

In the United States Bankruptcy Court

for the Northern District of Iowa

CARL M. SIMON and DIANE L. SIMON
Debtors.

Bankruptcy No. 94-21591KD
Chapter 12

ORDER RE MOTION FOR APPROVAL OF STIPULATION OF SETTLEMENT

On April 11, 1996, the above-captioned matter came on for hearing pursuant to assignment on a Motion for Approval of Stipulation of Settlement between Debtor and Secured Creditor Eckhart, Hammarback, and Koby. Debtor Carl M. Simon appeared with Attorney Peter C. Riley. The Chapter 12 Trustee Carol Dunbar was present. Attorney H. Raymond Terpstra appeared on behalf of Secured Creditor Eckhart, Hammarback and Koby ("Eckhart"). John Titler appeared on behalf of Farm Credit Service and Attorney Dan Childers appeared on behalf of Dave's Feed and Seed.

Debtor filed a Plan of Reorganization. While this Plan was being proposed for confirmation, Debtors entered into an agreement with Secured Creditor Eckhart. This Creditor seeks approval of this settlement which involves their claim secured by Debtors' dairy herd. After the filing of the Motion seeking approval of this settlement, Debtors have filed an Amended Chapter 12 Plan on February 6, 1996. This Amended Plan was designed and filed to give effect to the settlement between Creditor Eckhart and Debtor if the settlement is approved.

The Motion for Approval of Stipulation of Settlement was noticed to all creditors and two objections were filed. The first objection was filed by Dave's Feed and Seed which argues that the default provisions of the settlement are too severe against Debtor and in favor of Eckhart. Secondly, Dave's Feed objects to the requirement of a confirmation date by June 15, 1996. Finally, Dave's Feed objects to limitations placed in the settlement upon Debtor's ability to make any additional milk assignments.

Farm Credit Service also filed an objection. The first objection is similar to that of Dave's Feed in that they object to limitations on future milk assignments. Secondly, Farm Credit Service objects to a provision relating to payment of \$10,000 in cash. Farm Credit Service is concerned that the Stipulation of Settlement does not specify a source of this revenue. However, at time of hearing, Attorney Titler on behalf of Farm Credit Service indicates that he has now been apprised of the source of these funds and is satisfied with that response and, therefore, this particular objection appears to be satisfied. Finally, Farm Credit Service objects that the Stipulation of Settlement comprises a substantial portion of the Amended Plan filed February 6, 1996. This Creditor objects that approval of the Stipulation in its present posture would have the practical effect of approving the Amended Plan without notice to creditors and without the protections afforded by the confirmation process.

Three resolutions appear possible under the factual record as presented. The Court could deny approval of the Stipulation of Settlement if the Court determines that the objections are valid and are of such a magnitude that approval of the Stipulation would not be in the best interest of creditors. Secondly, the Court could approve the Stipulation of Settlement immediately if it determined that the objections made are without merit or of insufficient merit to deny approval. Finally, the Court could give a tentative approval to the Stipulation of Settlement with final approval being reserved until the Plan Confirmation hearing.

The Court has considered the various options presented. The Court concludes that the objections made are not of such magnitude that approval of the Stipulation of Settlement should be rejected at this stage. The Court has also considered approval of the Stipulation and finds that the objections made to immediate approval deserve consideration in the context of the Plan. That is, the Court feels that the Stipulation has a substantial impact not only upon the parties to the Stipulation but to all creditors and the Amended Plan filed February 6, 1996. To approve the Stipulation of Settlement at this time without the safeguards of the confirmation process would be unfair to all creditors and would effectively bypass the entire confirmation process. The Court feels that this is inappropriate under the circumstances.

The third option appears to be most desirable under the circumstances presented. The Court does not find the Stipulation of Settlement to be so flawed that it should not be presented as part of the confirmation process. The Court finds that it should give tentative approval to the Stipulation of Settlement but that final and binding approval of this Stipulation should be tied to approval of the Plan. As this Stipulation of Settlement, in many respects, forms the centerpiece of the Amended Plan, the Court finds that these matters can be noticed to all creditors and that the confirmation process can protect not only the interests of creditors but of the parties to the Stipulation and the terms of the Stipulation itself.

WHEREFORE, the Court gives tentative non-binding approval to the Stipulation of Settlement at this time subject to final approval or rejection at the time of the confirmation hearing along with the remainder of Debtors' Amended Plan.

FURTHER, the Stipulation of Settlement shall be appended to the Amended Plan and noticed to all creditors in the same manner as the Amended Plan.

FURTHER, all Creditors shall have the opportunity, pursuant to the Code and Rules, to object to the Plan and the Stipulation of Settlement as it impacts each individual creditor. Upon presentation at the confirmation hearing, the Court will make the ultimate determination as to approval of the Stipulation in conjunction with the Plan in its entirety and all other matters presented at the confirmation hearing.

SO ORDERED this 25th day of April, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge