

In the United States Bankruptcy Court

for the Northern District of Iowa

TERRY M. MATHERS
Debtor(s).

Bankruptcy No. X89-00451M
Chapter 12

FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER RE: DEBTOR'S PLAN OF REORGANIZATION

The matter before the court is the confirmation of the debtor's proposed chapter 12 plan filed June 29, 1989 and amended on October 13, 1989. The only objector to the plan is the Federal Land Bank of Omaha (FLB). The court now issues the following findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding under 28 U.S.C. 157(b)(2)(L).

The debtor, Terry M. Mathers, has farmed on his own since 1972; he farmed with his father and brother prior to that time. Mathers farms more than 450 acres of land, about 200 of which he owns. He grows corn, soybeans, oats and hay, and supplements his income with a Sunday paper route and by "custom farming" (performing farming service work such as harvesting for other farmers). Debtor does not raise livestock, although he has hog raising facilities on his farm which he rents out.

The debtor filed his chapter 12 petition on March 3, 1989. His initial plan of reorganization was filed on June 29, 1989. On July 25, 1989, FLB objected to the plan on the grounds that the plan was not feasible, that FLB's allowed secured claim was undervalued and that the proposed interest rate to be paid to FLB on this debt was inadequate.

Following these objections, the court held an initial confirmation hearing on August 10, 1989. At issue was the value of FLB's allowed secured claim. The plan listed the approximate unpaid amount of debtor's mortgage to FLB as \$299,000.00. Of this amount, \$150,000.00 was listed as an allowed claim secured by real estate, and the balance was treated as an allowed unsecured claim. The value of FLB's allowed secured claim was increased by debtor to \$154,900.00 at the time of the hearing. FLB objected to this value, alleging that the actual value of its secured claim was approximately \$50,000.00 more than the value listed by the debtor.

As part of the initial confirmation hearing, the court took evidence as to the value of the real estate securing the debt to FLB and determined that the value of FLB's allowed secured claim was \$185,382.00. The debtor disagrees and therefore amended his plan on October 13, 1989 to increase the allowed secured claim of FLB only to \$154,900.00.

On October 16, 1989, FLB filed its objection to debtor's amended plan, in which it reiterated its objections to the valuation of its secured claim and to the feasibility of the plan while withdrawing its objection regarding the interest rate to be paid on the debt.

The final confirmation hearing was held on October 17, 1989. At this hearing, the U. S. Trustee appeared on behalf of Carol Dunbar, the case trustee, and stated that the trustee had no objections to

the plan as amended, and that in her view the debtor is in compliance with the administrative requirements of the Code. The case trustee had no recommendation as to the feasibility of the plan.

II.

FLB, a holder of an allowed secured claim, objects to the confirmation of this amended plan. Under 11 U.S.C. § 1225(a)(5), the court cannot confirm this plan unless:

(B)(I) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of the property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder . . .

Because the debtor does not intend to surrender the secured property to FLB, the value of the property to be distributed to FLB under the plan cannot be less than the allowed amount of FLB's claim. As stated above, this court concludes that the value of FLB's allowed secured claim is \$185,382.00. However, the debtor's plan provides for the payment of only \$154,900.00 on this claim. Because this value is less than the allowed secured claim held by FLB, the court must deny confirmation of this plan under S 1225(a)(5)(B)(ii).

III.

In addition, the court finds that debtor's plan is not feasible under either the \$154,900.00 value given FLB's allowed secured claim by the debtor or the \$185,382.00 value determined by the court. For the purposes of considering feasibility, the court need focus only on the debtor's value.

11 U.S.C. § 1225(a)(6) provides that a debtor must show that he will be able to make all payments under the Chapter 12 plan and comply with the plan before it can be confirmed. The debtor's plan need not guarantee success; however, the court must find that the plan is workable and offers a reasonable prospect of success. In re Thies, Bankr. No. X87-01042M, slip op. at 3-4 (Bankr. N.D. Iowa, December 8, 1987). According to the Eighth circuit:

"Sincerity, honesty, and willingness are not sufficient to make the plan feasible, and neither are visionary promises. The test is whether the things which are to be done after confirmation can be done as a practical matter under the facts."

Clarkson v. Cooke Sales and Service Co. (In re Clarkson) 767 F.2d 417, 420 (8th Cir. 1985), quoting In re Bergman, 585 F.2d 1171, 1179 (2d Cir. 1978).

The debtor has the burden of proving feasibility. In re Knapp, Bankr. No. L87-02128D, slip op. at 2 (Bankr. N.D. Iowa, April 29, 1988).

FLB argues that the debtor's projected income for the next three years is overly optimistic and that his probable income for 1989 will be unable to meet the plan's 1990 debt payments. Upon a review of the debtor's plan and the evidence presented on the feasibility of this plan, the court concludes the debtor has failed to show that his plan is feasible under § 1225(a)(6).

