicious federal Bankruptcy Trustee and a nasty federal judge.

An August 2006 article in *Top Producer* – a magazine for “high-end” farmers – featured Dustin Sherwood of Trimble, Missouri as the successful farmer he was. That article – titled “King of Swap” – detailed Dustin’s internet-based, farm equipment sales business – a sideline to his large farming operations.

The *Top Producer* article drew notice of Deere Credit and Deere & Company. Deere personnel believed that Dustin’s internet sales of tractors and farm equipment had transacted items collateralized to the company and its credit subsidiary. In October 2006, Deere Credit took the Sherwoods into Receivership and harvested all their crops. The Sherwoods’ nightmare had just started.

Even though the \$2.1 million gleaned from harvest of Sherwoods’ 2006 crops should have covered their obligations to Deere, the family’s finances spiraled downwards. The Receivership was controlled by Farmers National Company of Omaha, Nebraska. (Farmers National is a realty and farm management company hired by Deere Credit and appointed Receiver by the court.) Farmers National froze Sherwoods’ assets after seizure of their 2006 crops. Thus financially hog-tied, Dustin and Jennifer Sherwood could not pay any of additional their notes that came due, despite the fact that they held land and other assets. Seizing their crops and freezing assets caused default on all other of the Sherwoods’ notes because the funds were held in receivership and no proceeds were released. In September 2007, after wrangling with Deere Credit in state courts just to get funds released for living expenses, the Sherwoods filed for Chapter 11 bankruptcy.

Today: land/home/equipment seized & sold, Sherwood imprisoned

Exactly two years after the *Top Producer* article appeared, Dustin Sherwood has gone from the penthouse to the outhouse. He’s an involuntary ward of the federal government, “farmed out” to the St. Clair County (Missouri) Jail – some 250 miles away from his family. (A recent scheduled visit to Dustin by his wife and supporters was denied by St. Clair County jail personnel, because, as they later told Dustin, the jailers “didn’t like the attitude” of the visitors.) The federal legal system has provided the Sherwoods with legal protections akin to the trials of “terrorists” at Guantanamo Bay.

Dustin, his wife, Jennifer and their daughters (ages 12, 9 and 6) have lost all – valuable farmland, new home with 40 acres, and all farm equipment, tools, etc. – all seized and resold. Foreclosure proceedings were never even completed before their land was sold! The legal actions that stripped Sherwoods’ assets raise fundamental questions about whether *any* farm families could survive such an onslaught by a “wolfpack” of more than 30 lawyers. Even today, that wolfpack of lawyers adds fees to the ever-burgeoning claims against the Sherwoods’ “assets.”

The value of the Sherwoods’ land and assets once exceeded \$10 million. Dustin farmed about 6,000 acres of soybeans and corn, just north of the Kansas City International Airport.

On Tuesday, August 5, 2008, the Chapter 11 Bankruptcy Trustee, Janice Stanton, auctioned off to a couple of Kansas City-based major investors the Sherwoods’ 1,200 acres of farmlands plus their homestead. (Bankruptcy Trustee Stanton rakes off 11% in commissions on all assets seized and sold off. The second lead law firm in the Bankruptcy action – the Kansas City law firm of Shugart, Thompson & Kilroy – formerly employed Janice Stanton.) Stanton’s law partner, Rex Redlingshafer is her court-appointed attorney in the Sherwood bankruptcy. Inside job???

Bankruptcy trustee Janice (*aka* “11%”) Stanton has conducted the bankruptcy proceedings in a manner that the Sherwoods and their advisors find questionable. Auction of the Sherwoods’ land, home (with 40 acres) brought about \$3,150,000. The successful bidder on most tracts, Eric Dunham – a big Kansas City investor – was bid at \$3.55 million, but the auctioneer regrouped the parcels and allowed Dunham to have it for \$3.15 million. After that happened, many others quit bidding, questioning whether the August 5, 2008 real estate auction was rigged.

