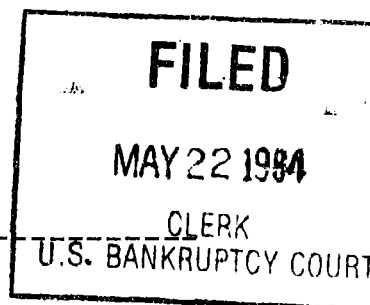


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

DENNIS D. WERLEIN
MARY M. WERLEIN

EF11-83-00406

Debtors.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDERS (1) DENYING CONFIRMATION OF PLAN
(2) DISMISSING CASE

Production Credit Association of River Falls (PCA), by Attorney Peter F. Herrell of Jordan, Herrell & Thiel, having filed a Motion to Dismiss on the grounds of, inter alia, unreasonable debtor delay and inability to effectuate a plan; and the Debtors, by Peter E. Grosskopf of Thornton, Black, Wachowski & Grosskopf, S.C., having subsequently proposed a plan; and Objections to the plan having been filed; and hearings having been held; and PCA appearing by counsel; and the Debtors appearing in person and by counsel; and the Federal Land Bank appearing by Attorney Steven R. Cray of Wiley, Rasmus, Colbert, Frasch, Norseng and Cray, S.C.; and the Commodity Credit Corporation appearing by Attorney Sheree L. Gowey of the United States' Attorney Office; and International Harvester Credit Corporation appearing by Attorney Michael L. Bertling of Carroll, Parroni, Postlewaite, Anderson & Graham, S.C.;

the Court, having heard testimony, considered the arguments and briefs of counsel and reviewed the complete record and file, and being fully advised in the premises, FINDS THAT:

1. Debtors Dennis D. and Mary M. Werlein filed for relief under Chapter 11 of the Bankruptcy Code on March 17, 1983.

2. The Debtors are farmers. 11 U.S.C. sec. 101(17)(1982).

3. The Debtors' Financial Disclosure Statement and an Addendum present the following picture of the Debtors' operations:

<u>1980</u>		
Income		72,125.25
Livestock	2,140.69	
Agriculture	43,277.03	
Dairy	23,555.75	
Other	3,151.78	
Expenses		67,851.49
Net 1980		<u>4,273.76</u>
<u>1981</u>		
Income		50,600.55
Livestock	8,840.80	
Agriculture	15,336.06	
Dairy	20,755.31	
Other	5,668.44	
Expenses		85,752.13
Net 1981		<u>(35,151.58)</u>
<u>1982</u>		
Income		29,613.04
Livestock	12,383.25	
Agriculture	8,487.79	
Other	8,742.00	
Expenses (farm only)		40,964.28
Interest	10,115.28	
Other farm	30,849.00	
Net 1982		<u>(11,351.24)</u>

1983		
Income		47,117.44
Livestock	25,306.78	
Agriculture	6,943.50	
Lumber	11,351.16	
Other	3,516.00	
Expenses (farm only)		<u>39,092.86</u>
Net 1983		8,024.58

4. The Debtors have made the following projection for 1984:

Income		84,000.00
Livestock	34,000.00	
Agriculture	50,000.00	
Expenses		34,200.00
Farm	25,200.00	
Living	9,000.00	
Net 1984		<u>49,800.00</u>
Payments to plan creditors		36,000.00

5. The Debtors, in Exhibit A to their Brief in Support of Debtors Motion for Confirmation of Chapter 11 Plan state:

PCA's failure to communicate or work with us for the past 2½ years has prevented us from operating in a profitable manner which would have assured them as well as our other creditors substantial payments. E.g., Lack of seed, fertilizer, feed, and veterinary care.

6. The Summary of Ballots for Debtors Chapter 11 Plan, filed with this Court, reveals that only one of the 10 classes of secured creditors (the class consisting of Mr. Werlein's parents) and 40% of the voting unsecured creditors (holding 39% in amount of the voting unsecured creditors' claims) have

accepted the proposed plan. All other voting creditors rejected the plan.

7. Plan Confirmation. Section 1129(a)(10) of the Code requires that at least one class of claims accept the proposed plan and that acceptance be determined without including the votes of insiders. See In re Polytherm Industries, Inc., 33 B.R. 823, 833-836 (W.D.Wis. 1983) (one impaired class must accept).

8. The only class of creditors which has accepted the proposed plan is Class 3, which consists of Mr. Werlein's parents. 11 U.S.C. sec. 1126(d) (class accepts if two-thirds in amount of allowed interests accept).

9. Mr. Werlein's parents are "insiders". 11 U.S.C. sec. 101(25).

10. Conversion. It is now more than one year since the Debtors filed for relief.

11. In 1983, while under protection of the Bankruptcy Code, the Debtors' operation showed a net profit of \$8,000 before living expenses.

12. The Debtors' 1984 projection calls for a one-third increase in livestock income and a seven-fold increase in agricultural income while simultaneously decreasing farm expenses by one-third. Despite Debtors' allegations that profit in 1982 and 1983 was adversely affected by Creditor PCA, there is no

indication that the Debtors and PCA have reached an accommodation or that the Debtors have obtained financing elsewhere-- in other words, there is no evidence that factors which the Debtors claim have prevented them from operating profitably in the past have changed.

13. In order for a plan to be confirmed, it must be feasible. 11 U.S.C. sec. 1129(a)(11).

14. It is now clear that the Debtors are either unable or unwilling to propose a feasible plan.

15. Either inability to effectuate a plan or unreasonable, prejudicial delay by the debtor is "cause" to convert or dismiss a Chapter 11 proceeding.

16. This Court may not convert a farmer's Chapter 11 proceedings to a Chapter 7 proceeding. 11 U.S.C. sec. 1112(c).

CONCLUSIONS OF LAW

1. The proposed plan can not be confirmed.
2. There is cause to dismiss the above captioned proceeding.

ORDERS

IT IS ORDERED THAT the confirmation of the plan of re-organization proposed in this matter by the Debtors be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED THAT said matter be, and the same hereby is, DISMISSED, without costs.

Dated: May 22, 1984.

BY THE COURT:



William H. Frawley
Bankruptcy Judge