

UNITED STATES BANKRUPTCY COURT **FILED** WESTERN DISTRICT OF WISCONSIN

IN RE:

IN BANKRUPTCY NO.:

William E. Kuenzi, Jr. and  
Eloise M. Kuenzi

OCT 26 1992

CLERK, U.S.  
BANKRUPTCY COURT  
CASE NO. \_\_\_\_\_

92-31382-13

Debtors.

STATEMENT OF REASONS

On October 20, 1992 this court heard the debtors' motion for reconsideration of the court's September 8, 1992 decision denying confirmation of the debtors' Amended Chapter 13 Plan. The debtors had filed their amended plan on July 24, 1992 in response to the court's July 17, 1992 decision denying confirmation. The court took the motion to reconsider under advisement to untangle the values and numerical assertions made in the various hearings.

Several numbers were discussed at the July 17, 1992 confirmation hearing. Because AgriBank, FCB ("AgriBank") argued that the debtors were ineligible for Chapter 13, the court had to estimate the total amounts of secured and unsecured debt. As a result of those calculations, the record may not be as clear as intended.

To clarify: at the July 17, 1992 hearing, the court heard evidence and made certain preliminary findings. First, the court found that as of the filing of this case the value of the property at issue was \$190,000. The court also found that 8 percent was an appropriate interest rate for the calculation required under § 1325(a)(5). Finally, the court determined that Agribank's allowed secured claim was approximately \$157,000.00.

The amount of AgriBank's allowed secured claim was determined by subtracting the delinquent real estate taxes from the

\$190,000.00 value of the property. Dane County's claim for delinquent real estate taxes is \$8,750.98. Green County's claim for delinquent real estate taxes is \$19,305.68. The sum of these amounts is \$28,056.66. Thus, the amount of AgriBank's allowed secured claim is \$161,943.34 (\$190,000 - \$28,056.66). (At the July 17, 1992 hearing, the court and the parties referred to the debtors' schedules and not to the proofs of claim to determine the tax delinquency. The schedules estimated a total real estate tax delinquency of \$32,467.00, thus estimating AgriBank's allowed secured claim at \$157,533.00. However, pursuant to 11 USC § 502(a), the claims presented in the proofs of claim are deemed allowed unless a party in interest objects. Therefore, I must use \$28,056.66 as the amount of prior real estate taxes and find that AgriBank's allowed secured claim is \$161,943.34).

Upon review of the plan and the record, I find that the plan can be confirmed. The plan provides that, after payment of the real estate taxes, the attorney fees, the trustee fees, and the car payments, AgriBank will receive approximately \$83,149.55. The Chapter 13 trustee has estimated that, amortized over five years at eight percent, the debt owed to AgriBank will be reduced to \$132,845.81. (The trustee's calculations are based on the secured claim estimate of \$157,533.00 and not the actual claim of \$161,943.34. As a result, the amortization is overstated by less than three percent). The debt will actually be reduced to an amount closer to \$139,000.00.

The \$139,000.00 amount is approximately seventy-five percent

of the \$190,000 value of the property. The plan provides for refinancing through an outside source to repay AgriBank in full within the five year period. The plan lacks specificity regarding the refinancing; however, assuming that the property value remains the same, refinancing should be available where, as in this case, the debt consists of approximately seventy-five percent of the property value.

The plan proposes the sale of 140 acres and two Harvester silos in the event that a sale would work to the mutual benefit of the debtors and AgriBank. The proposal lacks specificity as to the terms and the expected effects of the sale. This lack of specificity is not fatal to the plan. Nonetheless, confirmation of this plan is conditioned upon the debtors filing, within the next 90 days, a specific statement of their intentions as to when and under what terms the property is to be disposed and carrying out that stated intention.

Although this case presents a close question of confirmation, I find that the plan can be confirmed. The motion for reconsideration is granted and the plan is confirmed on the conditions stated herein.

Dated October 26, 1992.

A handwritten signature in dark ink, appearing to read "Robert D. Martin", written over a horizontal line.

ROBERT D. MARTIN  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT

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ORDER

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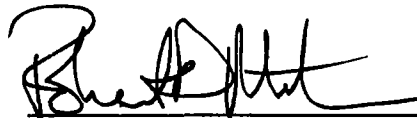
The court having this day entered its Statement of Reasons in the above-entitled matter;

IT IS HEREBY ORDERED that the debtors' September 17, 1992 motion for reconsideration is granted; and

IT IS FURTHER ORDERED that the debtors' Amended Chapter 13 Plan filed on July 24, 1992 is confirmed.

IT IS FURTHER ORDERED that confirmation is conditioned upon the debtors filing, within the next 90 days, a specific statement of their intentions as to when and under what terms the property proposed for sale under the plan is to be disposed and carrying out that stated intention.

Dated October 26, 1992



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ROBERT D. MARTIN  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

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Debtors.

STATEMENT OF REASONS AND ORDER

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Copies of the preceding Statement of Reasons and Order were mailed to the following parties on October 27, 1992:

Attorney for Debtors:

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Attorney for Farm Credit Services:

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Trustee:

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