

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

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August 10, 1995

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Subject: ***In re James W. and Patricia L. Eagle,***  
Chapter 12; Bankr. No. 92-30072

Dear Counsel and Trustee:

The matter before the Court is the confirmation of Debtors' Second Modified Plan and the objections thereto. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter memorandum of decision and accompanying Order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below more fully, the Court concludes that Debtors' Second Modified Plan may not be confirmed because the liquidation analysis is not accurate and, therefore, the best interest of creditors test under § 1225(a)(4) has not been met.

*Summary of Facts.* Debtors filed a Second Modified Plan on April 17, 1995 and noticed it for hearing. Objections were filed timely by the Internal Revenue Service (IRS) and the Rural Economic and Community Development Agency (RE&CD). Trustee John S. Lovald conducted a pre-confirmation meeting on May 4, 1995. RE&CD filed a brief in support of their objections on May 16, 1995. A confirmation hearing was held May 16, 1995. Appearances included Trustee Lovald, James A. Carlon for Debtors, and Assistant U.S. Attorney Thomas A. Lloyd for RE&CD and the IRS. All objections were resolved except RE&CD's objection regarding Debtors' liquidation analysis.

Re: James and Patricia Eagle  
Page 2  
August 10, 1995

RE&CD objected that Debtors' liquidation analysis erroneously reduces the equity available in Debtors' real estate by using an incorrect amount for Farm Credit Bank's lien and liquidation costs. RE&CD also disputed Debtors' values for chattel and liquidation costs. Both parties presented expert appraisals regarding the value of Debtors' machinery and cattle. Chapter 12 Trustee John S. Lovald, who also serves as a standing Chapter 7 trustee, testified regarding administration costs in a Chapter 7 case. He stated that he would abandon all the real property and all the machinery that was subject to a purchase money security interest. At the hearing, the Court made two bench rulings.

First, for purposes of the treatment of their secured claim, the Court held that RE&CD is bound by the values contained in their stipulation with Debtors. However, a valuation of the property for the best interest of creditors test under 11 U.S.C. § 1225(a)(4) must be made at or near the time of confirmation. "For purposes of the reorganization plan, the value of the collateral is to be determined at the time for confirmation of that plan." *Ahlers v. Norwest Bank Worthington (In re Ahlers)*, 794 F.2d 388, 398 (8th Cir. 1986, rev'd on other grounds, 485 U.S. 197 (1988)). Ideally, this helps insure that the value of secured property used to determine a secured creditor's claim mirrors the value of the property used for the best interest of creditors test. *In re Buxcel*, Bankr. No. 94-30036, slip op. at 3 (Bankr. D.S.D. June 19, 1995).

The Court also ruled the case would be treated as a hypothetical Chapter 7 on the date of the confirmation hearing for purposes of the liquidation analysis; it would not be treated as a conversion from Chapter 12. Thus, costs associated with the Chapter 12 proceeding, such as attorney and appraiser fees, would not be included unless incurred by the Chapter 7 trustee. Further, all claims would be valued based on the creditor's proof of claim, assuming the claim has not been modified under § 502(b). If Debtors and a secured creditor had stipulated to a value of the secured claim during the Chapter 12 that was different than the creditor's proof of claim, the proof of claim value would be used for the liquidation analysis.

The accuracy of Debtor's liquidation analysis for the best interest of creditors test was taken under advisement after receipt of each party's written closing arguments. Debtors were permitted to include in their written closing argument an amended liquidation analysis that reflected the Court's bench rulings. On June 19, 1995, Assistant U.S. Attorney Lloyd informed the Court that the IRS had filed an amended proof of claim for \$500.74 as a priority claim and \$152.50 as a general claim.

Re: James and Patricia Eagle  
Page 3  
August 10, 1995

*Discussion.* The Court finds that Debtors' amended liquidation analysis as set forth in their Confirmation Hearing Summary<sup>1</sup> filed June 6, 1995 cannot be accepted for the following reasons:

First, the value of Debtors' livestock is understated. Appraiser Gregg Hubner's estimates are more accurate, based on his assessment that not all the cows would be sold for slaughter. His weekly auctioneering at a sale barn gives him the edge in assessing the quality and market value of Debtors' cattle. Likewise, his feeder pig and sheep values better reflect the quality of the animals being sold and the current prices. Appraiser Hubner also had a more current number for the 1995 calves.

