

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

CARL L. JANSMA and JUDY L. JANSMA
Debtors.

Bankruptcy No. 93-51290XS
Chapter 11

ORDER RE: DEBTORS' OBJECTION TO CLAIM OF SIOUX COUNTY STATE BANK

Debtors Carl Jansma and Judy Jansma have objected to the claim of Sioux County State Bank. Hearing was held on March 1, 1994 in Sioux City.

Debtors filed their joint chapter 11 petition on July 28, 1993. Bank filed its proof of claim on November 22, 1993 (claim no. 8). Bank claimed a right to payment from the debtors at the date of bankruptcy of \$777,468.97 plus interest, attorneys' fees and costs. The base claim comprises a secured claim of \$521,005.00, an unsecured claim of \$246,474.47 and a priority claim of \$9,989.50. The priority claim was for Bank's post-petition contribution to the case. It was disallowed without prejudice at a preliminary hearing on debtors' objection.

The parties do not dispute the total amount of Bank's claim at the date of filing. They agree it was \$767,479.47. Debtors do not object to the allowance of the claim in that amount. The dispute is actually over the division of the claim into its secured and unsecured components for the purpose of plan treatment. Debtors' objection to the claim is more appropriately a motion for valuation of collateral pursuant to 11 U.S.C. 506(a) and Fed.R.Bankr.P. 3012.

In addition to their agreement as to the total amount of Bank's claim, the parties have agreed as to the value of certain property of the estate in which the Bank holds a security interest. The value of the property and of Bank's interest is stipulated to be:

feeder pigs	\$ 62,000.00
breeding stock	31,640.00
life insurance	80,000.00
hog facility (real estate)	102,500.00
harvested corn	18,005.00
machinery and equipment	13,660.00
total	\$307,805.00

The dispute as to value concerns the debtors' 1993 bean crop and 80 acres of farm ground. The parties agree that the value of the beans on the date of filing, if valued by their input costs, was \$12,972.00. The beans have been harvested and all costs of care, harvesting and sale have been paid with the

exception of the second half payment of rent to one landlord on whose ground some of the beans were grown. The net proceeds of the beans being held on deposit are \$49,669.55. The unpaid rent is \$6,612.00.

As to the 80 acres, the parties dispute its value. Debtors contend its fair market value is \$114,000.00; Bank says it is worth \$153,000.00.

The Farm Ground

The unimproved 80 acres is described as follows:

North half of the Southeast Quarter of Section 7, Lincoln township, Sioux County, Iowa, R 45 W.

Debtors purchased the land in 1989 for approximately \$102,000.00.

Appraiser Rick Attig of Rock Rapids testified on behalf of the debtors. Attig is an Iowa certified general real property appraiser. He is also a real estate salesman and farm manager. He sells and manages farms in the area of the subject farm. he has a Bachelor of Science degree in ag business from Iowa State University. He has participated in more than 800 appraisals since 1985; he has appraised more than 300 farms in the past two years.

Attig selected sales of four comparable farms to aid him in determining the subject's estimated fair market value as of February 12, 1994. The farms were near in geographical proximity to the subject; the sales dates ranged from December 1990 to March 1992. Two of the sales were adjoining farms sold by the same seller to the same buyer. Attig felt it was better to choose comparables in close geographic proximity to the subject and to adjust the comparisons for time differences rather than vice versa. Geographical proximity was felt to be an important factor because according to Attig and Carl Jansma, the area of the debtors' farm enjoys less annual rainfall than other, better situated areas of Sioux County. The lower rainfall would result in reduced yields and, therefore, lower land value compared to other farms sold in the general, but larger geographic area.

All of the farm sales used as comparables were sales by institutional creditors who had foreclosed against the properties and which were selling back to the individuals who had mortgaged the property. From his testimony, Attig did not appear to give great weight to estimating value based on the Corn Suitability Rating (CSR) of the subject and the comparables. In his view, sales prices did not always correspond to a farm's CSR. He was not able fully to say how a CSR for a farm was calculated. He stated that the calculation involved an evaluation of soils, but he was not able to say what effect land productivity had on CSRs. Attig testified that he believed that land values in the area had increased approximately 10 to 20 per cent since 1989. Under the market data approach, Attig estimated the value of the subject to be \$117,000.00. After considering also the income and replacement approaches, Attig's estimate of fair market value of the subject was \$114,000.00.

Richard Vander Werff of Sanborn, Iowa testified for Bank. Vander Werff is also an Iowa-certified appraiser. He is a member of the National Association of Master Appraisers. He has been doing appraisals since at least 1972. In 1993, he did approximately 150 farm ground appraisals in Sioux County.

