

In the United States Bankruptcy Court

for the Northern District of Iowa

HERBERT R. GREIMANN JR. and
COLEEN M. GREIMANN

Bankruptcy No. X89-01765M

Debtor(s).

Chapter 12

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

The matter before the court is the confirmation of the debtors' proposed chapter 12 plan filed on February 13, 1990 and amended on April 12, 1990. Both Metropolitan Life Insurance Co. and the United States, on behalf of Farmers Home Administration, the Agricultural Stabilization and Conservation Service/Commodity Credit Corporation, and the Internal Revenue Service objected to the feasibility of the plan. However, only Metropolitan Life attended the final confirmation hearing, which was held in Mason City, Iowa on April 17, 1990. 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. S 157(b)(2)(L).

I.

The debtors, Herbert, Jr. and Coleen Greimann (THE GREIMANNNS) have resided on their family farm since 1976. They are the sole operators of the farm, raising corn, soybeans, alfalfa, oats, and geese. The Greimanns filed their chapter 12 petition on November 20, 1989.

Metropolitan Life Insurance Co. (METROPOLITAN), which holds a \$292,000.00 mortgage on Greimanns' farm land, objects to Greimanns' plan of reorganization on the ground that estimated income under the plan far exceeds reasonable expectations, and therefore, the plan is not feasible as is required by 11 U.S.C. § 1225(a) (6). Specifically, Metropolitan argues that the income the Greimanns expect to derive from a tire disposal project and from the sale of sand is too speculative to be relied upon, and that expected income from the Greimanns' geese-raising operation is overly optimistic. The court agrees.

An explanation of each of the operations is necessary to understanding Metropolitan's objection to feasibility. First, the Greimanns' plan forecasts that the sale of sand from a sand pit located on their farm will generate \$2,500.00 annually. The sand would be sold to Hancock County to spread on its roads during the winter. Herbert Greimann testified at the hearing that there was commercial production from this sand pit for 50 years, but there has been no commercial production from the pit since 1975 or 1976. He stated that he approached representatives of Hancock County in the fall of 1989 and they showed an interest in purchasing sand from the farm. It is Greimann's understanding that he would not bear start-up or production costs in order to market the sand; the county would bear the cost of removing, handling, crushing and weighing the sand. In order to earn \$2,500.00 annually on the operation, assuming the debtors will not incur any production costs, the county will have to

purchase approximately 1,500 tons of sand a year. Greimann believes the county's needs far exceed this amount. However, he has held off on negotiations with the county pending the outcome of his bankruptcy. Consequently, the Greimanns have no promise or guarantee that if they open the sand pit for commercial production the county would give them a contract, nor is there any understanding as to how much sand the county would be willing to purchase. The extent of Herbert Greimann's inquiry is that, depending on their needs, the Hancock County engineer and the head of the Hancock County supervisor's office have expressed an interest in purchasing sand from the debtors.

Second, the Greimanns' plan proposes a tire disposal operation with a projected income of \$5,000.00 annually. Herbert Greimann intends to collect used tires and use them to terrace portions of the Greimanns' farm land. The tires will help to retain surface moisture on hills and will create a natural habitat for wildlife. Herbert Greimann currently has a small demonstration plot on his farm, consisting of approximately 30 tires. However, he cannot proceed on a larger scale absent approval from the Iowa Department of Natural Resources.

Greimann apparently has contacted representatives from the Department of Natural Resources in Mason City and in Des Moines, and they have shown some interest in his project. They have recommended that he apply for a grant program "available on a 50% cost share" to fund his project. Greimann received the grant application in the mail the day before the hearing; no evidence regarding the grant application or its terms were presented to the court. Greimann has never applied for any type of grant in the past, and he does not know whether he will be required to match the grant funds. He is uncertain as to the amount of money available for these grants and did not testify as to the likelihood he would receive such a grant.

The tire project's source of income will be money paid by local tire companies for the disposal of used tires. Greimann has contacted several local tire companies, and he estimates that he would receive \$6.00 for each tractor tire disposed of on his land, with truck and farm implement tires bringing in lower prices. Therefore, assuming Greimann accepts only tractor tires, he will have to dispose of more than 800 tires each year in order to gross \$5,000.00 from the project. Greimann has received no money for the tires utilized in his demonstration plot.

Metropolitan says that due to potential environmental hazards and expensive clean-up resulting from the storage of tires on land, along with potential liability as lender/mortgagee, it would strongly object to the disposal of tires on the Greimanns' farm. However, Metropolitan has produced no evidence of any contractual or legal right to prevent the disposal of tires on the land. Therefore, for the purposes of this confirmation hearing, the court will assume that the Greimanns could accumulate tires on their farm over Metropolitan's objections.

Third, Metropolitan disagrees with the projected income from the Greimanns' geese-raising operation. Debtors have operated as a contract feeder of geese for Piatrus Foods (PIATRUS) for four years. They receive goslings from the company and produce or pay for feed to raise them. They sell the mature geese back to Piatrus. Piatrus guarantees the debtors 55 cents per pound for each bird plus premium money for heavier geese. The average weight of the birds raised by the debtors is just over thirteen pounds.

Herbert Greimann testified that the profit the debtors make from each goose depends on weather conditions. In a normal year, when they can grow enough grain and grass to feed the birds without having to purchase additional feed, they can easily net more than \$3.00 a bird. However, in dry years, such as 1988, they may net as little as 60 cents per bird. The amount of geese the Greimanns raise is entirely dependent on how many geese they are supplied.

