

8/27/80

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In Re:

IN BANKRUPTCY

FRANK ARLYN VANDEHEY and
PATRICIA ANN VANDEHEY

No. 80-00576
Chapter 13

Debtors.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
and ORDER

The above named debtors having duly filed a petition under Chapter 13 of the Bankruptcy Code; and the First American National Bank of Wausau, Wisconsin, a creditor of said debtors having duly moved the Court to dismiss the said Chapter 13 proceedings for lack of subject matter jurisdiction; and a pre-trial conference having been held; and briefs having been submitted by counsel relative to the legal position as to said motion; and the Court having examined the record, and being fully advised in the premises, FINDS:

1. That the said debtors duly filed their petition herein on the 6th day of May, 1980, and it appearing from said petition that they are indebted to said First American National Bank by virtue of a judgment in the sum of \$426,000.00, and that the amount admitted by the debtors in the schedules is the sum of \$6,085.70.
2. That a number of other defendants are jointly and severally liable under said judgment along with the debtors herein.
3. That four of the co-guarantors or judgment debtors have been released upon payment of a portion of the judgment, decreasing it to the sum of \$384,566.46.
4. That two of said judgment debtors have not been adjudged bankrupt.
5. That said bank claims the amount due from said debtors as of the date of the filing of its brief to be in the sum of \$421,198.08, and that said amount exceeds the jurisdictional

limit for either secured or unsecured claims as to the right to file said Chapter 13 proceedings.

6. That the debtors claim that said indebtedness is not in excess of the amount provided by law as to a Chapter 13 proceedings by pro-rating the non-guaranteed portion of the judgment (\$370,000.00 having been guaranteed by Farmers Home Administration.)

7. That debtors contend that the Chapter 13 proceedings under the Code are new and must be liberally construed, and that equity requires that the bank's motion be denied because of the releases and guaranteed payment.

8. That the debtors further contend that \$32,500.00 is actually being paid by four of the guarantors, and the proposal of the Vandeheys of \$6,000.00 is actually being paid by one person.

9. That the debtors further contend that in interpreting the jurisdictional limits the Court so determine the individual liability rather than finding the joint and several liability as determined by the State Court judgment.

10. The Court concludes that the indebtedness of the debtors under the judgment above described and listed in the schedules is a joint and several judgment, and that the debtors have an indebtedness in excess of the amount limited in Chapter 13 proceedings.

CONCLUSIONS OF LAW

That the Court enter an order granting the motion of the American National Bank of Wausau, Wisconsin, dismissing said Chapter 13 proceedings for lack of subject matter jurisdiction.

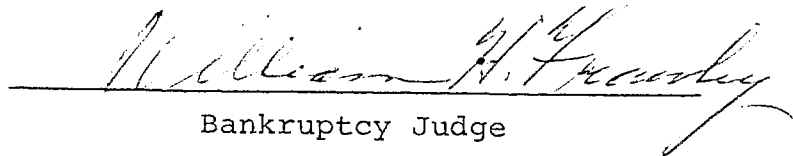
O R D E R

NOW, THEREFORE, IT IS ORDERED: That the said Chapter 13 proceedings, In Re Frank Arlyn Vandehey and Patricia Ann Vandehey, No. 80-00576 (13) be and the same is hereby dismissed for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED: That said debtors shall have twenty days from the date of this order to elect under Section 1307 of the Code to convert said matter to a Chapter 7 proceedings.

Dated: August 27, 1980.

BY THE COURT:


Bankruptcy Judge