

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501

IRVIN N HOYT
CHIEF BANKRUPTCY JUDGE

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October 29, 1996

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Subject: *In re James A. Anderson,*
Chapter 12; Bankr. No. 93-10223

Dear Counsel:

The matter before the Court is the modification of Debtor's confirmed Chapter 12 plan and objections thereto filed by the Farm Service Agency - Ag Credit. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying Order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, Debtor's proposed plan modification will be approved.

Summary of Facts. Debtor filed a Chapter 12 petition on December 29, 1993. A plan was confirmed September 27, 1994. Debtor and the Farmers Home Administration (now the Farm Service Agency or FSA) also entered a separate cash collateral agreement.

Debtor filed a motion to modify his confirmed plan on December 28, 1995 and an amended motion to modify on March 12, 1996. Following an evidentiary hearing, the amended motion to modify was denied without prejudice.

FSA filed a Motion to Dismiss on July 24, 1996 on the grounds that Debtor had failed to make his January 1, 1996 payment. Debtor

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responded on August 29, 1996 and offered to again move to modify his plan.

Debtor filed a third motion to modify on September 23, 1996 to address his inability to make a full plan payment to FSA in 1996 due to abnormal calf losses in 1995. In the Motion, Debtor proposed to pay FSA \$18,000.00 on October 1, 1996 (a partial payment of the \$32,016.00 annual payment due FSA under the original plan), a full payment plus an additional \$6,039.00 for 1996 interest on October 1, 1997, and then continue with the regular annual payments thereafter. FSA objected to the Motion on the grounds that the plan as modified was not feasible.

An evidentiary hearing on FSA's Motion to Dismiss and Debtor's proposed plan modification was held October 15, 1996. Debtor James Anderson testified about his current and projected production levels and estimated income and expenses. At the hearing, Debtor presented a letter from his father that stated his father would lend his son \$10,000.00 now and another \$10,000.00 later as needed. Debtor also produced a letter from his father that stated his father intended to waive the 1995 contract for deed payment owed to him. Debtor further testified that it was likely that his father would forgive other contract for deed payments that become due during the remainder of the plan term, if necessary to keep Debtor's plan afloat.¹

FSA loan officer Stacey Mount discussed Debtor's historical income and expenses and offered her opinion on the feasibility of Debtor's present proposed modification. FSA's supporting documents, based on information provided earlier by Debtor, did not include his father's cash infusion, the waiver of the contract for deed payments, or a slight increase in projected livestock income.

Applicable Law. A confirmed plan may be modified pursuant to 11 U.S.C. § 1229. A plan modified after confirmation must meet the same feasibility and good faith standards as the original plan. See 11 U.S.C. §§ 1222 and 1225.

Feasibility is fundamentally a question of fact. *In re Foertsch*, 167 B.R. 555, 566 (Bankr. D.N.D. 1994). A Chapter 12 plan must offer a reasonable prospect of success and be workable. *Id.* at 565. An "iron clad guarantee" is not required but the plan

¹ The Court did not consider a letter that Debtor submitted after the hearing [filed October 18, 1996] because FSA did not have an opportunity to cross examine Debtor on the information provided therein.

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should not be overly optimistic nor belabor the inevitable demise of a hopelessly insolvent debtor. *Id.* at 565-66 (cite therein); *In re Oster*, 152 B.R. 960, (Bankr. D.N.D. 1993). Future income and expense projections, including production and market rate predictions, should be rooted on objective fact. *Foertsch*, 167 B.R. at 565-67. Off-farm income may be considered. *In re Barnett*, 162 B.R. 535, 538 (Bankr. W.D. Mo. 1993).

"The test is whether the things which are to be done after confirmation can be done as a practical matter under the facts." *Clarkson v. Cooke Sales & Service Co. (In re Clarkson)*, 767 F.2d 417, 420 (8th Cir. 1985) (quoting *In re Bergman*, 585 F.2d 1171, 1179 (2d Cir. 1978)). A plan must be probable, not merely technically possible. *Foertsch*, 167 B.R. at 566. The Court may, however, resolve conflicts in the evidence in the debtor's favor due to the underlying purpose of Chapter 12.

Discussion. Feasibility of the modified plan for the remainder of 1996 is established by Debtor's funds and marketable calves on hand. Debtor's father has provided Debtor with a cash infusion of \$20,000.00. Half of these funds enabled Debtor to keep current with operating creditors, alimony obligations, and family living expenses. From the \$10,000.00 balance of the funds lent by his father, cattle proceed funds on hand totaling \$29,762.92, and some marketable calves on hand, Debtor can make the modified payment of \$18,000.00 to FSA on October 1, 1996, pay a \$5,000.00 feed bill, and pay his attorney.

Feasibility of the modified plan for 1997 is a closer issue. Based on the evidence presented and the change in circumstances since Debtor's prior motion to modify, however, the Court finds in Debtor's favor. First, Debtor's father stands ready to insure that Debtor makes his plan payments. He has provided cash, has waived a contract for deed payment, and will likely waive such payment again.

Second, cattle prices are slightly more optimistic. Debtor's projected sale prices for his livestock are reasonable based on the current market. His marketing plan is sound. Debtor's projected operating expenses are within his historical average, especially when the abnormally high expenses in 1992 are discounted.

Third, Debtor's 1996 calf crop did not suffer from the adverse weather that the 1995 calves faced. Consequently, Debtor has sufficient 1996 calves on hand to market as weanlings or yearlings. Moreover, Debtor will have fall 1996 and spring 1997 calves that he can market as either weanlings or yearlings in 1997. This will give Debtor sufficient flexibility in when and how many calves he

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sells to cure the projected shortfall in 1997 shown by FSA on Exhibit I [as corrected for a higher projected livestock income, the actual 1996 interest due, and the Trustee's fees due] and still meet his post-discharge payments.

For these reasons, the Court concludes that Debtor's proposed plan modification filed September 23, 1996 is feasible. As modified, the plan is not overly optimistic. Instead, it is workable and has a reasonable prospect of success.

An appropriate order granting Debtor's September 23, 1996 motion to modify will be entered. FSA's Motion to Dismiss will be denied.

Sincerely,



Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: case file (docket original; copies to counsel)

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

OCT 29 1996

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to those creditors and other parties to interest mentioned on the attached service list.

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

By: CH
Date: 10.29.96

Case: 93-10223 Form id: 122 Ntc Date: 10/29/96 Off: 3 Page : 1

Total notices mailed: 7

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