Next morning – August 6 – Jennifer Sherwood and her family approached the purchaser of their home to try to buy it back. But the buyer refused, claiming he’d already resold the Sherwoods’ homestead for \$75,000 more than he paid for it the day before!. The Sherwoods’ home was fairly new, built only four or five years ago and sited on a beautiful hilltop – 40 acres overlooking the hills and valleys of their adjoining farm operations.

Bankruptcy Trustee with an electric cattle prod (and attitude to match)

Since February 2008, when Janice Stanton was appointed to Chapter 11 Trustee, a rapid-fire liquidation of the Sherwoods’ assets has been conducted. Immediately upon assuming the trusteeship of Sherwoods’ assets, Stanton called the Sherwoods into her office and asked them to agree to converting to a Chapter 7. The Sherwoods refused, much to Stanton’s displeasure.

A couple weeks later, the Bankruptcy Trustee directed the U.S. Marshall and haulers to gather all of the Sherwoods’ farm implements, trucks, vehicles and auction them off. In another couple weeks or so, she ordered the gathering up all their personal tools, equipment, machines, all-terrain vehicles, etc. and had that property auctioned off.

In the next court hearing, Stanton reportedly said in open court that the Sherwoods would not be allowed to come up with a Bankruptcy Plan because, “they are not farmers any more.” (The Sherwoods’ farm equipment had been seized,

therefore – in the Bankruptcy Trustee’s “logic” – the Sherwoods’ couldn’t be farmers!) Further, after the Sherwoods demanded that the Trustee help them come up with a Plan, Stanton stated in open court that she only represented the unsecured creditors and that it was not her role to help the Sherwoods with a Plan.

Bankruptcy Trustee Janice Stanton was so arrogant as to require Dustin Sherwood explain to the court where proceeds to pay for his attorney would come from, because they would not come from the estate assets. In court, Stanton explained that her job was to maximize the estate assets. On another matter, Stanton has not allowed an accountant to evaluate the Sherwoods’ assets and determine tax liabilities, prior to the real estate auction. Funds for an independent audit requested by the Sherwoods was objected to by the Trustee to prepare the Sherwoods’ income tax returns – as ordered by the court!

The presiding judge in the case – Jerry W. Venters – told the Sherwoods to “go get a job” when denying the family living expense allowances in March 2008.

Most federal bankruptcy proceedings (under “Section 341”) provide creditors with a “reasonable time” (usually a 90-day window) to make claims. But in the Sherwoods’ instance, that “window” remained open for nearly a year. During that extended time, almost all the new “claims” of creditors have been filed. The Sherwoods’ advisors contend that some of those claims are completely fictitious. These days, the “wolfpack” of approximately 32 attorneys, and other hangers-on, appears for most of the hearings. The “wolfpack’s” billable hours are submitted to be drawn against the Sherwood assets. Such claims in the Sherwoods’ bankruptcy now total around \$8 million ... including interest charged at 20%!!!

Finding local counsel to represent them proved impossible. Dustin Sherwood visited 23 attorneys in the Kansas City area in vain. After talking with lawyers representing Deere’s interests, lawyer after lawyer that Dustin had approached told Dustin that they were in conflict and declined to represent the Sherwoods. It was not until July 30, 2008 that Dustin Sherwood finally got an attorney (from Topeka) approved by the court.

The major significance of abuse of process by this bankruptcy Trustee is in violation of the Chapter 11 Bankruptcy Code and is being upheld by the Bankruptcy Court of Western Missouri presided over by Judge Venters is in the code citation below:

Bankruptcy Code: Title 11.1112. (P) (c) ... Conversion or dismissal

The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not moneyed, business or commercial corporation, unless the debtor requests such conversion.

Dustin and Jennifer Sherwood never agreed to convert to a Chapter 7 Liquidation.

Today Dustin Sherwood is locked in a county jail 250 miles from home. Dustin’s mistake? He cited statutes that protect the homestead from seizure in bankruptcy, plus Missouri statutes granting homeowners to defend their properties against trespassers. (His home property was festooned with “No Trespassing” signs.) But Bankruptcy Trustee Janice Stanton (*aka* “11%”) interpreted those comments as threats against federal officials. Result: Dustin’s prompt removal to the St. Clair County jail since late July, where’s he’s been held without bond and with limited access to legal counsel and other visitors.

