

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

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In Re:

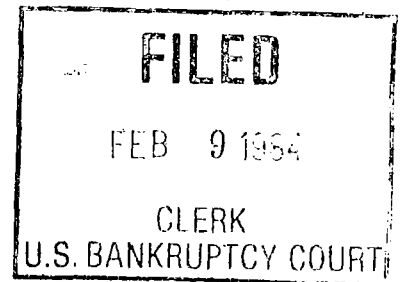
Case Number:

RICHARD G. ZAROVY  
NANCY C. ZAROVY

EF11-83-00417

Debtors.

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FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND  
ORDER FOR JUDGMENT  
DENYING CONFIRMATION OF PLAN  
OF REORGANIZATION PROPOSED BY  
BANK OF MELROSE<sup>1</sup>



The Bank of Melrose, by its attorney, Gene B. Radcliffe of Radcliffe & Laabs, having filed an amended Plan of Reorganization; and a Confirmation Hearing having been held; and The Bank of Melrose appearing by attorney; and the debtors-in-possession, Richard G. Zarovy and Nancy C. Zarovy, appearing in person and by their attorney, Mart W. Swenson, to object to said plan; and the debtors by their attorney having subsequently filed an Objection in the form of a legal brief; and the Court having heard the testimony and the arguments of counsel, considered the briefs submitted, and all the record and proceedings herein, FINDS:

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<sup>1</sup> The debtors also filed a plan of reorganization and the confirmation hearings of the two plans were combined. However, as the debtors have recently filed an amendment to their plan, a ruling on their plan would be untimely.

1. That the debtors-in-possession, Richard G. Zarovy and Nancy C. Zarovy, filed for relief under Chapter 11 of the Bankruptcy Code on March 18, 1983.

2. That, while the Bankruptcy Rules clearly envision a more formal procedure for Objections to Confirmation, Bankruptcy Rule 3020(b)(1), the Court reaches the debtors' objections on three grounds: First, The Bank of Melrose has responded to the merits of the debtors' objections without protest. Second, in this particular circumstance, the notice and the hearing were appropriate to permit a fair opportunity for parties in interest to be heard, see 11 U.S.C. sec. 102(1)(A)(1982). And third, the Bankruptcy Code requires this Court to make affirmative findings before confirming a plan, 11 U.S.C. sec. 1129(a)(1982), see Bankruptcy Rule 3020(c), cf. Bankruptcy Rule 3020(b)(2) (if no objection is timely filed, only sec. 1129(a)(3) findings may be made without receiving evidence).

3. That Mr. Zarovy is a farmer. 11 U.S.C. 101(17)(1982).

4. That the proposed plan provides, in pertinent part:

METHOD OF EXECUTION

Upon confirmation of this Plan Debtors shall execute quit claim deeds to any real property and bills of sale for any farm personal property or livestock to such creditors in return for releases of further liability or deficiency.

Debtors shall turn over the farm personal property and livestock upon confirmation and shall vacate the real

estate within 30 days of confirmation.

Payments required to be made under this Plan shall be made from future monthly income of the Debtors.

Upon confirmation all real estate farm personal property and livestock shall be surrendered or abandoned as above. All other property of Debtors shall vest in and be retained by Debtors.

5. That the debtors argue that the plan should not be confirmed because (1) it violates 11 U.S.C. secs. 303(a) & 1112(c)(1982) and (2) it violates U.S. Const. amend XIII, sec. 1; and, accordingly, the plan does not meet the requirements of 11 U.S.C. sec. 1129(a) (1) & (3)(1982).

6. That sec. 1129 provides, in pertinent part:

(a) The Court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this chapter.

(3) The plan has been proposed...not by any means forbidden by law.

7. That sec. 303(a) provides, in pertinent part:

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer. . . ;

and that sec. 1112(c) provides, in pertinent part:

(c) The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer..., unless the debtor requests such conversion.

8. That secs. 303 and 1112 clearly prohibit an involuntary liquidation of a farmer under Chapter 7 or an involuntary reorganization of a farmer under Chapter 11.

9. That these prohibitions were designed to protect farmers against premature outside interference. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 322 (1977), reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6278 ("Farmers are excepted because of the cyclical nature of their business"), S. Rep. No. 989, 95th Cong., 2nd Sess. 32 (1978), reprinted in 1978 U.S. Code Cong. & Ad., News 5787, 5818 (essentially identical language).

10. That, while the Code permits liquidation under the provisions of Chapter 11, such liquidation is limited to those cases in which the need for liquidation arises after a good faith Chapter 11 reorganization proceeding has proven futile. In re Nikon, 27 B.R. 773, 778 (Bankr. E.D. Mich. 1983).

11. That the decision to convert to a Chapter 11 liquidation is as significant an interference with a farmer's operation as the decision to convert to a Chapter 7 liquidation. Compare Finding 10 with 11 U.S.C. 1112(b)(1982).

12. That the Code prohibits the involuntary liquidation of a farmer under Chapter 11. In re Blanton Smith Corp., 7 B.R. 410, 414 (Bankr. M.D. Tenn. 1980).

13. That the Bank of Melrose argues that its plan is more in the nature of a reorganization than a liquidation because only the "business portion" of the debtors' estates is being liquidated.

14. That, in as much as Mr. Zarovy's business is farming, the Bank's plan, even if viewed as a reorganization, calls for the involuntary liquidation of a farmer which is prohibited by the Code.

CONCLUSION OF LAW

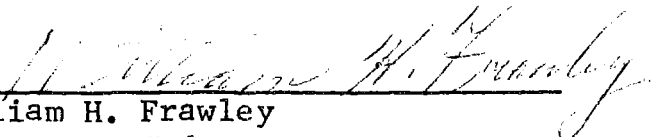
Even assuming, without deciding, that a Chapter 11 reorganization is futile in this case, the proposed plan does not meet the requirements of 11 U.S.C. 1129(a)(1) & (3)(1982) and may not be confirmed.

ORDER FOR JUDGMENT<sup>2</sup>

IT IS ORDERED THAT judgment may issue denying confirmation of the plan of reorganization proposed in this matter by the Bank of Melrose.

Dated: February 9 , 1984.

BY THE COURT:

  
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William H. Frawley  
Bankruptcy Judge

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<sup>2</sup> See Bankruptcy Rules 9001(7) and 9021(a).