

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

BARRY POMMERVILLE and
PEGANN POMMERVILLE

Bankruptcy No. 98-02056S

Debtor(s).

Chapter 13

DECISION RE: PLAN CONFIRMATION

Barry and Pegann Pommerville ask the court to confirm their *Amended Chapter 13 Plan* (docket no. 13). Carol Dunbar, the standing trustee, recommends confirmation. First Community Bank, a creditor asserting secured and unsecured claims, objects (docket no. 16). Hearing was held October 20, 1998 in Sioux City. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

Findings

Barry Pommerville, age 43, and his wife Pegann reside in Newell, Iowa. Prior to being injured in a motor vehicle accident, Pommerville earned his living as a self-employed trucker. Mrs. Pommerville traveled with her husband and booked loads and kept paperwork. She did not drive or prepare logs. The couple used trucking as a way to earn a living while seeing the country and visiting friends. Because of a partial emphasis on recreation, the couple did not earn as much by trucking as they might have had they concentrated solely on business. The couple operated as a partnership. Although the relationship was not precisely explained, the Pommervilles conducted their trucking operation through a relationship with a company named Landstar Ranger. Apparently Pommervilles booked loads through Landstar, and Landstar arranged for permits, insurance, and truck licensing and registration. For their arrangement with Landstar, it had been necessary for Pommervilles to post a \$500 cash bond or escrow account with the company. By the time of the bankruptcy filing, the relationship was no longer operative, but Landstar still held all or part of the escrow or bond. Debtors owed Landstar a debt for its services.

Pommerville was injured in a truck accident in February 1998. Since then he has not been able to drive his truck. He owns a 1991 Ford F-800 diesel semi-tractor, and the couple jointly own a 1993 Cherokee drop-deck trailer. For non-business use, the couple owns a 1995 Chevy Blazer. These three vehicles secure a truck loan from First Community Bank. There is about \$34,725 due on the loan. Pommervilles value the Blazer at \$18,000. They say the tractor is worth \$18,000-\$22,000 and the drop-deck trailer is worth \$14,000. Bank disagrees saying the tractor and trailer are worth \$17,000 together and the Blazer is worth \$15,000. Bank bases its valuation on bids it received after running a classified ad on the tractor and trailer and placing a sign on the Blazer. Bank also has a second mortgage on the debtors' home to secure the truck loan. I find that debtors' evaluations are reasonable and that the Bank is fully secured on the truck loan.

Debtors owe Bank \$15,521 on a debt secured by a first mortgage on debtors' home. The property is worth \$53,000. On their schedules, debtors listed Bank as the holder of an unsecured credit card claim in the amount of \$1,065.85.

Since his injury, Barry Pommerville receives approximately \$340 per week as workman's compensation. A disability policy, purchased through the Bank at the time of the truck loan, pays the Bank the monthly payments on that loan. The payments are \$808.35. These insurance payments will be made until Pommerville is released for work or the loan is paid in full, whichever comes first. At the time of the confirmation hearing, debtors were four months delinquent on the loan. Two of those will be paid by the insurance company once debtors fill out now-delinquent claim forms. Debtors also became delinquent on their first mortgage debt, but they brought payments current by the time of the confirmation hearing.

Pegann Pommerville recently became employed by Amerihost, a 61-room motel located in Storm Lake. She is in charge of the laundry room. She works a minimum of 24 hours per week but may work more as she must work until the laundry is done. She is paid \$5.25 per hour. Her minimum gross pay would be \$546 per month. From Mr. Pommerville's compensation payments and Mrs. Pommerville's part-time job, the couple brings home approximately \$2,000 per month.

Bank has repossessed the tractor and trailer. After the repossession, Bank spent \$609 in repairs to the tractor. Part of the cost was for removing Pommervilles' name or logo decals from the tractor doors. Hood damage was repaired. The Bank does not know whether the hood damage is covered by insurance.

Debtors' Plan proposes to cure the delinquency on the truck payments to the Bank, to continue payments on the truck and home debts and to pay unsecured creditors from disposable income. They estimate 100 per cent payment of unsecured claims. The 36-month plan contemplates the immediate return of the tractor and trailer for debtors' use. Initially, they propose to pay the trustee \$377.50 per month. Within 90 days after the return of the tractor and trailer, they would increase the payments to \$1,250.