Prior to incarceration, Judge Venters had stated that if Dustin could post \$150,000 bond, Venters would consider postponing the auction; it then looked possible that Sherwood could get the bond posted. But then the judge amended his Order and added conditions to Sherwood’s confinement which could not possibly be met. Judge Venters filed the amended order into a separate case file, for which no hearing had been held on this important issue. The farmland and homestead were sold, while Dustin sat in the hoosegow.

The lead law firm in the package of bankruptcy court and Trustee matters against Dustin Sherwood is the Kansas City-based firm, Lathrop & Gage. Ironically, that same firm is the counsel listed on the website for the city of Plattsburg, Missouri – the governance in which the Sherwoods’ seized and sold-off lake-front property is located.

Also in early August, Judge Venters refused Dustin’s request for bail. Sherwood was seeking bail so he could take a good-paying job offered him. So much for Judge Venters’ March 2008 instructions to Dustin to “get a job.” Most recently, Dustin’s court-appointed criminal attorney told him the only way he’ll ever get out of federal incarceration is to plead guilty to obstructing justice.

Indeed, fraud and illegal appropriation of assets has occurred!

Advisors to the Sherwood anticipate that charges involving bank fraud and illegal conversion of assets will likely be charged in this case. Without any humor, though, Dustin and Jennifer Sherwood agree. Without a completed foreclosure action, their property WAS seized and resold.

In late 2006 (right around the time Deere Credit seized the Sherwood’s crops and forced them into receivership), a 24-inch water line was run around and through the Sherwood farm property that backs up U.S. Army Corps of Engineers land surrounding Smithville Lake. Sources say that key farm real estate has already been mapped for development.

If “everything’s up to date in Kansas City” among the lawyers and bankruptcy court process, then farmers across America had better start packing their toothbrushes and a change of underwear. Indeed ... illegal seizure of agriculture assets *IS* occurring.

As of August 11, 2008, the federal district court amended the charges against Dustin Sherwood, claiming he was a menace to society and is now subject to incarceration without bail.

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Update on Dustin Sherwood Bankruptcy Case

by Sidney J. Perceful

Last month, *The Milkweed* detailed the woes of Dustin Sherwood – the imprisoned Missouri farmer whose property was seized by John Deere’s credit subsidiary and a wolfpack of Kansas City lawyers.

Here’s the update: Dustin has graduated to the federal penitentiary at Leavenworth, Kansas. Dustin’s wife and three daughters must leave their home by Nov. 1.

The injustice continues with Dustin Sherwood, a farmer in bankruptcy in Trimble, Missouri. This is Bankruptcy case of Dustin and Jennifer Sherwood Case No: 07-50584-JWV-11 and Criminal Action No. 08-0106REL-01.

I reported in the August 2008 issue of *The Milkweed* that 1,200 acres and his home were sold at auction because Judge Jerry Venters denied the lein holder foreclosure on their \$600,000 loan on the 1,200 acres which had market value of over \$7,200 per acre (\$8.64 million) plus another \$4 million in crops harvested each year. Instead, Judge Venters agreed to have the land sold at auction for \$3.15 million; then at the hearing to confirm the sale the trustee, Janice Stanton, bleated that they did not get enough from the estate to pay all the bills. Of course not, by now they exceeded \$8.2 million because the 30-some attorneys had their bills filed into the court as well plus commissions due.

My August report noted that the trustee, Janice Stanton, had retained an attorney named Rex Redlingshafer to represent her in the bankruptcy. Redlingshafer is both her law partner and husband. Not a bad deal for income to this marriage is it?

The Receivership that Deere Credit had appointed in state court to take over all of Dustin Sherwood’s assets back in 2006 has not been able yet to transfer all the assets to the trustee. A continuance for that hearing is re-scheduled for September 29. Keep in mind that the Receivership’s commission is 8% and the Trustee’s commission is 11% of the proceeds of the estate.

