

In the United States Bankruptcy Court

for the Northern District of Iowa

NATIONAL CATTLE CONGRESS INC.

Debtor(s).

Bankruptcy No. 93-61986KW

Chapter 11

ORDER RE HOMELAND BANK'S OBJECTION TO DEBTOR'S AMENDED 1995 PLAN OF REORGANIZATION AND DEBTOR'S

AMENDED 1995 DISCLOSURE STATEMENT

On December 12, 1995, the above-captioned matter came on for telephonic hearing pursuant to assignment. John Titler represented Debtor National Cattle Congress, Inc. Steven Moore represented Homeland Bank, N.A., as Trustee for the Bondholder Banks ("Bondholder Banks"). The matter before the Court is the Objection to Debtor's Amended 1995 Plan of Reorganization and to Debtor's Amended 1995 Disclosure Statement filed by the Bondholder Banks. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

STATEMENT OF THE CASE

The Bondholder Banks have stipulated with Debtor that the amount of their claim on the filing date of Debtor's petition was \$3,464,201.77. This claim was secured by Debtor's real estate and certain personal property. The parties have agreed that the personal property collateral has a value of \$200,000.

After receiving relief from the automatic stay, the Bondholder Banks reduced their claim to judgment and proceeded to effect a foreclosure sale of the real estate. At the time of the sale, the total foreclosure judgment amounted to \$4,030,700.12. According to the sheriff's certificate, the difference between the stipulated amount of the claim and the judgment arises from interest, attorneys fees and costs and expenses related to the sale.

The Bondholder Banks purchased the sheriff's certificate with a credit bid of \$3,731,700, reserving their secured interest in the personal property. They thus retain an interest in the remainder of the judgment which is acknowledged to be secured by personal property worth \$200,000. The Bondholder Banks have assigned the sheriff's certificate to Jamco, Inc. so they currently have no interest in the real estate.

Based on the foregoing figures, the Bondholder Banks argue that the value of their remaining allowed claim is \$257,043.77. This is 7.42% of the total stipulated value of their claim at the date of the petition. They arrive at this figure by reasoning that as the amount of the judgment remaining after the sheriff's sale was 7.42% of the total judgment, they are entitled to 7.42% of the total value of their claim.

Debtor argues that the Bondholder Banks' remaining claim is limited by the amount of their remaining collateral, i.e. the personal property valued at \$200,000. It asserts that allowing more than the value of the remaining collateral would constitute an improper premium arising from the Bondholder Banks' bifurcation of their claim by effecting a foreclosure sale of the real estate and retaining their secured interest in the personal property. Debtor urges that it should not be required to pay more for the bifurcated claim than it would have paid in the absence of the bifurcation. Debtor argues that the Bondholder Banks' only remaining interest is a claim of \$200,000, the value of the personal property.

CONCLUSIONS OF LAW

The amount of a claim is determined as of the date of the petition pursuant to 11 U.S.C. § 502. The parties stipulate that the Bondholder Banks' claim, as of the date of the petition, is \$3,464,201.77. The record is clear that the foreclosure judgment of \$4,030,700.12 includes postpetition interest, attorney fees and expenses of the sale. The Court concludes that acceptance of the Bondholder Banks' reasoning would result in a recovery of postpetition interest and costs attributable to the personal property collateral. This is not appropriate under § 506(b).

Secured creditors are entitled to receive postpetition interest and fees and costs related to secured claims only if they are determined to be oversecured, i.e. the value of their collateral exceeds the amount of their allowed claim. United Savs. Ass'n v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 630-31 (1988); 11 U.S.C. § 506(b). Even then, oversecured creditors are allowed postpetition interest and costs only to the extent of the value of their collateral. Timbers of Inwood Forest, 484 U.S. at 630.

In order to determine whether a creditor is oversecured, the collateral should be valued in close proximity to the date of confirmation. In re Ahlers, 794 F.2d 388, 399 (8th Cir. 1986), rev'd on other grounds, 485 U.S. 197 (1988); In re Seip, 116 B.R. 709, 711 (Bankr. D. Neb. 1990) (following Ahlers on this issue). Where a postpetition, preconfirmation sale of tangible collateral has occurred, however, the net proceeds from the sale caps the amount of a secured claim attributable to such collateral. In re Broomall Printing Corp., 131 B.R. 32, 37 (Bankr. D. Md. 1991).

When a creditor receives proceeds from the sale of its collateral, the net effect is that such payment is credited to reduce the total indebtedness. In re Kain, 86 B.R. 506, 515 (Bankr. W.D. Mich. 1988). Where the purchase price at the sale is more than the amount of the claim attributable to that collateral, the creditor is oversecured to the extent the sale proceeds exceed the amount of the claim. In re McCoy, 163 B.R. 206, 212 (Bankr. M.D. Fla. 1994). The value of any remaining collateral as of the effective date of the plan then determines the extent of the remaining secured portion of the claim. Kain, 86 B.R. at 515.

Applying the foregoing principles to this case, the Court finds that Bondholder Banks are oversecured. Their allowed claim totals \$3,464,201.77. The Court concludes that the amount to which the Bondholder Banks are secured is \$3,931,000.

The Court acknowledges that its ruling filed October 10, 1995 concludes that the real estate had a value of \$3.8 million. However, the proceeds of the sheriff's sale, i.e. the Bondholder Banks' credit bid of \$3,731,700, caps the amount of their secured claim attributable to the real estate. Adding the \$3,731,700 sale price of the real estate to the \$200,000 stipulated value of the personal property results in a total secured amount of \$3,931,700. The Bondholder Banks are oversecured to the extent of the difference between the allowed claim of \$3,464,201.77 and the secured amount attributable to the real estate of \$3,731,700. This difference arises from postpetition interest, attorney fees and costs of the sale as noted in the sheriff's certificate. Debtor does not appear to dispute that the Bondholder Banks are entitled to such interest and costs.

The Bondholder Banks have received \$3,731,700 from the sheriff's sale which is credited to reduce the total indebtedness. The value of the personal property which is the remainder of the collateral determines the extent of their remaining secured claim. That value is stipulated by the parties to be \$200,000. Thus, the Court concludes that the Bondholder Banks' only claim is a secured claim of \$200,000. The Bondholder Banks are not entitled to recovery of any of the remainder of the judgment because receipt of \$3,731,700 plus \$200,000 constitutes the full extent of their interest in the collateral property under § 506(b).

WHEREFORE, the Objection to Debtor's Amended 1995 Plan of Reorganization and to Debtor's Amended 1995 Disclosure Statement filed by the Bondholder Banks is GRANTED IN PART and DENIED IN PART.

FURTHER, for purposes of treatment in Debtor's Plan of Reorganization and Disclosure Statement, the Bondholder Banks hold a secured claim of \$200,000 and no unsecured claim.

SO ORDERED this 26th day of December, 1995.

Paul J. Kilburg

