

In the United States Bankruptcy Court

for the Northern District of Iowa

Richard Bakken and Shirley Bakken
Debtor(s).

Bankruptcy No. X90-00324F
Chapter 12

ORDER DENYING CONFIRMATION OF SECOND AMENDED PLAN

Debtors, Richard and Shirley Bakken, present to the court their second proposed plan of reorganization. An objection to the plan was filed by Willow Tree Investments, Inc. (WILLOW TREE). Willow Tree objects to the plan on five grounds:

1. that the plan fails to meet the "best interest test" of 11 U.S.C. § 1225(a)(4);
2. that debtors will not be able to make all payments under the plan as required by 11 U.S.C. § 1225 (a)(6);
3. that the plan is not proposed in good faith;
4. that paragraph 4, page 1 of the plan, improperly permits debtors to surrender collateral to secured creditors at any time after confirmation, in full satisfaction of debt, without regard to the value of the security at the time of surrender; and
5. that the plan's disposable income provision is not sufficient to meet the requirements of 11 U.S.C. § 1225(b)(1)(B).

FINDINGS OF FACT

Richard and Shirley Bakken have been farming for approximately 34 years. They live on a three-acre tract south of Ottosen, Iowa. They are buying on contract 240 acres of farm ground adjacent to their homestead. They lease an additional 320 acres on a 50/50 crop share basis. For the 1990 crop year, debtors planted corn on 107.9 acres of their land and on 135.9 acres of rented land. Their corn yield on these properties was 140 bushels per acre. They are entitled to one-half the corn from the rented land. Their 1990 corn crop totals 24,619 bushels. The present value of this corn, at \$2.15 per bushel, is \$52,930.85.

Debtors planted soybeans on 104.4 acres of their land and on 148.9 acres of the rented land. They are entitled to one-half of the beans on the rented land. Their bean yield on these properties was 49.9 bushels per acre. Their 1990 bean crop totals 8,924.61 bushels. The present value of the beans, at \$5.55 per bushel, is \$49,531.59. The total value of the 1990 crop is \$102,462.44.

There are unpaid costs associated with the 1990 crop. These include \$34,177.00 owed to Cenex for the purchase of various input supplies; \$960.00 for the rental of a corn head; \$5,500.00 for the purchase of seed; and \$3,200.00 for crop insurance. These costs total \$43,837.00 and when subtracted

from the present value of the crop, there remains \$58,625.44 in value. Debtors' cash flow projection (exhibit 1, attachment B) anticipates a payment to their attorneys of \$5,000.00 and a payment to their consultant of \$750.00.

The farm being purchased by debtors has a value of \$360,000.00. The balance due on the contract is \$314,000.00. Delinquent real estate taxes against the property are \$16,000.00. If the property were to be sold at the price of \$360,000.00, a reasonable real estate commission would be 5% of the selling price for a total commission of \$18,000.00. Other costs of sale would be approximately \$1,000.00.

Beginning in 1991, debtors propose to use facilities located on the farm for the care and feeding of livestock owned by third parties. They expect to begin contract feeding about 30 days after confirmation of a plan. The debtors have been told by at least two parties that they would hire debtors as contract feeders. The facilities are adequate for the proposed feeding operation. Under such contracts, farmers provide the labor, facilities, water and electricity. The owner provides the feed and the livestock. Contract feeders receive between \$8.00 to \$10.00 per head cared for.

Debtors' government deficiency program payments in recent years have been as follows:

1987 \$16,626.65

1988 6,280.00

1989 91402.00

1990 7,482.00 (first half advance payment)

The remaining deficiency payment for 1990 will depend on the market price of corn for a period of six months to one year after harvest. The maximum possible 1990 deficiency payment would be a figure computed by multiplying 89 cents times planted acres times the lands ASCS yield times debtors' share of the crop. For the property owned by debtors, the 1990 deficiency payment could be as high as \$12,195.94, computed as follows: .89 times 107.9 acres times 127 bu. ASCS yield. For the corn crop on the rented property, the maximum deficiency payment for 1990 would be \$7,861.82. This is computed as follows: .89 times 135.9 acres times 130 bu. proven yield times a interest in crop. No one knows what the balance of the deficiency will be. There is a possibility that a portion of the advance payment of \$7,482.00 would have to be returned. Little is known about deficiency programs for the future although the trend in payments is downward.

The court has examined debtors' cash flow projections (attachment B to exhibit 1) and determines they are reasonable with the following exceptions and changes: For 1991 through 1993, seed costs should be estimated at \$5,648.00 rather than \$5,930.00. Fertilizer and chemicals for the same period should be estimated at \$15,838.00 a year rather than \$17,670.00 per year. A more accurate estimate for corn drying for the 1991 through 1993 would be \$2,000.00 per year rather than \$5,000.00 per year. Real estate taxes should be estimated at \$3,666.00 per year rather than \$2,600.00. The debtors' projections for crop income for 1991-1993 are not unreasonable in light of the crop values for 1990.

