In the United States Bankruptcy Court

for the Northern District of Iowa

GEORGIE W. ARNOLD LAURA J. ARNOLD Debtor(s).	Bankruptcy No. Y87-00767W Chapter 12

ORDER

The above-captioned matter came on for hearing on January 12, 1994 on Debtors' Motion to Reconsider Claim. Debtors Georgie W. Arnold and Laura J. Arnold were represented by Attorney Greg Epping. Tim Dunbar appeared on behalf of the case trustee. Martin McLaughlin represented the United States of America on behalf of Farmers Home Administration ("FmHA"). Evidence was presented after which the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(B).

STATEMENT OF THE CASE

Debtors completed payments under their confirmed plan and their Chapter 12 case was closed March 18, 1993. The case was reopened in May, 1993. Debtors requested the case be reopened to allow for reconsideration of FmHA's Class IV claim.

In paragraphs 3.3 and 3.4 of Debtors' confirmed Plan, FmHA's secured claim was treated partially as a Class III claim (lien on real estate) and partially as a Class IV claim. According to paragraph 3.4, FmHA's Class IV claim was provided for as follows: 1) $11,988.85 paid from proceeds from sale of 12,000 bushels of corn; 2) $5,171.52 paid from generic commodity certificate; 3) $52,080 payable over period of seven years (approx. annual payment $10,347). Three of these annual payments remained payable to FmHA after the completion of Debtor's Plan in 1993. It also appears that FmHA had an allowed unsecured claim of approximately $29,500. Under paragraph 3.8 of the Plan, unsecured claims would be paid over three years with a total proposed payout of approximately 27%.

In August 1989, Debtors found two checks in their files made payable to them and FmHA jointly. These checks were for 1) 1986 corn deficiency, check dated 10/01/87 in the amount of $5,171.51 and 2) 1985 soybean set aside, check dated 4/23/87 in the amount of $71.64. Debtors turned these checks over to FmHA expecting that FmHA would apply the funds against its Class IV secured claim. This would reduce the amount payable to FmHA after completion of the Plan. However, over Debtors' objections, FmHA applied the total of $5,243.15 toward Debtors' unsecured debt.

The corn deficiency and soybean set aside checks are not mentioned in the Plan. A difference of only one cent distinguishes the $5,171.51 corn deficiency check from the generic commodity certificate of $5,171.52 turned over to FmHA pursuant to paragraph 3.4 of the Plan. The similarity in the amounts may have caused some confusion. The Court can find no reference to the $71.64 soybean check.

It appears that the corn deficiency check was left out of the Plan by inadvertence. The Liquidation Analysis which was attached to the Plan as Exhibit A lists both the check and the commodity certificate as security for FmHA's claim. In a brief filed by Debtors on February 19, 1988 contesting FmHA's right to the commodity certificate, Debtors stated that

they "do not dispute that FMHA has a valid, first lien on the check in the amount of $5,171.51 and have agreed to turn that check over to FMHA."

The check, however, was not turned over to FmHA either before or at the time of confirmation. Debtors now argue that FmHA is not entitled to assert a lien on the check because the Plan failed to provide for such a lien. Debtors seek to apply the check against the remainder of FmHA's allowed secured claim of $52,080 which, under the Plan, was payable over seven years. The Liquidation Analysis makes it evident that this amount is secured by livestock (valued at $10,080) and farm machinery and equipment (valued at $42,000).

CONCLUSIONS OF LAW

The Court must determine whether FmHA is entitled to assert a lien against the corn deficiency and soybean set aside checks which was not provided for in Debtors' Chapter 12 Plan. Debtors move for reconsideration utilizing the provisions of 11 U.S.C. 502(j), which states: "A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case."

Generally, a confirmed Chapter 12 plan provides a binding, res judicata effect that can reduce the amount of a secured creditor's lien not otherwise specifically preserved under the plan. In re Martin, 130 B.R. 951, 956 (Bankr. N.D. Iowa 1991). In Martin, the Court determined that a creditor who had failed to assert a lien on life insurance proceeds in the Plan had lost its right to have that lien treated as part of its secured claim. Id. The Court noted that the creditor's remedy is to ask the court to reconsider the claim under 502(j). Id.

