

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

In re George E. Jarocki and Sandra M. Jarocki, Debtors
Bankruptcy Case No. 87-01740-12

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

October 28, 1987

Michael G. Trewin, for debtors.
Steven R. Cray, for Federal Land Bank.

Thomas S. Utschig, United States Bankruptcy Judge.

**MEMORANDUM OPINION, FINDINGS OF FACT,
AND CONCLUSIONS OF LAW**

The Federal Land Bank (FLB), by Steven R. Cray, has brought a motion seeking relief from the 11 U.S.C. § 362 automatic stay. The debtors appear by Michael G. Trewin and contest the motion. A hearing was held in this matter on October 13, 1987. Both parties have been provided opportunity to offer evidence, make statements, and brief the legal issues involved.

FLB argues that it should be granted relief from stay because the debtor has not provided adequate protection as set forth in § 1205(b)(3) of the Bankruptcy Code. FLB contends that when a debtor is using farmland that is mortgaged to a secured creditor then the debtor must pay the secured creditor the reasonable rental value of such farmland as the exclusive method of providing adequate protection. The Court disagrees.

Under § 362(d)(1) of the Bankruptcy Code a secured creditor may be granted relief from the automatic stay to proceed against its collateral unless the debtor provides adequate protection with respect to the collateral. In a Chapter 12 case § 1205 sets forth the methods by which a debtor may provide adequate protection.

§ 1205. Adequate protection

(a) Section 361 does not apply in a case under this chapter.

(b) In a case under this chapter, when adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by--

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under

section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;

(3) paying to such entity for the use of farmland the reasonable rent customary in the community where the property is located, based upon the rental value, net income, and earning capacity of the property; or

(4) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will adequately protect the value of property securing a claim or of such entity's ownership interest in property.

There is nothing in the verbiage of § 1205 that would support FLB's interpretation. It would have been very easy for the drafters to use language to the effect that the only or exclusive means of providing adequate protection for encumbered farm property is to pay the reasonable rental value of such property. Certainly Congress in its wisdom could have drafted such specific language.

Instead, several means of providing adequate protection are listed in § 1205. The use of the term "or" to separate the alternatives indicates that none of the listed methods is exclusive. 11 U.S.C. § 102(5). It is apparent that the debtor may provide the adequate protection required by § 362(d)(1) through any of the four listed methods.

The debtors have offered to provide adequate protection in accordance with § 1205(b)(1) by making monthly cash payments to an escrow account to protect against any decrease in value of the property securing FLB's claim. FLB does not contend that such payments fail to constitute adequate protection within the meaning of § 1205(b)(1).

Accordingly, it is the conclusion of the court that FLB's motion seeking relief from the § 362 automatic stay should be denied.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.