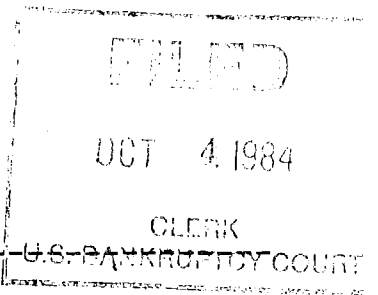


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

EDWARD J. BAUER
LORENE M. BAUER.

EF11-83-01250

Debtor.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER DENYING CONFIRMATION OF PROPOSED PLAN OF REORGANIZATION

Debtors Edward J. and Lorene M. Bauer, by Attorney Michael D. Schwartz, having filed a modified Plan of Reorganization; and Creditor The Federal Land Bank of St. Paul, by Attorney Stuart J. Krueger, having objected to said Plan; and Creditor First National Bank of Maiden Rock, by Attorney Robert L. Loberg, having objected to said Plan; and an adjourned confirmation hearing having been held; and the Debtors appearing in person and by counsel; and the Objecting Creditors appearing by counsel; and briefs having been filed; the Court, being fully advised in the premises, FINDS THAT:

1. The Debtors' modified Plan of Reorganization calls for the claims of The Federal Land Bank of St. Paul (FLB) and First National Bank of Maiden Rock (FNB) to be amortized over 25 years with 12% interest.

2. FLB is the sole creditor in Class F of the Debtors' Plan; FNB is the sole creditor in Class G of the Debtors' Plan.

Both classes are impaired under the Plan and have voted to reject the Plan.

3. Section 1129 of the Bankruptcy Code provides, in pertinent part:

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

. . .

(8) With respect to each class--

(A) such class has accepted the plan;
or

(B) such class is not impaired under the plan.

. . .

(b)(1) . . . the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of . . . paragraph [(8)] if the plan . . . is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

. . .

(A) With respect to a class of secured claims, the plan provides--

(i)(I) . . .

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such

holder's interest in the estate's interest in such property.

4. "Section 1129(b)(2)(A)(i)(II) contemplates a 'present value analysis that will discount value to be received in the future.' This present value analysis was intended to 'recogniz[e] the time-value of money.' A method for determining the time value of money is not given." In re Loveridge Mach. & Tool Co., Inc., 36 B.R. 159, 170 (Bankr.D.Utah 1983) (citations omitted).

5. The computation of the time value of money is a subjective determination which requires the Court to make predictions regarding the cost of money and the risk of loss. Accordingly, while there has been extensive litigation and commentary on the subject, see e.g., id. (appropriate interest or "discount" rate); In re White, 36 B.R. 199 (Bankr.D.Kan. 1983) (appropriate term); 5 L. King, Collier on Bankruptcy para. 1129.03[4][f] (15th ed. 1984) (appropriate interest rate), the determination is more art than science.

6. Barring special circumstances, it has been the practice of this Court to find that plans are "fair and equitable" when they propose to pay major creditors the current bank prime rate over an amortization period of up to 5 years.

7. However, given the fluid state of financial markets, a plan which provides for a fixed rate of interest over 25 years is not fair or equitable to the creditor or to the debtor.

CONCLUSIONS OF LAW

1. The proposed plan does not meet the requirements of 11 U.S.C. sec. 1129(a)(8).

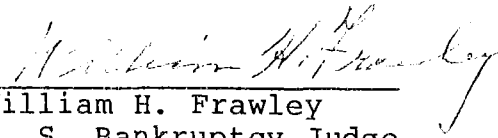
2. The proposed plan is not "fair and equitable" within the meaning of 11 U.S.C. sec. 1129(b) and can not be confirmed under the cramdown provisions of that subsection.

ORDER

IT IS ORDERED THAT the application for confirmation of the Debtors' modified Plan of Reorganization be, and the same hereby is, DENIED.

Dated: October 4, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge