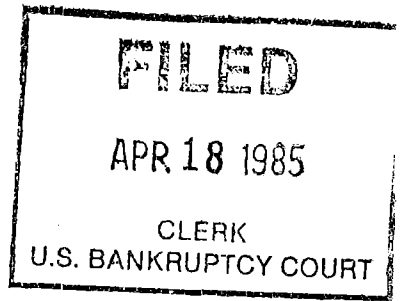


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

MICHAEL S. JENSEN
GWENDOLYN JENSEN

SF11-84-01036

Debtors

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDERS (1) MODIFYING PROPOSED PLAN
(2) FOR SUBMISSION OF CONFIRMATION ORDER

Debtors-in-possession Michael S. and Gwendolyn B. Jensen, by Attorney Robert C. Gee, having filed a plan of reorganization; and Creditor Lee Joanis, by Attorney John N. Nys, having filed objections; and a hearing having been held; and the Debtors and the Objector appearing in person and by their respective counsel; and Production Credit Association appearing by Attorney Lawrence J. Kaiser; and briefs having been filed; the Court, being fully advised in the premises, FINDS THAT:

1. On December 31, 1979, Debtors Gwendolyn B. and Michael S. Jensen entered into a land contract to purchase the Lee and Letitia Joanis dairy farm. The contract called for the \$171,000 purchase price to be amortized for 25 years at an interest rate of 8.75% (twice monthly payments total \$1,405.88 per month)--subject to renegotiation after 10 years.

2. Beginning in January of 1984, the Debtors were unable to make payments under the land contract. At that time there remained unpaid a principal amount of \$162,217.18. With interest, Debtors' obligation has since grown to an amount in excess of \$180,000.¹

3. On May 23, 1984, the Debtors filed for relief under Chapter 11 of the Bankruptcy Code.

4. The Joanis farm has a current fair market value of \$150-170,000. The present value of the farm--after deduction of costs of sale, see, e.g., In re Kurszewski, 41 B.R. 604, 605 (Bankr. W.D.Wis. 1984), and discounting to adjust for the current slow farm real estate market and the cost of holding property pending sale--is \$130,000.

5. The Debtors' proposed plan of reorganization consists of two alternative approaches. "Alternative A" is predicated on financing from the Farmers Home Administration (such financing had been approved but not funded at the time of the confirmation hearing). "Alternative B" becomes effective in the event that Fm.H.A. funding is not available.

6. Under alternative A, Mr. Joanis would be paid \$130,000 from the Fm.H.A. loan. This amount is described as "the discounted present value of the land contract". (Ms. Jensen testified

¹ Although the land contract provides for the expenses of legal proceeding to enforce the contract to be added to the principal when incurred, Mr. Joanis' June 6, 1981, proof of claim is limited to "\$162,217.18, plus interest at 8.75% per annum from 1/5/84".

that Mr. Joanis had agreed to accept \$130,000 in satisfaction of the land contract in the process of prior negotiations which, apparently, never resulted in a formal agreement.)

7. Under alternative B, the Debtors propose to pay land contract principal and interest to Mr. Joanis as follows: \$425 a month from April, 1985, through June, 1985; \$800 a month from July, 1985, through March, 1986; \$1,200 a month from April, 1986, through March 1987; \$1,700 a month from April, 1987, through March, 1988; and \$2,000 a month from April, 1988, through January, 1990; with a balloon payment on the principal balance then due (approximately \$165,000) and, "[alt that time, Debtors will also reimburse the land contract vendor for his foreclosure attorneys fees and disbursements." Payment under the schedule would not satisfy accruing interest charges until April of 1987 and would not--before the balloon payment--reduce the outstanding balance to the amount provided under the land contract amortization.

8. Ashland County, Wisconsin, has filed a proof of claim for \$5,622.17 in delinquent real estate taxes.

9. Under alternative A of the Debtors' plan of reorganization, Ashland County would be paid in full from the Fm.H.A. loan proceeds; under alternative B, the County would be paid in full in 72 monthly installments of \$78.08--no provision is made for interest.

10. Ashland County has voted to reject the Debtors' plan but did not file an objection to the plan or appear at the confirmation hearing.

11. The Debtors' 1980-84 milk production was adversely affected by three events: two outbreaks of disease within their dairy herd--vibriosis, commencing in early 1980, and infectious bovine rhinotracheitis (IBR), commencing in late 1982--and the distraction of family obligations due to the near drowning and subsequent disability of their daughter in late 1981.

12. The Debtors presented credible evidence of their ability --absent a fourth catastrophe--to meet the milk production goals upon which their plan is based.

13. The Court does not accord much weight to the expert testimony offered on behalf of Mr. Joanis: the expert had not visited the Debtors' farm, admitted that he was unfamiliar with Ashland County agriculture and did not indicate that he took into account the effect of the Debtors' prior adversity when making projections based upon the Debtors 1980-84 production levels.

14. Mr. Joanis argues that the Debtors' proposed plan does not meet the requirements of 11 U.S.C. subsecs. 1129(a)(1), (7), (8), (9) or (11).

Discussion

15. Compliance with the Code. Subsection 1129(a)(1). Because a Wisconsin land contract is not an "executory contract", In re Patch Graphics, 33 B.R. 373, 11 B.C.D. 889 (Bankr.W.D.Wis. 1983), the Court need not determine whether the Debtors' plan

"promptly" cures the default as required under 11 U.S.C. sec. 365.

16. Both alternatives of the plan adequately provide for the plan's execution and implementation as required under 11 U.S.C. sec. 1123(a)(5).

17. Payment of at least present value of Chapter 7 distribution to rejecting creditor. Subsection 1129(a)(7)(A)(ii). The result of a Chapter 7 proceeding would be for under-secured creditor Joanis to recover equitable title to the Debtors' farm.

18. Plan alternative A would result in a cash distribution to Mr. Joanis in an amount equal to the present value of the farm.

19. Even if Mr. Joanis can be considered a rejecting creditor as to alternative B,² that alternative would result in a distribution to Mr. Joanis of over \$180,000 plus 8.75% interest--well in excess of \$130,000 (the present value of the farm) plus a discount rate of 11%.

20. Impaired class accepts plan or plan is fair and equitable as to class. Subsections 1129(a)(8) & (b).

Mr. Joanis, who is the only creditor in class 3 of the plan, is impaired under alternative A of the plan, but not under alterna-

² Under alternative B, Mr. Joanis is an unimpaired claimant, Paragraph 20 *infra*, and is deemed to have accepted the plan, 11 U.S.C. sec. 1126(f). Cf. The Bankruptcy Amendments and Federal Judgeships Act of 1984, which limits subsection 1129(a)(7)(A)(ii) to impaired classes of claimants in cases filed after October 7, 1984.

tive B, see 11 U.S.C. sec. 1124(2) (cure of default), In re Madison Hotel Associates, 749 F.2d 410, 12 B.C.D. 616 (7th Cir. 1984).

21. However, alternative A is fair and equitable as to Mr. Joanis because the plan provides for him to receive the indubitable equivalent of his claim. See 11 U.S.C. sec. 1129(b)(2)(A)(iii).

22. Payment of a 507(a)(6)³ claim with interest. Subsection 1129(a)(9)(C). While it is clear that Mr. Joanis lacks standing to object to the treatment of Ashland County under the Debtors' proposed plan, it is equally clear that this Court has an independent duty to determine whether a proposed plan meets the section 1129 requirements.

23. The minor modification required to bring the plan in compliance with subsection 1129(a)(9)(C) would not adversely change the treatment of any creditor or interest holder and should not delay the confirmation of the Debtors' plan.
11 U.S.C. secs. 102(1), 105 & 1127.

24. Plan is feasible. Subsection 1129(11). Confirmation of Debtors' plan is not likely to be followed by liquidation or further reorganization.

³ Renumbered 506(a)(7) by the Bankruptcy Amendments and Federal Judgeships Act of 1984.

CONCLUSIONS OF LAW

1. The Debtors' proposed plan of reorganization should be modified to pay interest on the claim of Ashland County.
2. The Debtors' proposed plan of reorganization, so modified, should be confirmed.

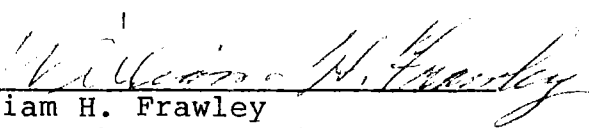
ORDERS

IT IS ORDERED THAT alternative B of the Debtors' proposed plan of reorganization be, and the same hereby is, MODIFIED to provide for the payment of interest to Class 2 claimant Ashland County.

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

Dated: April 18, 1985.

BY THE COURT



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Robert C. Gee
Attorney John N. Nys
Attorney Lawrence J. Kaiser