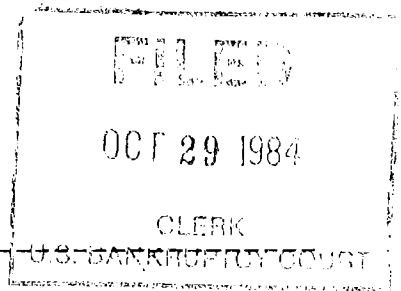


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

MARVIN GORDEN,

LM11-83-00173

Debtor.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDERS (1) DECLARING ALLOWED CLAIM
(2) DENYING OBJECTION
(3) FOR SUBMISSION OF CONFIRMATION ORDER

Debtor-in-Possession Marvin Gorden, by Attorney Galen W. Pittman, having filed an Amended Chapter 11 Plan; and Donna Gorden, by Attorney Beverly A. Fleishman, having filed an Objection to Debtor's Plan; and a hearing having been held; and the Debtor appearing in person and by counsel; and the Objector appearing in person and by counsel; and The Federal Land Bank of St. Paul appearing by Attorney Peter M. Gennrich; and Production Credit Association of Sparta appearing by Attorney Michael J. McAlpine; and the matter of the Objection being submitted on briefs; the Court, being fully advised in the premises, FINDS THAT:

1. Sometime prior to February 4, 1983, Donna Gorden commenced a divorce action against Marvin Gorden. Case No. 82-CV-568 (Family Court Branch, Monroe County Circuit Court, Wis.). The parties were separated and Mr. Gorden continued farm

operations pursuant to a state court order awarding him possession of the farm.

2. On February 4, 1983, Mr. Gorden filed for relief under Chapter 11 of the Bankruptcy Code.

3. Mr. Gorden listed Ms. Gorden as an unsecured creditor "for notice purposes" with a claim in the amount of "0". Ms. Gorden has not filed a proof of claim. ("A proof of claim may be filed at any time prior to the approval of the disclosure statement . . ." Local Rule 30).

4. On June 29, 1983, the state court granted the divorce but deferred the determination of property, maintenance and support obligations.

5. On August 29, 1983, the Gordens¹ reached a Final Stipulation, captioned in the state court, which provided, in part:

IT IS HEREBY STIPULATED AND AGREED . . . subject to the approval of the Court . . .

Maintenance to both parties is denied.

. . . the Petitioner shall receive the sum of \$65,000.00 as a further property settlement to be paid on or before the date of the hearing herein. Petitioner agrees . . . to withdraw her objections to the Respondent's bankruptcy proceeding.

¹ The Gordens were represented by their respective divorce counsel--it does not appear that the attorneys representing the Gordens in this Court were actively involved in the preparation of the Final Stipulation.

The Stipulation contains no explicit reference to a subsequent hearing. No hearing has been held and no court has approved the Final Stipulation.

6. On August 31, 1984, this Court (Martin, J.) approved the Debtor's disclosure statement.

7. On September 4, 1984, Mr. Gorden filed an Amended Chapter 11 Plan. The Plan provided for a payment to Ms. Gorden of "\$6,500 within ten (10) days after the Distribution Date, . . . the balance of \$58,500 or the amount allowed by the Court shall be amortized over [9 years with 8% interest] with the first payment due one . . . year from the date of the [initial payment] in the amount of \$6,500 plus interest . . ." In addition, the plan provides that "payments . . . in respect of any Claim which . . . is disputed, unliquidated, or contingent shall not be made until [it] becomes an allowed Claim."

8. Ms. Gorden, the sole creditor in Class 4 of the Debtor's plan, has voted to reject the plan.

9. "In the present case, there is no dispute that the claim pursuant to the written agreement exists by and between the parties in the amount of \$65,000." Brief in Support of Debtor 5 (filed October 4, 1984). See Brief in Support of Objection 1 (filed October 16, 1984).

10. Ms. Gorden objects to the Plan for the following reasons:

- A. The plan fails to provide for payment of the debt as agreed in the Stipulation to Donna Gordon and if

anything, Donna Gordon should be classified as a Class 3 debtor or post February 4, 1983, creditor.

- B. The plan fails to comply with the provisions of 11USC Section 1129(b). The proposed plan does not treat the claim of Donna Gordon in a fair and equitable manner in that Donna Gordon entered into the attached stipulation based solely on the fact that she would be receiving a lump sum payment and the plan fails to provide for said payment.

Affidavit in Support of Motion and Objection (filed Sept. 17, 1984).

11. Impairment. That the Plan does not provide for payment as provided in the Stipulation supports the argument that Ms. Gordon is an impaired creditor, 11 U.S.C. sec. 1124, but does not --in and of itself--support an objection to the plan of reorganization.

12. Classification. Under 11 U.S.C. sec. 1129(9)(A) certain costs and expenses arising after the commencement of a bankruptcy proceeding must be paid in cash. The Creditors placed in Class 3 of the Debtor's plan appear to have claims relating to costs and expenses arising after the February 4, 1983, commencement of the Chapter 11 proceedings. Accordingly, the plan calls for cash payments to those creditors.

13. The post-February 4, 1983, Final Stipulation purports to establish a fixed liability for a theretofore unliquidated pre-bankruptcy claim.

14. Ms. Gordon's claim is not "substantially similar" to those of the Class 3 claimants and she is properly excluded from said class. 11 U.S.C. sec. 1122.

15. 1129(b) Compliance. Ms. Gorden, the sole member of an arguably impaired class, has voted to reject the plan. Accordingly, the proposed plan may not meet the requirements of 11 U.S.C. sec. 1129(a)(8) and, in that case, can only be confirmed under the "fair and equitable" cramdown provisions of 11 U.S.C. sec. 1129(b)(1).

16. If Ms. Gorden is a secured creditor, unsecured creditor or interest holder in the estate of the Debtor, she is entitled to the present value of the "allowed amount" of her claim or interest because estate property will vest in Mr. Gorden upon confirmation of the plan. 11 U.S.C. sec. 1129(b)(2) (absolute priority rule: claim or interest holder entitled to present value if junior interest to receive or retain any property), 11 U.S.C. sec. 1141(b)(c) (debtor obtains estate property free from liens upon confirmation of plan), see In re Knutson, 40 B.R. 142 (Bankr.W.D.Wis. 1984) (ownership interests are junior to unsecured claims).

17. The absolute priority rule contained within 11 U.S.C. sec. 1129(b)(2) is not the only requirement of the "fair and equitable" standard contained in 1129(b)(1). In re Jones, 32 B.R. 951, 960 n. 14, 10 B.C.D. 1446, 1452 n. 14 (Bankr.D.Utah 1983).

18. Plan Confirmation. Can the plan be confirmed? The facts set forth above provide ample room for argument that, inter alia, Ms. Gorden has no valid claim against the Debtor, her claim remains unliquidated in this bankruptcy proceeding and she is not

an impaired claimant. On the other hand, there is also ample room for argument that, inter alia, the Debtor and all other classes of creditors accept Ms. Gorden's \$65,000 claim, she will not receive present value of said claim and that the Debtor's planned alteration of the terms of the Final Stipulation is in bad faith.

19. "Confusion now hath made his masterpiece!"

W. Shakespeare, Macbeth Act II, scene 3.

20. In the interests of justice and expediency, the Court enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. Donna Gorden has a valid allowed \$65,000 claim against the estate of the above-captioned bankruptcy proceeding.

2. The amended plan of reorganization proposed by the Debtor meets the requirements of 11 U.S.C. sec. 1129.

ORDER

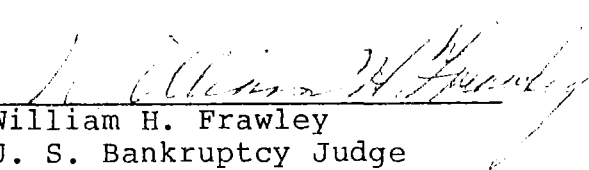
IT IS ORDERED THAT Donna Gorden is declared to have an allowed claim against the bankruptcy estate of Debtor Marvin Gorden, in the amount of \$65,000, with payments as provided in the amended plan of reorganization.

IT IS FURTHER ORDERED THAT Donna Gorden's Objection to Debtor's Plan be, and the same hereby is, DENIED, without costs.

IT IS FURTHER ORDERED THAT Debtor Marvin Gorden submit an Order of Confirmation in accordance with Fed.R.Bankr.P. 3020(c).

Dated: October 29, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Galen W. Pittman
Attorney Beverly A. Fleishman
Attorney Peter M. Gennrich
Attorney Michael J. McAlpine