

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
FAX (605) 224-9020

October 25, 1989

Carlyle E. Richards, Esq.
222 Midwest-Capitol Building
Aberdeen, South Dakota 57401

Thomas M. Tobin, Esq.
Post Office Box 1456
Aberdeen South Dakota 57402

Re: Norman and Sheila Christofferson
Chapter 12 186-00308

Dear Counsel:

The Court has before it debtors' motion to modify their Chapter 12 plan, filed by Thomas Tobin on August 8, 1988. Carlyle Richards, attorney for the First National Bank of Eden, timely objected to the proposed modification. After reviewing the facts, the argument of counsel and the applicable law, the Court sustains the bank's objection.

The relevant facts are undisputed and were stipulated to by the interested parties on June 30, 1989. Debtors filed for relief and reorganization under Chapter 12 of the Bankruptcy Code on November 26, 1986. As of that date, debtors owed the bank \$46,298.19 principal and \$6,191.78 interest pursuant to a promissory note dated December 4, 1985. The promissory note was secured by a first security interest in all of debtors' machinery, livestock, grain or feed and a 1985 crop lien. All such interests were properly perfected by filing. The bank filed its proof of claim totalling \$52,489.97 on January 21, 1987. On February 10,

Re: Norman and Sheila Christofferson
October 25, 1989

Page 2

1988, debtors and the bank stipulated that the bank had a secured interest in the collateral in the amount of \$18,120.00, which would draw interest at the rate of 13% over a five year period, with the first annual payment to be due on or before December 31, 1988, and with all such payments to be net to the bank. This stipulation and amendment to Christoffersons' plan was approved by the Court on March 3, 1988. The amendment clearly stated that the amount of the bank's allowed secured claim was "subject to credit for any collateral returned to the bank and sold[.]" However, it does not provide that the bank's claim could be satisfied merely by surrendering all of the collateral to the bank at some unspecified time thereafter.

Christoffersons paid the bank \$800.00 on February 22, 1988. On May 12, Christoffersons tendered the return of the machinery, which had not been used since November 1987, "as full payment of the debt except for the unsecured portion." After the plan was approved, Christoffersons put 404 acres of farm land into the Conservation Reserve Program, which eliminated the need for the farm equipment. The bank indicated that it was willing to accept the collateral and liquidate the same, but with the understanding that Christoffersons' obligation to the bank would be credited only to the extent of the net proceeds of the sale. On May 1, 1989, Christoffersons' collateral was sold at auction for the gross sum of \$6,510.00. After deducting expenses, \$6,183.28 was applied to the debtors' obligation to the bank. Per the June 30 stipulation, the bank claims that \$8,921.09 principal and \$1,342.13 interest is still due and owing by the debtors to the bank.

The bank contends that the debtors are attempting to modify their Chapter 12 plan unilaterally and without a hearing by tendering back the collateral to the bank in full payment of their debt. Debtors claim that the addition of 404 acres into the CRP program eliminated the need to keep or maintain the farm machinery and that the debtors could not have sold their machinery for more than was owed against it. Debtors thus tendered it back to the bank, claiming that they should not have their Chapter 12 plan jeopardized by having to pay for machinery that they no longer need.

Section 1229 of the Bankruptcy Code provides:

(a) At any time after confirmation of the plan but before the completion of the payments under such plan, the plan may be modified, on request of the debtor, the trustee, or the holder of an allowed unsecured claim, to -

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payment; or

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

A request for modification of a confirmed Chapter 12 plan should be limited to when there has been a change in the debtors' circumstances that substantially affects the debtors' ability to make payments. 3 Collier Bankruptcy Manual, §1229, pp. 1229-1 and 1229-2 (Matthew Bender 1987). Debtors have the burden of proving that a modification is allowable under §1229. In re King, 90 B.R. 155 (Bkrcty. E.D.N.C. 1988). Under §1229, only three areas of the plan are open to modification: (1) increasing or decreasing the payments to a particular class; (2) extending or reducing the time for payments; and (3) adjusting a particular claim where a payment might have been received by a creditor outside the plan. Here, while there has been a substantial change in factual circumstances with the addition of 404 acres of the debtors' land into the Conservation Reserve Program, the Court does not believe that the inclusion of the land substantially affects the debtors' ability to pay their debt. Thus, it does not appear that debtors have met their burden of showing that a modification is permissible under § 1229.

The Court notes that there is a great disparity regarding the value of collateral. In March 1988, the parties stipulated that its value was in excess of \$18,000.00. In May 1989, when the collateral was sold at auction, the machinery brought only \$6,183.00. During this time, the machinery had not been used or otherwise altered to account for this drastic reduction in value. Nevertheless, the Court does not believe that the addition of the 404 acres of land into the Conservation Reserve Program relieves the debtors from their responsibility to make payments on the machinery as contemplated in the plan and in the amount to which the debtors agreed in their stipulation. Debtors' motion to amend their

Re: Norman and Sheila Christofferson
October 25, 1989

Page 4

confirmed Chapter 12 plan will thus be denied. This constitutes the Court's findings of fact and conclusions of law on this matter. This is a core proceeding under 28 U.S.C. §157(b). The Court will enter an appropriate order.

Very truly yours,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH/sh

CC: Bankruptcy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

IN RE:)	CASE NO. 186-00308
)	
NORMAN DUANE CHRISTOFFERSON &)	
)	CHAPTER 12
SHEILA GAYE CHRISTOFFERSON)	
)	
)	ORDER SUSTAINING FIRST
)	NATIONAL BANK OF EDEN'S
Debtors.)	OBJECTION TO DEBTORS'
)	MOTION FOR MODIFICATION

Pursuant to the letter opinion executed this same date;

IT IS HEREBY ORDERED that the objection of the First National Bank of Eden to debtors' motion for modification is sustained.

IT IS FURTHER ORDERED that debtors' motion to modify their confirmed Chapter 12 plan under 11 U.S.C. §1229 hereby is denied.

Dated this 25th day of October, 1989.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By: _____

Deputy

(SEAL)