DISCUSSION

Best Interest of Creditors Test

Willow Tree contends that the plan does not meet the "best interest of creditors" test as set out in 11 U.S.C. § 1225(a)(4). This confirmation standard requires that debtors pay to an unsecured creditor on account of its claim value "as of the effective date of the plan" equal to what the creditor would receive on the claim if the estate were liquidated under chapter 7 on the effective date. For purposes of this case, the effective date is the date of the confirmation hearing. In the Matter of Blurida Farms, Inc., 93 B.R. 648, 653 (Bankr. S.D. Iowa 1988).

Debtors' 1990 crop is property of the estate and therefore must be valued in considering the best interest of creditors test. 11 U.S.C. § 1207(a)(1). Debtors' plan recognizes the 1990 crop as a component in applying the best interest test. Debtors propose to pay to unsecured creditors \$32,989.00 which debtors believe is the net value of the 1990 crop after crop expenses. Debtors also propose to pay to unsecured creditors the net sale proceeds of their lake cottage property. This portion of the plan is not objectionable and is not objected to.

Debtors' plan cannot be confirmed because it undervalues the amount which must be paid out to creditors under 11 U.S.C. 1225(a)(4). The value of the crop is \$102,432.44. Unpaid bills include \$34,177.00 for unpaid input costs, \$960.00 for a corn head rental, \$5,500.00 for seed corn payments, \$3,200.00 for crop insurance, \$5,000.00 for attorneys' fees, and \$750.00 for consultant fees. After deduction of these unpaid expenses, there remains a net value of the crop of \$52,845.44. This net value exceeds the proposed payout on account of the crop by \$19,856.44. The debtors have provided the court with no evidence as to other administrative expenses which might have been deducted from that difference. These expenses might have included court costs, estate income taxes on the sale of the corn, costs associated with the sale of the corn, and trustee's fees relating to the sale of the corn. Nor is there evidence that there are any priority taxes which would be paid in a chapter 7 estate under 11 U.S.C. § 507(a)(7). The court cannot conjure up all these estimates. The court can easily multiply the total value of the corn times an approximately three per cent trustee's fee. 11 U.S.C. § 326. However, this would yield only approximately \$3,073.00 in additional costs.

Based on the evidence regarding the 1990 corn crop, debtors' plan does fail to meet the best interest test as set out in 11 U.S.C. § 1225(a)(4).⁽¹⁾

Disposable Income Test

Willow Tree states that the plan's language fails to meet the requirements of 11 U.S.C. § 1225(b)(1) (B). This Code section requires that if the trustee or the holder of an allowed unsecured claim objects to confirmation, then unless the plan provides for payment in full of the unsecured claim, the plan must provide that "all of the debtor's projected disposable income to be received in the three-year period . . . will be applied to make payments under the plan." The relevant section of the plan is paragraph 6. According to paragraph 6, "the Debtors will submit to the control of the chapter 12 Trustee, such future earnings and income as is necessary for the execution of this Reorganization Plan." The court agrees with Willow Tree that this language can be read in such a way as to violate the provisions of the disposable income test.

Other Objections to the Plan

Paragraph 4 of the introduction to debtors' second plan provides that "the Debtors reserve the right to surrender, abandon, or execute deeds in lieu of foreclosure as to any item of property to any creditor holding a valid lien against such property and receive full and complete satisfaction of any claim secured by the lien on such property." Willow Tree finds this language to be objectionable on the ground that at any time during the period of the plan, regardless of the value of the property, the

creditors would have to take back collateral in full satisfaction of claims secured by the lien. The plan provision is ambiguous. To the extent it provides that debtors have the right to surrender during the course of the plan period any item of collateral and receive satisfaction of the secured claim regardless of the value at surrender, it violates 11 U.S.C. § 1225(a)(5)(B)(ii).

There is no evidence that the plan was not proposed in good faith. The court finds that the debtors would be able to make plan payments required of them by the proposed plan.

CONCLUSIONS OF LAW

The debtors' second amended plan of reorganization does not 1225(a)(4), (5), or meet the requirements of 11 U.S.C. (b)(1)(B).

ORDER

Judgment shall enter that confirmation of the debtors' second amended chapter 12 plan of reorganization filed on or about October 15, 1990 is denied.

SO ORDERED ON THIS 26th DAY OF NOVEMBER, 1990.

William L. Edmonds
Chief Bankruptcy Judge

1. Willow Tree has also argued that debtors have failed to consider the equity in their farm ground. The court need not reach this issue. However, the court points out that if the farm ground is truly adjacent to the three-acre homestead as the testimony shows, the debtors might be entitled to claim 37 acres of the farm ground as exempt. A trustee in a chapter 7 case would be unable to force a marshaling of the homestead assets between himself and the contract seller so as to cause a loss of the homestead. In re Chadwick, 114 B.R. 663, 664 (Bankr. W.D. Mo. 1990); Johnston v. Butterfield (In re Butterfield's Estate), 196 Iowa 633, 195 N.W. 188 (1923).