Bank would receive direct payments on the truck loan from the disability policy until Pommerville is no longer disabled. Also, Pommerville hopes to hire a driver and book loads until Pommerville himself is able to drive again. This use of the truck accounts for the increase in payments to the trustee. Pommervilles anticipate that if Mr. Pommerville again becomes able to drive, the couple's income will be sufficient to make payments under the plan.

Debtors list as assets various contract claims and a tort claim stemming from Mr. Pommerville's accident. They also list as an asset a claim against the Bank for wrongful repossession of the vehicles. The proceeds of all such claims will be devoted to the plan performance.

First Community Bank objects to confirmation for several reasons:

- (1) debtors are not eligible for chapter 13 because they lack income that is "sufficiently stable and regular" to enable them to make payments under a plan;
- (2) the plan has not been proposed in good faith;
- (3) the plan is not feasible;

- (4) over the objection of the Bank, the plan does not provide for payment of debtors' projected disposable income over three years;
- (5) the plan fails to say how and when they will cure the arrearage on Bank's secured claim;
- (6) the plan provides for payments on Bank's secured claim which Bank is not now receiving; and
- (7) the plan fails to provide adequate protection to Bank's interests in estate property.

Bank is particularly concerned about the protection of its claim. Brad Reichter, a vice president at the bank, testified that the debtors had let insurance on the vehicles lapse and that if the vehicles are returned to debtors and then put into the possession of another driver, the bank will never see the vehicles again or the debtors will not take care of them.

Discussion

Debtors are eligible for Chapter 13 relief. Mrs. Pommerville's wages are regular and stable. I find also that Mr. Pommerville's future income, either from workman's compensation payments or from trucking income on his return to work, will be sufficiently regular and stable to fund a plan. Mr. Pommerville testified that before his injury, he did not have difficulty in paying business and personal expenses.

The debtors will be able to make the payments called for by the plan. If Mr. Pommerville, because of his injury, does not return to work, the disability payments will be sufficient to pay off the truck loan and to provide sufficient income to make other payments under the plan. His income before the injury was sufficient to pay his expenses, and I see nothing that would prevent him from paying his bills when he once again becomes self-employed. Even if he remains disabled, the payments of \$377.50 per month to the trustee will be sufficient to pay the trustee's fee, attorney's fees, and a significant percentage of the unsecured claims.

Bank contends that the plan has not been proposed in good faith. I find no evidence of this. There is no evidence that debtors have made fraudulent misrepresentations to the court, that the debtors' schedules are inaccurate, or that the debtors are unfairly attempting to manipulate the Bankruptcy Code. Education Assistance Corp. v. Zellner, 827 F.2d 1222, 1227 (8th Cir. 1987).

The plan provides for the submission of debtors' disposable income over a three-year period. The value of property to be distributed under the plan on account of each allowed unsecured claim, as of the plan's effective date, is not less than what would be distributed to such a creditor if debtors' estate were liquidated under chapter 7. The plan otherwise complies with the provisions of Chapter 13 and the Code.

Debtors have not sufficiently addressed Bank's concern regarding the adequate protection of its secured claim--more particularly the insurance of the vehicles if they are returned to debtors. Upon the return, Bank should not be required to provide insurance. Debtors cannot be allowed any period of possession during which they do not insure the vehicles.

Bank's concerns can be adequately addressed by confirming the proposed plan with a proviso that Bank does not have to return the vehicles to the debtors until they provide proof of insurance on the vehicles.

IT IS ORDERED that debtors' plan will be confirmed by separate order to be submitted by the standing trustee.

IT IS FURTHER ORDERED that First Community Bank must return the 1991 Ford F-800 diesel semi-tractor, the 1993 Cherokee drop-deck trailer, and the 1995 Chevy Blazer upon proof of insurance of such vehicles which names Bank as a loss payee.

IT IS ORDERED that judgment shall enter accordingly.

SO ORDERED THIS 27th DAY OF OCTOBER 1998.

William L. Edmonds

Chief Bankruptcy Judge

I certify that on I mailed by U.S. mail a copy of this order and a judgment to Wil Forker, Carol Dunbar, A. J. Stoik, and the U.S. trustee.