

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

GERALD D. JOHNSON and
JUDITH K. JOHNSON

Bankruptcy No. 95-50511XS

Debtor(s).

Chapter 13

DECISION RE: TERM OF REPAYMENT TO STATE BANK OF ALCESTER UNDER PLAN

Debtors and State Bank of Alcester submit to the court in advance of the final confirmation hearing the issue of whether debtors may, under their plan, pay Bank's allowed secured claim over a period exceeding five years. A preliminary hearing on confirmation was held May 24, 1995. John Harmelink appeared for the debtors. Richard H. Moeller appeared for Bank.

Gerald and Judith Johnson filed their joint chapter 13 petition on March 27, 1995. They filed a proposed plan on April 13, 1995 (docket no. 8). Debtors' schedules list Bank as a secured creditor. Debtors and Bank do not agree on the value of Bank's secured claim. A hearing to determine the amount of the secured claim has been scheduled. Whatever the amount, the debtors propose to pay the allowed amount of the secured claim over a period of 20 years beginning December 5, 1995. The debtors propose that the first five annual payments be made through the standing trustee.

Bank objects to debtors' plan for various reasons, including that debtors' plan may not be confirmed because they propose payments to Bank on its secured claim over a period longer than five years. Other creditors have objected to the plan, and debtors intend to amend to resolve some of the pending dispute. Debtors and Bank have not been able to resolve Bank's foregoing objection over the plan term. Debtors and Bank have asked the court to rule on this issue so that the ruling can be considered in debtors' amendment.

In its objection to the plan, Bank alleges that debtors are indebted to it by virtue of six promissory notes. The notes are attached to the objection. Bank contends that all are due by their own terms within the five-year plan period proposed by the debtors. This appears from the notes to be so.

The debtors' plan may modify Bank's rights as a secured creditor. 11U.S.C. § 1322(b) (2). Debtors' plan may not provide for payments over a period that is longer than the three- to five-year period of a plan. 11 U.S.C. § 1322(d). An exception to the latter prohibition is contained in 11 U.S.C. § 1322(b) (5) which permits a debtor to "provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any ... secured claim on which the last payment is due after the date on which the final payment under the plan is due." To the extent that debtors' obligations to Bank come due by their terms within the five-year plan period proposed by debtors, the exception to the limitation on plan payments does not apply. Debtors may not obtain confirmation of

a plan which proposes to pay Bank its secured claim over a period longer than the term of the plan without Bank's consent. In re Molitor, 133 B.R. 1020, 1021 (Bankr. D. N.D. 1991); In re Ramirez, 62 B.R. 668, 670 (Bankr. S.D. Calif. 1986); Matter of Foster, 61 B.R. 492, 494 (Bankr. N.D. Ind. 1986); In re Hildebran, 54 B.R. 585, 587 (Bankr. D. Or. 1985).

IT IS ORDERED that debtors may not confirm a plan which proposes payment to Bank on its secured claim over a period exceeding that provided in 11 U.S.C. § 1322(d).

SO ORDERED THIS 22nd DAY OF JUNE 1995.

William L. Edmonds
Bankruptcy Judge