The debtor projects his 1989 crop income as follows:

Crops	Price	Acres	Yield/Acre	Value
Corn	\$ 2.35	118.2	132.0	\$ 36,665.64
Corn	2.35	74.0	114.0	19,824.60
Soybeans	6.75	208.0	38.0	53,352.00
Oats	2.25	32.0	80.0	5,760.00
Hay	60.00	6.0	4.0	1,440.00
Set Aside	4.24	13.1	100.0	5,554.40
TOTAL				\$122,596.64

The debtor admits that his 1989 income will probably fall more than \$30,000.00 short of the plan's projected 1989 income. Given the evidence at the confirmation hearing, it is clear that commodity prices and yields have dropped well below the debtor's expectations. The price of corn was \$2.10 at the time of trial, and the debtor testified that he expected the yield per acre of corn to be 80 bushels. The price of soybeans at the time of the hearing was also below the projected price. FLB contends that the price of beans at the time of the hearing was \$5.12 a bushel, while the debtor argued that over the course of the fall season bean prices had averaged approximately \$5.35 a bushel. The debtor added that because his beans were seed beans, they would also receive a \$0.50-0.75 premium at market. In determining probable income, the court will give the debtor the benefit of the doubt, and find that he could sell his beans at \$5.35 with a \$0.65 premium for a total of \$6.00 a bushel. In addition, the debtor admitted the yield on his beans could be as low as 32 bushels an acre. The court will use a prospective yield of 35 bushels per acre. Finally, the debtor testified that his yield on oats was down by ten bushels an acre. Given these new figures, the debtor's prospective gross farm income based on the evidence appears as follows:

Crops	Price	Acres	Yield/Acre	Value
Corn	\$2.10	192.2	\$ 80.0	\$32,289.60
Soybeans	6.00	208.0	35.0	43,680.00
Oats	2.25	32.0	70.0	5,040.00
Hay	60.00	6.0	4.0	1,440.00
Set Aside	4.24	13.1	101.0	5,554.40
TOTAL				\$88,004.00

By this court's estimate, the debtor's 1989 income will be \$34,592.64 below his planned projection. FLB contends that this figure is closer to \$38,000.00, a figure the debtor's financial expert does not dispute.

Assuming that all other numbers hold steady, the debtor's financial outlook for 1989 is as follows:

A. Crop Income	\$ 88,004.00
B. Custom Farm/Building Rent	13,000.00
C. Paper Route	1,800.00
D. Total Gross Income (A + B + C)	\$102,804.00

E. Total Cash Expenses	(117,950.00)
F. Net Cash Income (D - E)	- 15,146.00
G. Loans/Credit/Interest	68,777.00
H. Balance available for debt pymt. (F + G)	\$ 53,631.00
Planned debt payments 1989	81,495.24

By these figures, the debtor stands to fall more than \$28,000.00 short on planned debt payments for 1989.

In addition, this court notes that while the debtor projects a gross farm income of more than \$116,000.00 for each of the next three years, the debtor's 1988 tax return lists his gross farming income for that year as only \$71,837.00. (Plaintiff's exhibit 1.) The debtor contends that this figure was determined by the cash basis method of accounting, as opposed to the accrual basis method, and because part of the debtor's income is based on his exchange of services and equipment with other farms, the cash basis figure underestimates the debtor's actual net income. While this may be true, the debtor would still have to generate \$18,000.00 worth of services and labor to equal his expected 1989 level of income, much less the level of income projected by his plan.

In short, the debtor's projected income under this plan appears to be overly optimistic in light of his 1988 tax returns and his expected 1989 income. A significant portion of this difference is obviously due to lower yields and commodity prices than anticipated by the plan. "Market projections must be supported by some factual basis in order for them to be regarded by the court as anything more than wishful thinking." *In re Konzak*, 78 B.R. 990, 994 (Bankr. D. N.D. 1987). Obviously, no court can expect a debtor to accurately predict future market prices and yields, and feasibility should not be pegged solely on the basis of these predictions. However, the debtor has failed to present any data indicating that this year's commodity prices are unusually low or that commodity prices over the next two years are likely to be higher. Consequently, the court has little reason to believe debtor's future income will reach the plan's 1990 and 1991 projections.

Meanwhile, as the debtor's income under the plan is falling, his debt payments have risen. The debtor's amended plan increases the value of FLB's allowed secured claim by over \$4,000.00 without modifying the payment schedule on this debt. The debtor admits this increase will add approximately \$550.00 a year to his costs but states that he will be able to meet these increased payments.

