

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Northern Division

In re:)
) Bankr. Case No. 88-10212
JOHN EDWARD HENNING)
Social Security No. 503-34-8208) Chapter 12
)
and) MEMORANDUM OF DECISION RE:
MARILYN JOYCE HENNING) DEBTORS' DISCHARGE
Social Security No. 504-44-1212)
)
Debtors.)

The matter before the Court is Debtors' request for a discharge and the objections thereto filed by Chapter 12 Trustee A. Thomas Pokela and the Farmers Home Administration. This is a core proceeding under 28 U.S.C. § 157(b). This Memorandum and accompanying order shall constitute findings and conclusions under F.R.Bankr.P. 7052.

I.

Debtors' Chapter 12 debt adjustment plan was confirmed on June 9, 1989. Under the plan, FmHA's claim for \$207,475.00, secured in 890 acres of real property, was to be paid over 29 years. The plan also gave FmHA a \$70,500.00 secured interest in unencumbered chattels. This chattel value was to be paid over fifteen years with 3% interest against FmHA's unsecured claim. Upon completion of these payments secured by chattels

all indebtedness to FmHA, except the allowed secured claim on land, will be deemed paid and satisfied in full, and FmHA shall thereupon and forthwith cancel, release, satisfy and discharge all liens and encumbrances whatsoever against the Debtors' chattels.

The plan further acknowledged that FmHA still had an unsecured claim for \$242,515.94 after payment of the claims secured by land

and chattels.¹ The plan stated:

There is no money, property, or anticipated income that will reach this portion of the debt. However, after payment of operating expenses, living expenses, and payments outside the Plan and under the Plan, if any additional income becomes available to the Debtors from the effective date of the Plan through its termination on June 30, 1992, such funds shall be delivered to the Chapter 12 Trustee for distribution of the same to himself for his fees, as provided by law, and for payment of the balance to the undersecured debt of Farmers Home Administration. The Debtors anticipate that there will not be any payments at all through completion of the Plan on the undersecured debt. After distribution of dividends from the last payment made through the office of the Chapter 12 Trustee on June 30, 1992, any remaining undersecured and unsecured indebtedness, and all indebtedness to the Chapter 12 Trustee, will be deemed paid in full with the exception of the remaining allowed secured claims to FmHA on land and chattels as defined and prescribed herein.

Debtors filed their Final Report and Account on October 16, 1992. FmHA filed an objection on November 13, 1992 on the grounds that Debtors had not made all disposable income payments pursuant to §§ 1225(b) and 1228(a). Chapter 12 Trustee A. Thomas Pokela filed a similar disposable income objection on November 20, 1992. A discharge hearing on January 20, 1993 was continued several times pending a settlement. The objections were never resolved.

On April 19, 1993 Debtors filed a response to the objections. Therein, Debtors claimed that they had no disposable income on June 30, 1992 when the plan terminated and that the plan had a special disposable income provision not in accord with §1225(b)(1)(B). Upon request of the parties, the Court took the matter under advisement to determine what obligation, if any, Debtors had to pay disposable income.

¹ Debtors had no other unsecured claim holders in the Chapter 12 case. The confirmed plan paid the unsecured creditors from Debtors' previous Chapter 11 case in full without interest over ten years and gave them a lien on certain real property.

II.

Section 1225(b)(1)(B) obligates a Chapter 12 debtor to make disposable income payments if unsecured creditors file an appropriate objection. Disposable income is defined under the Code as income that is received but is not "reasonably necessary" for the support of the debtor and his family and for the "continuation, preservation, and operation of the debtor's business." 11 U.S.C. § 1225(b)(2). The disposable income repayment term under § 1225(b)(1)(B) "begin[s] on the date that the first payment is due under the plan" and runs the three to five-year term of the plan.

Under § 1222(b)(2), a plan may modify the rights of the holders of unsecured claims. Section 1227(a) provides that the debtor and all creditors are bound by the terms of the confirmed plan. Nothing in the Code prohibits the debtor from offering disposable income treatment different from that defined by § 1225(b)(2)(B) as long as the best interest of creditors test under § 1225(a)(4) is met.

III.

In this case, Debtors offered disposable income treatment to FmHA that is slightly different than the disposable income provided by § 1225(b)(1)(B). Debtors gave FmHA a secured interest in chattels and also committed disposable income to FmHA as defined by the plan and for a term described in the plan. FmHA accepted this treatment and both parties are bound by it.

The confirmed plan defines disposable income as "any additional income" that may become "available to the Debtors from the effective date of the Plan [June 30, 1989] through its termination on June 30, 1992." The plan describes "additional

income" as the funds remaining after the "payment of operating expenses, living expenses, and payments outside the Plan and under the Plan," including the fees to the Chapter 12 Trustee as provided by law. The plan states the balance is to be applied to the undersecured debt of Farmers Home Administration. While the confirmed plan provides that Debtors will make long term payments to FmHA on secured claims in land and chattels, there is nothing in the disposable income provisions on pages 30 and 31 of the plan that indicates the chattels payments were bargained for in lieu of disposable income payments.

An order will be entered in accordance with these findings. A final status conference will be held August 24, 1993. At the status conference, interested parties should be prepared to report a settlement to the Court or set a trial date.

Dated this ____ day of August, 1993.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy

(SEAL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Northern Division

In re:)
) Bankr. Case No. 88-10212
JOHN EDWARD HENNING)
Social Security No. 503-34-8208) Chapter 12
)
and) ORDER DEFINING DISPOSABLE
MARILYN JOYCE HENNING) INCOME AND THE REPAYMENT
Social Security No. 504-44-1212) TERM UNDER DEBTORS'
) CONFIRMED PLAN AND SETTING
Debtor.) A STATUS CONFERENCE

In recognition of and compliance with the Memorandum of Decision Re: Debtors' Discharge entered this day,

IT IS HEREBY ORDERED that disposable income as defined by Debtors' confirmed plan is "additional income" remaining after payment of "operating expenses, living expenses, and payments outside the Plan and under the Plan" and Trustee fees and that the disposable income repayment term as provided by Debtors' confirmed plan is June 30, 1989 through June 30, 1992; and

IT IS FURTHER ORDERED that a FINAL status conference on Debtors' discharge and the objections thereto shall be held Tuesday, August 24, 1993 at 10:45 a.m. in the Fourth Floor Courtroom, U.S. Post Office and Federal Courthouse, 102 Fourth Avenue S.E., Aberdeen, South Dakota. At that time a trial date will be set if interested parties have not settled all objections.

So ordered this ____ day of August, 1993.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy

(SEAL)