UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Northern Division

In re:	)	Bankr. No. 97-10001
	)	
JAMES LESLIE COATS	)	Chapter 12
Soc. Sec. No. 504-60-9346	)	
	)	
and	)	
	)	DECISION RE: DEBTORS' MOTION
JANE IRENE COATS	)	TO MODIFY CONFIRMED PLAN AND
Soc. Sec. No. 503-94-4987	)	FSA'S MOTION TO DISMISS
	)	
Debtors.	)	

The matters before the Court are the Motion to Dismiss filed by the Farm Service Agency and the Second Motion to Modify Confirmed Chapter 12 Plan filed by Debtors. These are core proceedings under 28 U.S.C. § 157(b)(2). This Decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014(c). As set forth below, the Farm Service Agency's Motion to Dismiss and Debtors' Second Motion to Modify both will be denied, and Debtors' general discharge order will be entered.

I.

James L. and Jane I. Coats renegotiated a debt to the Farm Service Agency ("FSA") in mid 1993. As part of the process, the Coats signed the second of two "Shared Appreciation" agreements with FSA. Under this second agreement the Coats agreed that FSA could recapture some of the $30,260.79 in debt that it wrote down if certain conditions occurred, most notably, if the value of Coats' farm land increased in value within a certain time.

On January 2, 1997, the Coats ("Debtors") filed a Chapter 12 petition in bankruptcy. According to their schedules filed later that month, Debtors owed the FSA a total of $371,933.09 of which $116,933.09 was unsecured. Collateral for this debt included a first mortgage on some land and a second mortgage on other land and Debtors' personalty. Debtors also scheduled FSA as holding a separate unsecured claim for $400 for an overpayment on a crop deficiency.[1]

In August 1997, FSA's motion to sell two quarters of Debtors' land was approved and Debtors' motion to sell certain personal property. In December 1997, FSA and Debtors filed a stipulation regarding the sale of the realty, the application of the proceeds, and some related items. The stipulation was approved in early January 1998 without objection.

In mid-1998, Debtors and FSA litigated the extent of FSA's secured interest in Debtors' 1997 calf crop. This issue was eventually resolved by the confirmation of a plan in early 1999. Under the confirmed plan, FSA was to receive annual payments on its land debt and chattel debt. The chattel debt payments would continue for a few years after the three-year plan term. The land

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[1] Debtors also stated that Christine Moore was a co-debtor on FSA's claim, but they did not give any specifics.

debt payments would continue after completion of the plan until 2028. Debtors' confirmed plan also stated:

> Debtors further agree to recognize and be bound under the terms of the "shared appreciation" agreement entered with FSA, including any dismissal of the Chapter 12 Plan.

Regarding its unsecured claim of $150,903.68, FSA was to receive a share of any of Debtors' disposable income during the plan term.

In early 2002, the case trustee moved to dismiss the case because Debtors had not timely filed their final report and account after completion of plan payments. In response, Debtors advised the trustee and Court that they had not yet completed their plan payments. In particular, Debtors stated they still owed payments on real estate taxes and also potential payments on the shared appreciation agreement with FSA. Debtors stated litigation pending in federal district court may affect how the shared appreciation agreement was interpreted and applied in their case. Debtors also advised the Court that they would likely move to modify their confirmed plan to address the real estate and shared appreciation agreement claims.

The Court continued the hearing on the trustee's motion to dismiss to allow Debtors time to file a motion to modify their confirmed plan. Debtors filed their motion on February 20, 2002. Therein, Debtors proposed to reamortize their remaining secured chattel debt to FSA over a three-year term beginning in 2003. As

to FSA's claim secured by real estate, Debtors' motion to modify stated FSA had agreed to bring real estate taxes current upon approval of the modification. Debtors then proposed to reamortize the total debt, including the taxes paid, over the remaining 26 years on the note. As to the share appreciation agreement,[2] Debtors proposed that no payment be made on it until a final ruling on the pending district court action was received. If it were finally determined that Debtors owed FSA money under the shared appreciation agreement, then Debtors proposed to pay it under FSA's reamortized claim secured by realty. FSA objected to Debtors' motion to modify. Eventually, the matter was resolved by stipulation that was filed July 16, 2002.

Under the stipulation, Debtors agreed to the following (emphasis added):

. . . .

> 4. FSA Shared Appreciation Agreements. Debtors agree that they shall be bound by both Shared Appreciation Agreements with FSA. Payments on the first agreement in the sum of $22,650.00 shall be amortized over 25 years at 5% interest. Payments of $1,608.00 shall be made directly to FSA on February 1 of each year from 2003 through 2027. **On the second Shared Appreciation agreement, debtors shall use FSA servicing rules and regulations currently in place to determine how this amount shall be**

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[2] It was not clear which shared appreciation agreement was referenced here.

> **paid back. Debtors shall continue to cooperate with FSA, and comply with FSA loan servicing requirements as set forth in the plan.**
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> . . . .
>
> 6. Debtors shall not seek a discharge until payments due February 1, 2003 to FSA shall have been made in full, and only then if all real estate taxes are current. Debtors shall not be able to obtain discharge over FSA objection otherwise.

An order approving the modification, as altered by the stipulation, was entered July 18, 2002.

Debtors filed their final report and account on July 1, 2003. FSA filed a Motion to Dismiss on August 11, 2003, and stated:

> Pursuant to the terms of the Debtors' modified plan, the Debtors agree to be bound by two Shared Appreciation Agreements and to use FSA servicing rules and regulations to determine how this amount will be paid. On May 9, 2003, the Debtors were notified (by certified mail) of the amount due and the options available for payment. The Debtors did not respond to this notice. They have no remaining administrative loan servicing options for payment. This debt became delinquent on July 13, 2003. The amount of recapture due is $30,060.79.

In their response, Debtors argued the payments due under the shared appreciation agreement (apparently referencing the second agreement) were outside the plan term. At a September 2003 hearing, the parties agreed that Debtors would file another motion to modify their confirmed plan if they and FSA could not reach an

accord on the shared appreciation agreement.[3]

An agreement was not reached and Debtors filed a second motion to modify their confirmed plan on October 20, 2003. Therein, Debtors proposed to amortize over 25 years the $30,260.79 that they owe FSA under the second shared appreciation agreements. FSA objected because the modification extended plan payments beyond the five-year plan term permitted by 11 U.S.C. § 1229(c) and because it did not comply with applicable federal regulations. FSA again noted that Debtors had failed to timely exercise repayment options on the second shared appreciation agreement. A briefing schedule was established.

In its brief, FSA stated that the debt under the second shared appreciation agreement became due on July 13, 2003, and that Debtors, despite having received notice personally and through their counsel, did not timely request loan servicing options from FSA on this debt. FSA argued that Debtors could not modify the payment terms for this debt in bankruptcy because their maximum five-year plan term would end on January 8, 2004. Further, FSA argued that Debtor could not modify this shared appreciation claim because under the July 16, 2002, stipulation Debtors had agreed to

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[3] In its Motion to Dismiss, FSA also argued that Debtors had failed to pay 2002 real estate taxes that were due May 1, 2003. That issue has apparently been resolved since it was not addressed in the parties' stipulated facts and briefs.

be bound by FSA's servicing rules and regulations and those rules and regulations would not permit an amortization as proposed by Debtors.

In their brief, Debtors acknowledged that they agreed in July 2002 that they would be bound by FSA's rules and regulations as to the shared appreciation agreements. It was that modified plan term, however, that they wanted to again modify by addressing the second shared appreciation agreement debt under the Bankruptcy Code rather than under applicable federal regulations. Debtor argued that § 1229 does permit them to modify this claim because claims secured by realty need not be paid in full during the plan term. Instead, Debtors argued this long-term debt could be repaid outside the plan pursuant to § 1222(b)(9).

II.
MODIFICATION OF DEBTORS' PLAN.

The three-year term for Debtors' plan as originally confirmed ended January 1, 2002.[4] The July 2002 modification did not specifically change the last plan payment date except that Debtors agreed not to seek a discharge until they had made their February, 2003, payments to FSA. FSA's claim under the second shared appreciation agreement matured on July 13, 2003, which was outside

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[4] Debtors' Plan as Confirmed and the attendant confirmation order are *not* a model of clarity regarding the first plan payment date.

the plan term of both Debtors' plan as originally confirmed and as modified on July 18, 2002. Thus, the first issue presented is whether Debtors may again modify the plan treatment for FSA's second shared appreciation agreement where any payments will fall outside the three to five-year plan term established by § 1229(c).

