UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

---

In re:

ROLAND G. HUEBNER
WILLIAM L. HUEBNER
BEAR BLUFF FARMS
HUEBNER BROTHERS

Debtor.

Consolidated Case No.

WF11-84-00376

---

OPINION AND ORDER DISMISSING DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION

Creditor Aetna Life Insurance Company (Aetna) has filed a disclosure statement and plan of reorganization in these consolidated bankruptcy proceedings. The debtors and certain creditors have objected to Aetna's disclosure statement. A hearing on this matter was held October 16, 1985. The parties have subsequently filed briefs with the court.

The major argument raised against Aetna's disclosure statement is that it is premised on a plan which improperly proposes to liquidate the farmer-debtors over their objection. The parties are in agreement that the proposed plan calls for an involuntary liquidation of debtors who are farmers within the meaning of the Bankruptcy Code. Therefore, the issue of whether such a plan may be approved is appropiately addressed at this juncture in the interest of judicial economy. See In re Kehn Ranch, Inc., 41 B.R. 832, 833 (Bankr.D.S.D. 1984).

In defense of its plan, Aetna points out that 11 U.S.C. § 1121(c) allows a creditor to file a plan where the debtor has not done so within his 120 day exclusivity period. It further notes that sec. 1123(a)(5)(D) allows for the sale of estate property to implement a plan. Based on these Code provisions Aetna asserts that a liquidation plan of reorganization of any debtor, including a farmer, may be confirmed against the debtor's will.

In opposition to Aetna's disclosure statement debtors and creditor Michael, Best and Friedrich rely on secs. 303(a) and 1112(c). Sec. 303(a) prohibits the commencement of an involuntary case against a farmer under either Chapter 7 or 11 of the Code. Sec. 1112(c) proscribes the conversion of a farmer-debtor's Chapter 11 reorganization to a Chapter 7 liquidation unless the debtor requests such conversion. It is asserted that Aetna's liquidation plan does not comply with these provisions and thus may not be confirmed.[1]

In an unpublished decision, In re Zarovy, EF11-83-417 (Bankr. W.D.Wis. Feb. 9, 1984), this court held that a reorganization providing for an involuntary liquidation of a farmer is prohibited by the Code. The basis of the court's decision was that secs. 303 and 1112 prohibit such a liquidation plan.

Aetna cites two United States Court of Appeals decisions which, subsequent to Zarovy, hold that an involuntary plan of

---

[1] 11 U.S.C. § 1129(a)(1) provides that a plan may not be confirmed unless it complies with applicable provisions of the Code.

liquidation for a farmer may be confirmed. See In re Button Hook Cattle Co., Inc., 747 F.2d 483 (8th Cir. 1984); In re Jasik, 727 F.2d 1379 (5th Cir. 1984). It is clear from a review of each decision that the courts were concerned with the problem of a debtor being able to indefinitely stall creditors by withholding a plan of reorganization. The Jasik decision correctly points out that Congress intended to address this problem in 1978 when it promulgated sec. 1121 of the Code which limits the debtor's exclusive right to file a plan to clearly defined periods. Jasik, supra at 1382. The court in Jasik stated that it found nothing in the statutory language or in legislative history which allows a debtor-farmer to refuse to file a plan and therefore hold off creditors and prevent the submission of a plan of liquidation. Id. at 1381. The desire to prevent a farmer from gaining the unwarranted and unfair advantage of being able to indefinitely stall creditors was the basis of both the Jasik and Button Hook decisions. These decisions from the Eighth and Fifth Circuits are not binding on this court and are not persuasive.

The essence of this court's dispute with both of the cases cited by Aetna is that the courts improperly trampled long-established protections for a debtor-farmer. It must be of little solace to a farmer who has filed a Chapter 11 reorganization to know that he is protected from an involuntary conversion to Chapter 7 when the same result can be worked through a liquidation plan if he is unable to propose a plan or obtain an extension within 120 days of filing.

A statutory provision should not be construed in isolation from other related provisions. In re Nikron, Inc., 27 B.R. 773, 777 (Bankr.E.D.Mich. 1983). In this connection it has been pointed out that, "[i]t is not to be presumed that Congress intended any part of a statute to be without reasonable meaning." Payne v. Panama Canal Co., 607 F.2d 155, 164 (5th Cir. 1979). The courts in Jasik, supra, and Button Hook, supra, acknowledged the existence of secs. 303(a) and 1112(c) but engaged in no analysis of the effect these provisions have on the issue of whether a liquidation plan may be confirmed over a debtor's objection. The decisions in those cases improperly left secs. 303(a) and 1112(c) without any reasonable meaning.

The proper conclusion that a liquidation plan may not be confirmed over a debtor's objection is based on a consideration of all relevant provisions of the Code and does not emasculate any of these provisions. Equally as important, such a conclusion provides the necessary assurances that a farmer-debtor cannot abuse the bankruptcy system. A farmer-debtor who abuses the reorganization process is subject to dismissal under sec. 1112(b) even though a liquidation plan may not be approved over his objection. Additionally, if a farmer-debtor has not come forth with a plan within his exclusivity period, creditors may, pursuant to sec. 1112(c), propose a plan and have it confirmed, provided it is not a liquidation plan. Under this interpretation of the Code creditors possess adequate tools to prevent debtor abuse, farmer-debtors retain in a meaningful sense the protec-

tions of secs. 303(a) and 1112(c), and no Code provision is deprived of reasonable meaning.

The court in In re Lange, 39 B.R. 483 (Bankr.D.Kan. 1984) reached a conclusion consistent with this analysis. The court there stated:

> The court believes that, upon objection by the farmer, a liquidating plan does not comply with Chapter 11 and those provisions of Chapter 3 incorporated in Chapter 11 because the liquidation plan purports to do that which the creditor could not otherwise do pursuant to § 303(a) and § 1112(c).

Id. at 486. The court held that a farm creditor's remedy is dismissal, not liquidation. Id. at 487.

An important aspect of Lange is its discussion of statutory construction. The court rejected the argument that a liquidating plan may be confirmed over a farmer-debtor's objection because the Code does not explicitly proscribe such a plan. It astutely observed that some things are not proper or permissible even though they are not specifically prohibited. As an example it cited H. D. Still's Sons v. American Nat. Bank, 209 F. 749 (4th Cir. 1913), where an involuntary bankruptcy petition was filed against a farm partnership. Petitioning creditors in that case argued that since sec. 5a of the Act did not say that farm partnerships could not be the subject of an involuntary petition, then such an involuntary petition was allowable. In dismissing this argument the Fourth Circuit stated:

> It seems to us hardly reasonable to suppose that the Congress which was careful to exempt from liability to involuntary bankruptcy . . . tillers of the soil, nevertheless intended that the exemption should not apply when two or more of those persons were associated

> as partners . . . [S]uch an intention . . . does [not] find support . . . in consideration of public policy.

Id. at 753, as quoted in Lange, supra at 485.

The reasoning of the court in H. D. Still's Sons is most appropriate in the present case. It makes little sense that Congress would specifically provide protections to a farmer-debtor by enacting secs. 303(a) and 1112(c) of the Code, yet intend that an involuntary liquidation plan may be approved over a farmer-debtor's objection. Interpreting the Code so as to allow the confirmation of a liquidation plan over a farmer-debtor's objection would in essence obliterate the protections established by secs. 303(a) and 1112(c). Under the public policy rationale set forth in H. D. Still's Sons, this interpretation should be avoided.

A final argument raised by Aetna is that Congress did not intend that secs. 303 and 1112 should prevent creditor liquidation plans in farm bankruptcies. As support for this proposition it cites House Report No. 99-178 on the Family Farmers Bankruptcy Act of 1985, H.R. 2211. The Act would, among other things, extend a farmer-debtor's exclusivity period for filing a plan from 120 days to 240 days. The House Report states:

> This will also give the farmer additional time in which to prevent the filing of a liquidation plan by creditors (as was done in Matter of Button Hook Cattle Co., Inc., 11 CBC 2d 760 (8th Cir. 1984).

Bankruptcy Law Reports, No. 152, Family Farmer Bankruptcy Act of 1985, Text of House Report No. 99-178, p. 5. At the outset, it should be noted that a report from one committee of the House of

Representatives on 1985 legislation does not demonstrate Congressional intent at the time secs. 303 and 1112 were enacted. Nevertheless, this report only acknowledges the existence and effect of Button Hook, it does not express agreement. Since the Act, according to the report, is an effort to limit Button Hook, it could just as plausibly be argued that Congress did not intend that the Code be interpreted as the Button Hook court interprets it.

Upon consideration of the arguments raised by the parties and analysis of the relevant cases which have been decided subsequent to Zarovy, supra, this court concludes that its decision in Zarovy should be followed. The Button Hook and Jasik decisions relied on by Aetna improperly remove the meaning from secs. 303(a) and 1112(c) of the Code. The court in Lange avoids this result. The Lange decision is consistent with Zarovy and a more well-reasoned decision than the cases cited by Aetna. Consequently, the court is convinced of the appropriateness of its Zarovy decision.

11 U.S.C. § 1129(a)(1) provides that a court shall approve a plan only if it complies with applicable provisions of the Code. A creditor's involuntary plan of liquidation for a farmer does not comply with secs. 303(a) and 1112(c). Therefore, a court may not approve such a plan. Aetna's plan of reorganization may not be approved. Its disclosure statement and plan of reorganization shall be dismissed.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

IT IS ORDERED THAT Aetna's disclosure statement and plan of reorganization are dismissed.

Dated: December 3, 1985.

BY THE COURT:

William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Paul J. Scheerer
Attorney Galen W. Pittman
Attorney Jerry W. Slater
Attorney Thomas F. Mallery
Attorney Donald B. Rintelman
Attorney Gary L. Dreier
Attorney Paul W. Henke, Jr.
Attorney Daniel W. Hildebrand
Attorney William R. Steinmetz