The Bankruptcy Court has the power to reconsider the allowance of claims for cause and readjust the claim in any fashion according to the equities of the case. In re Colley, 814 F.2d 1008, 1010 (5th Cir. 1987). Reconsideration of claims is discretionary with the court and may be done at any time so long as the bankruptcy court retains control of the case. In re W.F. Hurley, Inc., 612 F.2d 392, 394 (8th Cir. 1980). "Cause" and "equities of the case" are not defined in the Code. In re Yagow, 62 B.R. 73, 78 (Bankr. D.N.D. 1986). Courts apply the standards for relief from judgment in Fed. R. Civ. P. 60(b)(6), incorporated through Bankruptcy Rule 9024, to determine whether to reconsider and readjust the allowance of a claim. In re Kelderman, 75 B.R. 69, 70 (Bankr. S.D. Iowa 1987); Colley, 814 F.2d at 1010. Grounds for relief from judgment under Rule 60(b) include mistake, inadvertence, fraud and misrepresentation. Colley, 814 F.2d at 1010.

In re Rankin, 141 B.R. 315 (Bankr. W.D. Tex. 1992), is on point. Creditors sought reconsideration under 502(j) to determine the correct class treatment of their claims. They previously voted for confirmation of the debtor's Chapter 11 plan based on debtor's attorney's representations that their claims would have Class 2 treatment under the plan. However, the Court later determined that the plan gave these claims Class 7 treatment. The court found that the motion for reconsideration implicitly alleged mistake and misrepresentation which is sufficient cause to reconsider allowance of claims for purposes of 502(j) and Rule 60(b). Id. at 319. After recognizing the res judicata effect of the plan, the court concluded that the plan did not bar reconsideration because it failed to list these creditors' claims within any class. Id. at 320. Considering the preconfirmation intent and conduct of the parties, the court concluded that debtor was estopped from insisting on Class 7 treatment because of former representations to the creditors and the court that the claims would have Class 2 treatment. Id. at 322.

Considerable tension exists between reconsideration of claims and the necessity for finality of confirmation orders. In re Barrett, 136 B.R. 387, 391 (Bankr. E.D. Pa. 1992) (Chapter 13). An issue is also presented whether reconsideration may be had after a case is reopened. In re Miles, 39 B.R. 494, 497 (Bankr. W.D.N.Y. 1984). Some factors which may be considered are whether reconsideration of claims is appropriate include whether 1) interested parties have relied on the earlier proof of claim, 2) other creditors would receive a windfall, 3) the creditor has intentionally delayed and 4) there is justification for the creditor's delay in asserting a claim. Courts have also acknowledged the "ancient and elementary

power" of the Bankruptcy Court to reconsider any of its orders. Id. at 496.

After considering these factors, the Court concludes that cause exists under 502(j) and Rule 60(b) to reconsider FmHA's claim to a lien on the checks. The checks were not provided for in the Plan because of inadvertence. The equities of the case compel the conclusion that FmHA has an allowed secured claim on the checks and is entitled to retain the proceeds from the checks. The record clearly establishes that both parties recognized that FmHA had a lien in at least the corn deficiency check. The soybean set aside check should be given the same treatment. Therefore, the Court finds that FmHA has an allowed secured claim in the total amount of $5,243.15 which is a lien on the two checks in the amounts of $5,171.51 and $71.64.

This conclusion affects the amount of FmHA's unsecured claim. The extent to which it was allowed and paid under Debtors' Plan must be reduced in proportion to the amount it is now allowed as a secured claim. FmHA shall reimburse the case trustee to the extent it received a distribution under the Plan to be applied against $5,243.15 of its unsecured claim which is now satisfied as a secured claim.

WHEREFORE, the Court concludes that FmHA has an allowed secured claim in the amount of $5,243.15 as this claim was inadvertently omitted from the approved Chapter 12 Plan.

FURTHER, FmHA is entitled to retain the proceeds from the 1986 corn deficiency check in the amount of $5,171.51 and the 1985 soybean set aside check in the amount of $71.64 in satisfaction of such claim.

FURTHER, any payment FmHA received under the Plan in satisfaction of that amount as an unsecured claim should be returned to the case trustee for redistribution in accordance with the Plan.

SO ORDERED this 14th day of February, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge