

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

TELEPHONE (605) 224-0560

FAX (605) 224-9020

October 15, 1997

James E. Carlon, Esq.
Counsel for Debtor
Post Office Box 249
Pierre, South Dakota 57501

Donald E. Covey, Esq.
Counsel for Sentinel Federal Credit Union
Post Office Box 1766
Winner, South Dakota 57580

Trustee John S. Lovald
Post Office Box 66
Pierre, South Dakota 57501

Subject: ***In re Florence M. Cole,***
Chapter 12; Bankr. No. 94-30046

Dear Counsel and Trustee:

The matter before the Court is Debtor's Motion to Modify Chapter 12 Plan of Reorganization and Sentinel Federal Credit Union's objection thereto. This is a core proceeding under 28 U.S.C. § 157(b). This letter decision and accompanying order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court will approve Debtor's Motion with certain conditions attached.

SUMMARY OF FACTS. Debtor's plan was confirmed June 28, 1995. It was modified on August 8, 1996 to accommodate Debtor's inability to make her April 1996 payment to Sentinel Federal Credit Union until December 1996. The August 8, 1996 modification order also required Debtor to create a written pasture lease with her son, Larry Cole.

On September 5, 1997, Debtor filed a second motion to modify her confirmed plan. Therein, Debtor stated that due to crop failures in 1997 she needed to delay her 1997 payment to the Credit Union until December 28, 1997. Debtor stated she is current on all other plan payments and that she would pay the Credit Union interest during the delay.

The Credit Union objected on September 30, 1997 on the grounds that Debtor was delinquent in her real estate taxes and that the

153.

Re: Florence Cole
October 15, 1997
Page 2

modified plan was not feasible. The Credit Union also pointed out that Debtor had not made her June 28, 1996 payment until April 21, 1997 and that the late plan payment precipitated a relief from stay motion by the Credit Union.

An evidentiary hearing was held October 7, 1997. Appearances included James Carlon for Debtor, Trustee John S. Lovald, and Donald E. Covey for the Credit Union. The matter was taken under advisement upon receipt of several exhibits and the testimony of Marla Olson, the County Treasurer, and Debtor.

APPLICABLE LAW. Under 11 U.S.C. § 1229(a), a Chapter 12 debtor may seek modification of his confirmed plan 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 payments; 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 Chapter 12 plan modified after confirmation must meet the same requirements as the initial plan because §§ 1222(a), 1222(b), 1223(c), and 1225(a) apply to any modification. 11 U.S.C. § 1229(b). Consequently, a modified plan must be proposed in good faith and it must be feasible. 11 U.S.C. §§ 1225(a)(3) and (a)(6).

DISCUSSION. Debtor adequately explained why her farm income this year had been decreased by crop failures. The County Treasurer shed some light on why payments on Debtor's taxes are so mixed up. Further, the Court is satisfied that this modification is offered in good faith and that the modification as proposed is feasible. Therefore, it will be approved.

The matter will not rest there, however. Debtor's testimony and the arguments of counsel highlighted several problems. First, Debtor needs to memorialize any pasture leases, hunting leases, crop sharing agreements, work sharing agreements for her wheat harvest, cattle wintering agreements, or other financial arrangements on which her modified plan relies. Second, Debtor must stop all gambling of any sort. This type of "recreation" is inappropriate when her creditors remain unpaid, especially where a large gambling loss contributed to her need to file bankruptcy. Third, Debtor and her counsel need to determine whether she is maintaining adequate crop insurance. The benefits should cover, if

Re: Florence Cole
October 15, 1997
Page 3

possible, the crop inputs and that portion of her plan payments that are projected to be paid from crop proceeds. Fourth, Debtor and her counsel need to work with the County Treasurer to insure that plan payments are appropriately credited and that current taxes are paid on time. Finally, Debtor and her counsel need to work with the Credit Union to see whether the date of her annual payments needs to be moved to the time of year when the majority of her income is produced. These annual payments will continue after the plan is completed and should not be a yearly dilemma for Debtor and the Credit Union. Only with these understandings will the second plan modification be approved.

The Credit Union may seek dismissal of the case on shortened notice if Debtor does not provide within 30 days of this decision adequate documentation of or receipts for any pasture leases, hunting leases, crop sharing agreements, work sharing agreements for her wheat harvest, cattle wintering agreements, or other financial arrangements that are necessary for Debtor to make her 1997 payment to the Credit Union, if Debtor does not pay her 1996 real estate taxes in November 1997, or if Debtor fails to make her 1997 plan payment to the Credit Union in December 1997.

Sincerely,



Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: case file (docket original; copies to parties in interest)

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
Entered
OCT 15 1997
Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

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

OCT 15 1997

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

By: CN
Date: 10-15-97

Case: 94-30046 Form id: 122 Ntc Date: 10/15/97 Off: 3 Page : 1

Total notices mailed: 6

Debtor Cole, Florence Maxene RR 2, Box 32, Witten, SD 57584
Aty Carlon, James E. PO Box 249, Pierre, SD 57501
Trustee Lovald, John S. PO Box 66, Pierre, SD 57501
Aty Arendt, Al #1, 201 N. Euclid, Pierre, SD 57501-2571
Aty Covey, Donald E. PO Box 1766, Winner, SD 57580
Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321