A modification must be sought "before the completion of payments under such plan." 11 U.S.C. § 1229(a). The Court is satisfied that payments on long-term debts are still "payments under such plan" that may be modified after confirmation under § 1229(a). *In re Schnakenberg*, 195 B.R. 435,438. The more difficult section to apply here is § 1229(c), which provides:

> A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

11 U.S.C. § 1229(c). The section is identical to § 1222(c) except that no long-term payments under either § 1222(b)(5) or § 1222(b)(9) are recognized.

One court has found Congress' exclusion of subsections (b)(5) and (b)(9) from § 1229(c) to be intentional; it strictly construed § 1229(c) to mean that payments under long-term plan payment terms cannot be modified if paid outside the plan term. *Schnakenberg*, 195 B.R. at 439-40. Another court reached the same conclusion,

though with different verbiage, when it stated payments under a plan modified post-confirmation may not extend beyond five years after the first payment becomes due under the confirmed plan. *In re Harry & Larry Maronde Partnership*, 256 B.R. 913, 915-16 (Bankr. D. Ne. 2000). One reporting court reached the opposite conclusion. *In re Hart*, 90 B.R. 150, 152-54 (Bankr. E.D.N.C. 1988), the court concluded that § 1229(c) could not have been intended by Congress to prohibit the modification of long-term plan payments since that interpretation would be inconsistent with Chapter 12's stated purpose of giving farmers a "fighting chance to reorganize their debts and keep their land." *Hart*, 90 B.R. at 153-54 (quoting Joint Explanatory Statement of the Committee of Conference, reprinted in 132 CONG.REC. H89998, H8999 (Oct. 2, 1986)). The court in *Hart* also compared and contrasted § 1229(c) with the modification provisions for Chapter 13 and Chapter 11 cases and concluded that Congress did not intend to restrict plan modifications more so in Chapter 12 than in Chapter 11.

This Court agrees with the Court in *Hart* that § 1229(c) was erroneously copied from § 1329(c) and that Congress did not intend to limit a Chapter 12 debtor's ability to modify long-term plan payments. However, the Supreme Court continues to dictate that a bankruptcy court must abide by the plain meaning of a Bankruptcy Code section, despite its perhaps unintended implications. *Lamie*

v. United State Trustee, 124 S.Ct. 1023, 1030-32 (2004). Consequently, this Court can only conclude that § 1229(c) does not permit Debtors to modify any plan payments that extend beyond the original three to five year plan term. Since that five-year anniversary has passed in this case, Debtors can no longer modify the plan treatment regarding their second shared appreciation agreement with FSA.

Clearly, unusual circumstances were presented in this case. Debtors and their counsel apparently misunderstood the severe time restraints imposed by FSA's regulations should they want to amortize the sum due under the second shared appreciation agreement. Accordingly, the Court urges FSA to work with Debtors to formulate an acceptable resolution that will not unnecessarily place Debtors in a foreclosure situation. If that happens, Debtors' Chapter 12 reorganization will have been for naught and the shared appreciation agreement, which likely was designed by FSA to aid both debtors and itself, will instead have produced the most harsh of outcomes.

III.
DEBTORS' ENTITLEMENT TO A DISCHARGE.

As noted above, under both Debtors' original plan as confirmed and the first post-confirmation modification, Debtors agreed to pay FSA under the second shared appreciation agreement pursuant to

applicable federal rules and regulations. That debt did not first become due until July 13, 2003, which was after Debtor's plan term was completed. Section 1228 provides that a discharge order may be entered after completion of all plan payments other than long-term payments under §§ 1222(b)(5) or (b)(9). Accordingly, Debtors need not have made any payments on the second shared appreciation agreement to receive their general discharge of debts. The discharge order will not, of course, discharge Debtors' long-term debts with FSA, including the second shared appreciation agreement. 11 U.S.C. § 1228(a)(1).

An order will be entered denying both FSA's Motion to Dismiss and Debtors' Second Motion to Modify. Debtors' general discharge order will be entered once the dismissal and modification order is final.

Dated this 25th day of February, 2004.

BY THE COURT:

Irvin N. Hoyt
Bankruptcy Judge

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered
FEB 25 2004
Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

ATTEST:
Charles L. Nail, Jr., Clerk
By
Deputy Clerk
(SEAL)

UNITED STATES BANKRUPTCY COURT SEAL

I hereby certify that a copy of this document was electronically transmitted, mailed, hand delivered or faxed this date to the parties on the attached service list.

FEB 25 2004

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