Vander Werff used three comparable sales in using the market data approach. One was from a sale in March, 1992, and two were sales in early 1993. He felt sales more recent in time were better comparables than those used by Attig. Also Vander Werff testified that he did not use the

comparables used by Attig because in his opinion, they were questionable "arms' length transactions" being sales by creditors back to the former owners. Vander Werff also placed more emphasis on CSRs when comparing the subject with his comparable sales. He testified that a farm's corn suitability rating would take into account not only soil quality, but also rainfall, as a farm located in a low rainfall area would have a different CSR than a farm with the same types of soils in an area of better rainfall. Vander Werff further testified that as an appraiser he did not adjust for the lesser annual rainfall amounts of the subject farm because he does not believe there is documented evidence to show there is a difference from the general area. It was Vander Werff's opinion that an increase in land values of 25 per cent since 1989 might be normal, but that in strong areas, 40 to 50 per cent increases are not abnormal.

Vander Werff, in using the direct sales or market data approach, appraised the subject property at \$149,600.00 as of July 22, 1993. He gave no testimony that the land had either increased or decreased in value since then. In considering also the income and cost approaches, he gave a final market value of \$153,000.00 for the farm.

Both expert witnesses were well qualified, intelligent, and well spoken. However, the court, having heard both and having read their appraisals, finds that Vander Werff's appraisal is the more persuasive. The court hesitates to rely on Attig's comparables in that their "arms' length" quality can be questioned. Vander Werff's comparable sales appear more reliable indicators of the subject's value. Also, Vander Werff appeared more experienced than Attig and he had a better grasp of corn suitability ratings, especially as they take into consideration rainfall factors. There was a dispute over the rainfall factor in the area of the subject farm. Beyond the experience of Attig and Jansma, there was no evidence quantifying the lower rainfall or its effect on crops in comparison to other areas of the county.

The court considers the market data or direct sales approach to be the most reliable. Therefore, the court finds that the 80 acres owned by Jansmas and mortgaged to Bank has a fair market value of \$149,600.00.

1993 Bean Crop

The parties agree that the dispute over the value of the 1993 harvested bean crop is a legal rather than a factual dispute. The value at filing, if determined on the basis of input costs, would be \$12,972.00. The net value of the proceeds without consideration of the remaining payment to the landlord would be \$49,669.55.

Jansmas contend that the crop must be valued at the date of filing by reference to the input costs. Otherwise, he says, the court would be ignoring as an element of value the debtors' post-petition efforts to care for, harvest and sell the crop. Without limiting the value to the input costs at filing, Jansma says farmers would never be able to reorganize.

The valuation of collateral for determining plan treatment should be accomplished as close to the date of confirmation as possible. In the Matter of Seip, 116 B.R. 709, 711 (Bankr. Neb. 1990). The date of filing of the petition is not the critical date for valuing the collateral interest of the Bank. That the confirmation date is the relevant one is borne out by 11 U.S.C. 1129(b)(2)(A)(i)(II) which requires that for treatment of a dissenting class of secured creditors to be "fair and equitable" the creditor must receive on account of its claim "deferred cash payments totaling at least the allowed amount of such

claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property." Id. (emphasis added).

Debtors' argument that valuing the crop at present ignores his efforts in creating added post-petition value would change the rule of law without considering more appropriate remedies. The appreciated value of the crop since filing inures to the benefit of the estate and the secured creditor. To the extent a debtor-in-possession or a trustee incurs costs in preserving or disposing of the collateral, the property may be surcharged under 11 U.S.C. 506(c). To an extent, that has already been done, as the crop proceeds are net of all costs except the unpaid landlord. The parties may still obtain that relief. The court finds that the value of the 1993 bean crop for purposes of determining Bank's secured claim for confirmation is \$49,669.55. This may be reduced prior to confirmation hearing by the trustee's payment of the landlord out of those funds.

Although the court makes no finding or conclusion on this matter, the parties are cautioned to consider and ensure that the claims of Bank against debtors are not duplicated inadvertently. Such could happen if debtors use proceeds from the sale of Bank's collateral to protect Bank's other assets. If Bank is given a replacement lien in other property to secure the use of the collateral proceeds, but the proceeds are used only to protect the Bank's other collateral interests, this may have the effect of providing more protection to the Bank's interests than is necessarily adequate. The parties must be sure that this is considered in determining the position of the Bank at confirmation.

IT IS ORDERED that the Sioux County State Bank has an allowed claim in the amount of \$767,479.47. Bank has a secured claim, for purposes of confirmation issues, in the amount of \$507,074.55. Bank has an unsecured claim in the amount of \$260,404.92.

SO ORDERED ON THIS 4th DAY OF MARCH, 1994.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U. S. mail to: William Needler, Roger Carter, Jon Sullivan, 2002 List, Jeff Henderson and U. S. Trustee.