

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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HERBERT R. GREIMANN JR. and  
COLEEN M. GREIMANN

*Debtor(s).*

Bankruptcy No. X89-01765M

Chapter 12

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### ORDER DENYING MOTION TO ALLOW FILING OF AMENDED OR MODIFIED PLAN

### ORDER GRANTING MOTION TO DISMISS

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Two motions are before the court. Debtors Herbert R. Greimann, Jr. and Coleen M. Greimann seek additional time to file an amended or modified chapter 12 plan. Creditor Metropolitan Life Insurance Co. (METROPOLITAN) resists the debtors' motion; it has moved to dismiss the case. Hearing on the motions was held on August 15, 1990 in Mason City, Iowa. The court now issues this ruling which includes 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) and (A).

#### FINDINGS OF FACT

Debtors filed their chapter 12 case on November 20, 1989. They filed their proposed plan of reorganization on February 13, 1990. Metropolitan objected to the plan, and after an initial hearing on confirmation, debtors filed an amended plan. Final confirmation hearing on the debtors' amended plan was held April 17, 1990. Metropolitan's objection to the plan was that it was not feasible and therefore did not meet the requirement of 11 U.S.C. § 1225(a) (6).

In May, 1990, the court entered its order and judgment denying confirmation. The court found that the plan was not feasible. The court was particularly concerned that the debtors' projected income from the sale of sand and their projected income from the disposal of tires was so speculative that the income could not be relied upon for purposes of determining whether debtors would be able to make plan payments. Also, from the evidence at the original confirmation hearing, the court determined that because of a cutback in the number of geese to be raised by Greimanns, the income from the sale of geese for 1990 was insufficient to meet plan needs.

Debtors have requested additional time to modify their plan. However, it is not really a plan modification which they seek. More accurately, debtors are asking for an additional opportunity to prove that their previously proposed plan is feasible. Debtors cite several circumstances which have taken place since the April confirmation hearing which they contend would now make their plan workable. The circumstances are these: Coleen Greimann has taken an employment test to become a postal worker and has received a high grade; Pietrus Foods, Inc., the company for which Greimanns raise geese, anticipates an increase in its production requirements for 1991; the Iowa Department of Natural Resources has approved Greimanns' tire disposal pilot project for the construction of an erosion terrace on Greimanns' farm; Greimanns are now in a position to sell sand from their sand pit; Greimanns expect a promising corn crop, and therefore, projected feed costs are diminished; Greimanns have rented out two residential properties on a monthly basis and expect to rent out one more; and debtors have received a letter from the U. S. Department of Agriculture regarding six months of storage fees which are due to Greimanns.

#### GEESE PRODUCTION

Originally for 1990, Greimanns estimated \$40,000.00 in income from the production of geese for Pietrus. However, that amount of income was based on the expectation that 10,000 geese would be raised by Greimanns. For 1990, that will

not be so. For 1991, Pietrus now anticipates a 10,000-geese requirement from Greimanns. However, the anticipated income for production of geese in 1990 is still approximately \$20,000.00 (one-half of the debtors' original 1990 estimate).

#### FEED COSTS

For 1990, Greimanns expected feed costs in the amount of \$7,000.00. They now anticipate a sufficiently good corn crop so that those costs will be reduced. For the purposes of these motions, the court will accept the testimony of the debtors and will reduce the total disbursements under the 1990 cash flow from \$57,600.00 to \$50,600.00.

#### STORAGE PAYMENTS

Debtors' counsel received a letter from the U. S. Department of Agriculture (exhibit 4) indicating that debtors were owed approximately \$6,100.00 for storage fees for sealed grain. However, based on Mr. Greimanns' testimony that these storage payments were included in his original 1990 cash flow as part of \$15,000.00 in government payments, no change in cash income for the 1990 plan year is necessary.

#### RENTAL INCOME

Greimanns have fixed up two residential properties for leasing--a house on an acreage and a mobile home. Both are presently occupied and Greimanns will receive \$150.00 per month each, or \$300.00 a month for the rental of these properties. Greimanns anticipate that a third property will provide a similar amount of income per month. These properties were not being rented at the time of the original confirmation hearing. For purposes of this motion, the court will assume income of \$300.00 per month for a six-month period. This would be an additional \$1,800.00 available to the Greimanns for the 1990 plan year. This would include income for the two presently occupied rental units if they were rented after June 1, but would include no income for the unit still being remodeled.

#### MRS. GREIMANNS' EMPLOYMENT

Mrs. Greimann is seeking employment, and her future employment could be quite helpful to the feasibility of a plan. However, she is not presently employed, and the court cannot speculate as to when she might be employed or as to the amount of her income. Therefore, the court finds that her application with the post office cannot translate into income which is part of the 1990 cash flow.

#### FOSTER CARE

In the amended plan's 1990 cash flow, debtors showed \$4,800.00 in income from foster care. However, the court finds that only \$3,696.00 is supportable by the evidence.

#### SALE OF SAND

In their original 1990 cash flow, debtors projected sand pit income of \$2,500.00. In the period since the denial of confirmation, Mr. Greimann has constructed a trailer to transport sand and has made at least one sale. However, he has been warned by Metropolitan not to sell sand from the mortgaged property. Therefore, he has ceased making attempts at sales. No evidence as to Greimanns' right to sell sand or as to the mortgagee's right to prevent sales was presented to the court. For the purposes of the motions, the court finds that \$2,500.00 would be available to Greimanns in 1990.