To date, Dustin Sherwood remains in jail based on hearsay testimony only of Trustee Janice Stanton. She comes over from the bankruptcy case and testified in the Criminal Case (which is illegal on its face because it co-mingles the courts aside from being hearsay testimony and not first-person testimony). A hearing was held on August 17, scheduled for 10:15 a.m.; however, the authorities and Judge Venters held the hearing over an hour earlier (9:00 a.m.) and the entire family and bankruptcy attorney got there as the hearing concluded and sent Dustin back to prison without bail or any hint of how long he will be imprisoned. The federal grand jury had no additional charges and Dustin is being held for Obstruction of Justice. The day of the hearing, Dustin complained of chest pains and was taken from Kansas City court to Leavenworth prison and has been held there since with no medications I am told. Conversation with his father confirmed that Dustin has been held in solitary confinement at Leavenworth since leaving the court room and hearing until last Wednesday, September 4.

Another hearing was held on August 18 to confirm the sale of the real estate and the Sherwood home place. It was confirmed in a matter of minutes after

Judge Venters convened the hearing. However, he was an hour and a half late starting the hearing because he was meeting privately with the creditors. His final comments on confirming the sale so quickly was, “You just have to understand, in bankruptcy it is all about the money.” Also, according to Dustin’s dad, the U.S. Marshals warned them that if they even made “eye contact” with Dustin in the courtroom they would be arrested also.

New information which came to light regarding the City of Plattsburg’s 24-inch waterline that was run around the perimeters of Dustin’s acreage closest to Smithville Lake is that a huge golf course and high-end housing developments are planned for that area. Remember the water lines were run in early 2006, Dustin’s problems with Deere Credit started in late 2006 with the Receivership taking over all his assets and Deere harvesting his 2006 crops and selling them. Also, it is worth noting again that Lathrop and Gage Law Firm, the main contact for economic development at Plattsburg, is the lead law firm for Deere Credit which put the Sherwoods out of the farming business permanently. Further, the “second” lead law firm, Shugart, Thompson & Kilroy which represented MFA, is the old law firm that trustee Janice Stanton was affiliated with before her present partnership and trustee appointment to Dustin Sherwood’s case. Shugart, Thompson & Kilroy have a “real estate development” section in their huge law firm.

For three years Dustin Sherwood’s crops have been harvested by Deere Credit and the bankruptcy court. This includes 2006, 2007 and now the 2008 harvest coming up which bring in over \$2.1 million each harvest. Dustin Sherwood is in Leavenworth with no end in sight and no possible hint of a date for release from prison and no trial.

After the trustee was appointed, Deere Credit, other creditors with the help of the Bankruptcy Courts have successfully stripped the Sherwoods of their \$10 to \$12 million in assets that they have worked for a lifetime to accumulate.

They (the trustee and bankruptcy court processes) have stripped this family of all their possessions, savings and retirement accumulations as well as their there daughter’s (ages 6, 9, and 12) potential inheritance; dissolved the family unit which existed for some 16 years and gave Jennifer Sherwood, Dustin’s wife and their three young girls until the end of October to move out of the home place. According to the Judge, the fact they would be homeless is not his concern but he did levy that they pay \$600 per month rent for the next two months and where they got the money to pay it was not the court’s problem either. Judge Venters’ only comment was that Eric Dunham (the investor who bought the home place at auction) should not have to lose the opportunity of a \$100,000+ profit on the house he bought at the auction for \$315,000.00 just to sell it back to the Sherwoods for \$415,000.

This could be the most blatant “illegal government and private taking” of land and assets through “abuse of process” by government officials on the horizon for a long time. If allowed to stand unnoticed by legislators, this could set a dangerous precedent for all citizens in America. Each citizen who reads this article should contact their congressman and talk to them about Bankruptcy Law Reform because this is certainly setting for the re-establishment of “debtor’s prison” system from old English historical practices.

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