The Greimanns' plan projects income from the raising of 10,000 geese annually and assumes a \$4.00 net on each bird. Herbert Greimann testified that he is certain he will receive 5,000 geese from Piatrus in 1990. However, he concedes that he has no contract or guarantee that Piatrus will provide him with 10,000 geese in 1990. Greimann ordered 10,000 geese from Piatrus in November or December, 1989 but was informed that they doubted they could supply him with 10,000 geese in 1990. Greimann believes that he may still receive 10,000 geese by the end of the summer, but he has no guarantees from his supplier.

The court recognizes that by raising fewer geese the debtors' expenses under the plan will also be less since they will spend less on commercial feed and will be able to sell the grain they raise at market rather than feeding it to their geese. However, there is no indication that this difference in expenses would make up the difference in anticipated income under the plan.

II.

The Greimanns' planned cash flow and scheduled payments for 1990 and 1991 are as follows:

	<u>1990</u>	<u>1991</u>
Total Cash Income	\$134,729.00	\$103,325.00
Total Expenses	(57,600.00)	(57,600.00)
Total Payments to Secured Creditors	(75,783.78)	(40,579.78)
Cash Available to Unsecured Creditors	1,345.22	5,145.22

Herbert Greimann concedes that without the income from the proposed tire project and sale of sand, the reorganization plan will fail. Even assuming the debtors realize all the income projected under this plan, including \$2,500.00 annually from the sale of sand and \$5,000.00 annually from the disposal of tires, this plan will barely survive. Absent the income from either of these two projects, the debtors will not be able to meet their scheduled 1990 payments. This narrow margin of error is aggravated by the Greimanns' doubtful calculations regarding the raising of 10,000 geese in 1990 and in 1991.

11 U.S.C. § 1225(a) (6) necessitates a finding that "the debtor will be able to make all payments under the plan and to comply with the plan." This provision is commonly referred to as the "feasibility requirement." Because the concept of feasibility is also basically the same under chapters 11 and 13 of the Bankruptcy Code, these cases provide guidance in the interpretation of feasibility under chapter 12. In re Snider Farms, Inc., 83 B.R. 1003, 1006 (Bankr. N.D. Ind. 1988).

A debtor bears the burden of proving that his proposed chapter 12 plan is realistic and will cash flow. In re Fenske, 96 B.R. 244, 248 (Bankr. D. N.D. 1988); In re Snider Farms, Inc., 83 B.R. at 1014. The debtor need not guarantee the success of his plan. Prudential Ins. Co. of America v. Monnier (In re Monnier Bros.), 755 F.2d 1336, 1341 (8th Cir. 1985); In re Wolf, 61 B.R. 1010, 1011 (Bankr. N.D. Iowa 1986). However, the debtor must demonstrate the probability of actual performance of the provisions of the plan. Clarkson v. Cooke Sales & Serv.Co. (In re Clarkson), 767 F.2d 417, 420 (5th Cir. 1985). "Sincerity, honesty, and willingness are not sufficient to make the plan feasible, and neither are any 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." Id- at 420 (quoting In re Bergman,

585 F.2d 1171, 1179 (2nd Cir. 1978)). The determination of feasibility cannot be made in a completely evidentiary vacuum, but rather must be rooted in predictions based on objective fact. In re Clarkson, 767 F.2d at 420; In re Snider Farms, Inc., 83 B.R. at 1013.

The court is troubled by the speculative nature of the Greimanns' proposed tire and sand projects. Aside from a cursory investigation of each project as a potential source of income for the farm, the debtors have taken no concrete action to implement and consummate either project. No negotiations have been undertaken; no contracts or guarantees have been secured, and no definite facts or figures have been presented.

The court in no way intends to discourage debtors from pursuing creative and innovative methods to increase their farm income for the purposes of reorganization. However, the mere possibility of implementation of such projects, particularly when the feasibility of the plan itself is dependent on their success, is not sufficient to pass muster under § 1225(a)(6). A debtor must go beyond investigation; he must prove to the court that such projects will be implemented and that they are workable and likely to succeed.

In the present case, Herbert Greimann has presented no specifics as to the grant he intends to pursue from the Department of Natural Resources. He is unaware of any of the requirements of the grant or the likelihood he will actually qualify for it. He has presented no specifics as to how many tires will be necessary for the project, whether local tire dealers will be willing and able to supply all the tires required by the plan, whether there will be any costs, other than labor, incurred in moving the tires to the farm and terracing the land with these tires.

Likewise, the Greimanns have yet to negotiate any sort of agreement regarding the sale of sand to Hancock County. Had the debtors produced an agreement, contingent on the approval of a plan of reorganization in the bankruptcy court with the county specifying the amount of sand to be sold, the price per unit of the sand, and who would bear the cost of processing the sand, the court would have been more likely to find the project viable. However, the testimony of Herbert Greimann that unnamed county officials have shown an interest in the project is in and of itself insufficient to provide any reasonable likelihood of success.

The court finds that there is insufficient evidence that the tire and sand projects will provide the income relied upon by their plan of reorganization. Absent the success of either project, the debtors admittedly will not be able to meet the scheduled payments anticipated by their plan.

In addition, the court is concerned by the fact that the Greimanns' plan anticipates income from the sale of 10,000 geese for each of the next two years while Herbert Greimann testified that it is entirely likely that they will be supplied with no more than 5,000 geese in 1990. The Greimanns' plan of reorganization provides a very slender financial cushion. Even assuming they will receive income from the sand and tire projects, the loss of income from the geese operation, if no more geese are supplied in 1990, would itself likely render this plan unworkable. Consequently, the court finds that this plan is not feasible pursuant to 11 U.S.C. § 1225(a) (6).

ORDER

IT IS THEREFORE ORDERED that the confirmation of debtors' chapter 12 plan is denied.

SO ORDERED THIS 11th DAY OF MAY, 1990.

William L. Edmonds

Bankruptcy Judge