#### TIRE DISPOSAL PROJECT

Projected tire disposal income most concerned the court in its original denial of confirmation. Mr. Greimann has apparently devised a method for building farm terraces out of used tires. Presumably, if such a methodology is finally approved and marketed, Greimann could make money from both the disposal of tires and the construction of terraces. The terraces would be used to prevent erosion of farm land. In his original cash flow, Greimann projected \$5,000.00 from this endeavor for each of the three plan years. In denying confirmation, the court was unable to find that any money would be available to the Greimanns from such a project. There was no evidence at the confirmation trial that the

Department of Natural Resources would approve such a project or that it was saleable. Therefore, the court disregarded Greimanns' \$5,000.00 per year projection. The projection was far too speculative.

Mr. Greimann has now received word from the Iowa Department of Natural Resources that it has approved as a pilot project his construction of one terrace on his own farm. For this project, Greimann may use a maximum of 20 tractor tires, 60 car tires, and any combination of 20 truck or flotation tires. Greimanns' income for disposing of such tires would be \$6.00 per tractor tire, 60 cents per automobile tire, and \$4.00 per truck or flotation tire. Therefore, based on the maximum tires useable in the pilot project, Greimanns could produce as much as \$236.00 in 1990. There is no evidence that Greimann could get approval to construct additional terraces on his own farm or on anyone else's farm. Therefore, the most the court can show for the 1990 cash flow would be \$236.00. This court is still concerned about the speculative nature of the \$5,000.00 projection for 1991 and 1992. From the letter of the Iowa Department of Natural Resources (exhibit 1), clearly this project is still in its infancy. It may well be an excellent idea, both to dispose of used tires and to prevent erosion. However, there are other methods of preventing erosion, and there are other uses for used tires. In one part of the United States, used tires are being burned to generate energy and useable by-products. It is not known whether other farmers would want to build terraces out of used tires or if the Iowa Department of Natural Resources would approve construction of such terraces on their properties. Further, there is no evidence that the construction of the terraces involve such expertise as would allow Mr. Greimann to be a limited or profitable source of such construction. Perhaps once this methodology would be approved, other farmers could construct their own terraces and obtain the money for the disposition of the tires. The court does not believe there has been a substantial change of circumstances on this issue. The court cannot find that \$5,000.00 per year will be available under this project.

### SUMMARY

Based on the foregoing changes, Greimanns, revised exhibit "A" 1990 cash flow appears as follows:

Beginning cash	\$ 31,404.00
Geese (5,000.00) net	20,000.00
Corn	.00
Beans	31,850.00
Oats	3,000.00
Government payments	15,000.00
Grain cleaning	1,175.00
Foster care	3696.00
Sand pit excavation	2,500.00
Tire disposal--terraces	236.00
Real estate rental	<u>1,800.00</u>
Total cash	110,661.00
Less disbursements	<u>(50,600.00)</u>
Cash available	60,061.00
Less payments under plan	<u>(75,783.78)</u>
Deficiency	(15,722.78)

### DISCUSSION

As is shown, despite certain changes in circumstances, the debtors would still be nearly \$16,000.00 short of meeting their first year obligations under the plan. It is not necessary that a plan provide a guarantee of success. However, in this case, despite giving debtors certain presumptions in considering their motion, the plan income is insufficient to meet

debtors' expenses and plan payments. This is regretful in light of the debtors' obvious efforts and their willingness to earn money from various sources in order to make their farming operation work. In considering motions to extend time to file plan modifications, the court should consider the likelihood of successful confirmation of a new plan. In re Bentsop, 74 B.R. 56, 58 (Bankr. Minn. 1987). Debtors do not propose a modified plan but seek an additional opportunity to prove that the plan would work. The court should be very cautious in granting motions to amend for such a purpose. There certainly are instances where circumstances would so significantly change that the debtor should have an opportunity to put on new evidence to gain confirmation of a plan which had previously been denied confirmation. If a court is to permit modifications, it should be truly based on substantial changes in circumstances and not merely on a new presentation of evidence. Otherwise, confirmation litigation in bankruptcy courts would never end. There have been changes in this case favoring the debtor, but these changes are not sufficient to change the court's mind on its previous order nor are they sufficient to make the court believe that if the debtors had an additional opportunity, they could show the court that their plan would work. Therefore, it is the court's conclusion that the motion to amend should be denied.

#### MOTION TO DISMISS

Metropolitan has moved to dismiss the case. Dismissal of a chapter 12 is governed generally by 11 U.S.C. § 1208 and particularly in this case by § 1208(c)(5). Confirmation has been denied, and the court now denies debtors' motion for additional time to file a modification. The court, therefore, concludes that the case should be dismissed pursuant to 11 U.S.C. § 1208(c) (5) .

#### **ORDER**

IT IS ORDERED that the debtors' motion for additional time to file a modified plan is denied.

IT IS FURTHER ORDERED that the motion of Metropolitan Life Insurance Co. to dismiss this chapter 12 case is granted.

IT IS ORDERED that this chapter 12 case is dismissed.

SO ORDERED ON THIS 4<sup>th</sup> DAY OF September, 1990.

William L. Edmonds  
Bankruptcy Judge