Furthermore, while the debtor's future income appraisals are high, some of his plan expenses appear to be rock bottom estimates. Although he lists his real estate taxes at \$2,740.00 for 1989 and 1990, he admits that these taxes will probably amount to \$3,400.00. FLB estimates his real estate taxes will be \$3,651.00. The debtor also testifies that drying costs have never been more than \$1,000.00. His expense estimates appear to lie on the low side of this figure; they never exceed \$530.00.

The debtor's financial consultant, Mark Eldridge, testified that a number of the plan's cash operating and debt payment figures could be reduced in order to make up for this lost revenue. These figures are as follows:

Debt Payments	Plan	Proposed Reduction
Hired labor	\$ 1,000.00	\$ 1,000.00
Machinery repairs	9,000.00	5,600.00
Interest	25,190.00	5,000.00

Machinery hire	2,380.00	2,380.00
Fuel and oil	4,288.00	788.00
Crop insurance	3,217.00	1,500.00
Auto & truck expense (farm)	3,000.00	1,000.00
Family living expenses	6,000.00	3,000.00
Misc. & professional fees	6,000.00	3,000.00
Federal Land Bank	16,843.85	4,543.85
M. G. Smith	6,000.00	2,800.00
T. J. Burlingham	6,000.00	2,000.00
Trustee, FCBO	1,684.39	1,684.39
Income & Social Sec. taxes	2,415.00	2,415.00
TOTAL		\$36,711.24

Unfortunately, the court has trouble accepting many of these figures, which often appear to be mere conjecture by Mr. Eldridge. For example, Eldridge states that the debtor will get a refund on his crop insurance amounting to approximately \$1,500.00. However, Eldridge is uncertain as to the accuracy of this figure or how it is arrived at.

Likewise, Eldridge also argues that due to reductions in costs, the interest to be paid on the debtor's 1989 credit purchases will be about \$1,000.00 less than anticipated. However, the only items requiring credit that Eldridge testifies will be lower are fuel, which will be about \$788.00 below the anticipated cost, and machinery hire, which will not be needed for 1989 (hence, another \$2,380.00 reduction). It is difficult to believe this \$3,000.00 reduction in debt will reduce the debtor's interest payments by \$1,000.00.

The debtor's projected living expenses are already fairly low; it is difficult to believe he can get by on only one-half of this projection.

Eldridge also lists cuts and deferments on the debtor's 1990 debt payments. First, he contends that the debtor will only need to pay about \$12,300.00 to FLB in 1990, not the \$16,843.85 listed in the plan. FLB disputes this new figure and the court agrees.

The plan lists the amount to be paid FLB in 1990; a final confirmation hearing is not the time to begin revising this payment schedule. Furthermore, due to the increased valuation of FLB's security in the debtor's amended plan, the actual payment to FLB in 1990 should be about \$17,393.00.

Eldridge also proposes cutting \$4,800.00 of the debtor's costs by reducing the amount to be paid on the secured debts held by M. G. Smith and T. G. Burlingham. Aside from the fact that this is a deviation from the proposed plan, this will only defer these costs until 1990 or later. The same can be said for deferring \$3,000.00 of the debtor's professional fees. The feasibility of this plan should be based on the plan itself and not on amendments to the proposed plan made at the time of final confirmation. If the debtor already anticipates the need to defer some of these debts before the plan ever goes into effect, then clearly the plan as proposed is inadequate.

It must also be noted that many of the figures set out in the original plan are estimates based on the debtor's average costs in previous years, including averages determined from the debtor's past tax

returns. Consequently, the fact that certain costs may be low for this year does not guarantee that they will remain low for the duration of the plan. Given the debt payments to be made in 1990, the unreliability of some of the cuts suggested by Eldridge, and the fact that at least two of his expenses have been underestimated (his payments to FLB and his real estate taxes), it is unlikely the debtor will be able to cut more than \$10,000.00 to \$15,000.00 from his 1989 expenses. Even given every proposed cut except the deferral of the Smith, Burlingham and FLB debts, the debtor's income will still fall short of his expenses. Therefore, such cuts will clearly not be sufficient to facilitate the debtor's 1990 planned payments.

CONCLUSIONS OF LAW

Because debtor's plan does not provide for the payment of the full amount of FLB's allowed secured claim, confirmation must be denied under 11 U.S.C. § 1225(a)(5)(B)(ii).

Because the debtor has failed to present any evidence to indicate that his projected income for 1990 and 1991 are attainable, debtor's amended chapter 12 plan is not feasible under either the \$154,900.00 value given to FLB's allowed secured claim by the debtor or the \$185,382.00 value found by the court.

ORDER

IT IS HEREBY ORDERED that confirmation of the debtor's amended chapter 12 plan is denied.

SO ORDERED THIS 29th DAY OF JANUARY, 1990.

William L. Edmonds
Chief Bankruptcy Judge