

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
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June 26, 1995

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Chapter 12 Trustee
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Subject: ***In re Broken Bow Ranch, Inc.,***
Chapter 12; Bankr. No. 87-30137

Dear Trustee and Counsel:

The matter before the Court is the Motion to Determine Entitlement of Disposable Income proceeds filed by Trustee Lovald and the responses thereto. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute findings and conclusions under F.R.Bankr.P. 7052. As set forth below more fully, the Court concludes that Farm Credit Bank of Omaha may participate fully in the Trustee's distribution of disposable income to unsecured claim holders.

Brief Summary of Facts. Debtor's Chapter 12 plan was confirmed July 11, 1988. The confirmed plan incorporated a settlement between Debtor and Federal Land Bank of Omaha (now Farm Credit Bank of Omaha [FCBO]). The settlement resolved several issues between Debtor and FCBO, including an appeal of a valuation decision, and provided for the cancellation of some FCBO stock without credit to Debtor. The settlement was noticed to all creditors and other parties in interest for objections. No objections were filed and the settlement was approved by Order entered July 8, 1988. The plan and settlement gave FCBO a secured claim of \$275,700.00 and an unsecured claim of \$85,644.00 against Debtor, although the Court earlier had valued FCBO's secured claim

Re: Broken Bow Ranch, Inc.
June 26, 1995
Page 2

at \$233,974.51 (\$234,840.00 less real estate taxes due of \$865.49).¹

Contemporaneous with the confirmation of Debtor's plan, Edward C. and Lola E. Martin, made a compromise agreement with FCBO. The Martins agreed to give FCBO \$20,000.00 and FCBO agreed to release the Martins from liability as co-makers with Debtor on FCBO's note.

On January 16, 1990, Trustee Lovald, Debtor, the Farmers Home Administration (now the Rural Economic and Community Development Agency [RECD]), and FCBO filed a stipulation that modified the treatment of the unsecured claims of RECD and FCBO. The Stipulation recognized that at confirmation RECD had an unsecured claim of \$412,668.13 and FCBO had a secured claim of \$85,664.00.² The Stipulation also acknowledged that one annual payment of \$3,565.00 had been made by Debtor post-petition and that the payment had been applied *pro rata* to the two unsecured claims (approximately \$2,958.95 for RECD and approximately \$606.05 for FCBO).³ Under the stipulation, RECD and FCBO relinquished their entitlement to two future annual payments on their unsecured claims and agreed to look only to disposable income for payment. The stipulation also resolved an error in Debtor's liquidation analysis by having Debtor pay \$3,200.00 to RECD and \$800.00 to FCBO on their unsecured claims. After application of the funds received under the stipulation and the one annual payment, RECD had a remaining unsecured claim of approximately \$406,509.18 and FCBO had a remaining unsecured claim of approximately \$84,237.95. The stipulation was approved by Order entered January 18, 1990.

On March 30, 1992, Debtor filed its final report and account. On August 21, 1992, William E. Martin, another co-maker with Debtor on the FCBO note, and his wife Michelle Martin gave FCBO another note for \$6,000.00. In exchange, FCBO agreed not to contest whether Debtor had paid all disposable income under its plan. FCBO expressly retained its right to participate in any disposable income distribution.

¹ The valuation order and findings of fact and conclusions of law entered April 18, 1988 have a mathematical error in them and incorrectly state that the secured value of FCBO's claim is \$233,934.51.

² The correct amount is \$84,644.00.

³ These calculations are approximate because the Stipulation and Order approving the Stipulation did not disclose whether the \$3,565.00 annual payment included Trustee's fees.

Re: Broken Bow Ranch, Inc.
June 26, 1995
Page 3

Trustee Lovald and RECD objected to Debtor's discharge on the grounds that Debtor had failed to pay all disposable income. After an evidentiary hearing, this Court found that Debtor owed \$81,862.00 in disposable income (\$74,420.00 after the Trustee's fees are deducted). That decision was upheld on appeal. Debtor made its disposable income payment to Trustee Lovald and received a discharge on March 10, 1995.

On March 13, 1995, Trustee Lovald filed a Motion for Court Determination of Creditor Entitlement to Disposable Income Proceeds. Therein, he asked the Court to determine whether FCBO should participate in the distribution of disposable income where FCBO had made a "secret" agreement with Debtor's co-makers not to object to Debtor's discharge in exchange for \$6,000.00 but had not credited the \$6,000.00 against its claim.

FCBO resisted the Trustee's Motion on April 3, 1995. It claimed all parties were bound by Debtor's confirmed plan. RECD responded on April 3, 1995 that both the \$20,000.00 and the \$6,000.00 payments to FCBO from the Martins individually should be credited against FCBO's unsecured claim.

A hearing was held April 6, 1995. Appearances included Trustee Lovald, Assistant U.S. Attorney Thomas A. Lloyd for RECD, and John C. Quaintance for FCBO.

Discussion. First, under 11 U.S.C. § 1227(a) all parties are bound by the secured and unsecured values of FCBO's claim as stated in the plan and stipulation. While FCBO had no legal basis for the nearly \$40,000.00 increase in its secured claim against Debtor in lieu of a claim against the Martins personally, no one timely objected to FCBO's stipulation with Debtor. Having learned that FCBO may not put all its cards on the table, the Court and Trustee must now be more vigilant when assessing any settlements FCBO drafts and notices for objections.

Further, the Court can find no legal basis for excluding FCBO from the pool of unsecured claim holders or for reducing FCBO's unsecured claim against Debtor by \$20,000.00 or \$6,000.00. FCBO's side deals were with Debtor's co-makers. The \$20,000.00 and the \$6,000.00 were not paid from bankruptcy estate funds. While the Court finds FCBO's tactics to be questionable, they do not appear to be unlawful or unethical, especially where Debtor's co-makers were not co-debtors and where Debtor and the co-makers were represented by counsel. It is unfortunate, however, that FCBO used its superior bargaining position with the co-makers to circumvent the bankruptcy process.

Re: Broken Bow Ranch, Inc.
June 26, 1995
Page 4

An order will be entered directing the Trustee to distribute *pro rata* the \$74,420.00 in disposable income based on unsecured claims of approximately \$406,509.18 for RECD and approximately \$84,237.95 for FCBO.⁴

Unsecured claim holder Tri-County Electric Association did not file a proof of claim timely. Therefore, it does not have an allowed, unsecured claim under 11 U.S.C. § 502(a) and may not participate in the distribution of disposable income under 11 U.S.C. § 1225(b) and the terms of the confirmed plan.

Sincerely,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: Bankruptcy Clerk
United States Trustee

⁴ See footnote 3.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In Re:)	Case No. 87-30137-INH
)	
BROKEN BOW RANCH, INC.,)	Chapter 12
)	
Employer's Tax ID No. 46-0267495)	ORDER DIRECTING TRUSTEE
)	TO DISTRIBUTE
Debtor.)	DISPOSABLE INCOME

In recognition of and compliance with the letter decision entered today on Trustee John S. Lovald's Motion for Court Determination of Creditor Entitlement to Disposable Income Proceeds,

IT IS HEREBY ORDERED that Trustee Lovald shall distribute *pro rata* the \$74,420.00 in disposable income based on unsecured claims of approximately \$406,509.18 for the Rural Economic and Community Development Agency and approximately \$84,237.95 for Farm Credit Bank of Omaha.

So ordered this _____ day of June, 1995.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA A. JOHNSON, ACTING CLERK

By _____
Deputy Clerk

(SEAL)