Second, Debtors' estimated liquidation costs for the cattle are overstated. Exhibit C, as prepared by Barb Johnson, accurately sets forth what sale and trucking costs would be incurred if Debtors' calves and mixed-aged cows were sold through the local auction barn. Her conclusion that the liquidation costs would be approximately \$2,100.00 or 3% of gross is more accurate because it was based on information provided by the sale barn. In contrast, Debtors estimated that liquidation costs for the cows and calves would exceed \$10,000.00 alone and was presented without sufficient foundation.

Neither party presented good evidence on the liquidation costs for the sheep and pigs. Debtors will need to get that information before preparing another liquidation analysis.

Third, Debtors underestimated the value of their machinery and vehicles. Appraiser Hubner's values are more reliable. His experience as a personal property auctioneer several times a year allows him to assess more accurately the quality of the machinery and the present market demand for it. Further, Appraiser Hubner had the correct model year for the large Case IH 7110 tractor and his value was based on several noted resources, not just the secured claim holder's opinion. Finally, the Court finds that the value of Debtors' 1989 pickup is somewhere between Appraiser Meligan's and Appraiser Hubner's assessments. Both presented a sound basis for their values.

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<sup>1</sup> In the liquidation analysis attached to their Confirmation Hearing Summary, Debtors acceded to Trustee Lovald's position that a Chapter 7 Trustee would abandon all real property and all machinery subject to a purchase money security interest.

Re: James and Patricia Eagle  
Page 4  
August 10, 1995

Fourth, Debtors may have overestimated the value of their household goods and miscellaneous property. If the property is exempt, it does not need to be included in the liquidation analysis since the property would not be distributed in a Chapter 7 liquidation.

Fifth, Debtors substantially overestimated the costs and priority claims that must be paid in a Chapter 7 liquidation. As explained by Trustee Lovald, as a Chapter 7 trustee he would not likely need an appraiser. His Trustee's fees would not exceed \$7,000.00, even if the more generous 1995 rates were used. Moreover, all fees for Debtors' attorney would be borne by Debtors in a Chapter 7 case, so those would not be included in the liquidation analysis. Post-hearing, the IRS has substantially reduced its priority claim through an amended proof of claim; the amount used by Debtors is not current.

Neither party presented expert testimony on the tax consequences of liquidation, although Trustee Lovald's estimates based on his experience as a Chapter 7 Trustee are probably close. In preparing another liquidation analysis, Debtors should work with Trustee Lovald or a tax professional to assess more accurately what taxes the Chapter 7 estate would incur.

An Order will be entered denying confirmation of Debtors' Second Modified Plan. Within twenty days, Debtors may file a third modified plan that includes a more accurate liquidation analysis. The Court's Scheduling Clerk will be advised that Debtors may receive a confirmation hearing date in September although no regular court date for Pierre is scheduled for that month. Any notice requirements under Local Bankr. R. 309(B) will be waived so that Trustee Lovald may conduct a pre-confirmation meeting, if needed, on a date that is most convenient for all parties.

Sincerely,

Irvin N. Hoyt  
Chief Bankruptcy Judge

INH:sh

CC: Bankruptcy Clerk

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
Central Division

In re: )  
 ) Bankr. Case No. 92-30072  
JAMES WILLIAM EAGLE )  
Social Security No. [REDACTED]-6082 ) Chapter 12  
 )  
and )  
 ) ORDER DENYING CONFIRMATION  
PATRICIA LOU EAGLE ) OF DEBTORS'  
Social Security No. [REDACTED]-1826 ) SECOND MODIFIED PLAN  
 )  
Debtors. )

In recognition of and compliance with the Court's letter memorandum of decision entered this day,

IT IS HEREBY ORDERED that confirmation of Debtors' Second Modified Plan is DENIED; and

IT IS FURTHER ORDERED that within twenty days of entry of this Order Debtors shall file a Third Modified Plan and notice it for hearing in September. Any notice requirements for a pre-confirmation meeting under Local Bankr. R. 309(B) are waived so that the Trustee may conduct a pre-confirmation meeting, if needed, upon reasonable notice.

So ordered this \_\_\_\_ day of August, 1995.

BY THE COURT:

\_\_\_\_\_  
Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

PATRICIA A. JOHNSON, ACTING CLERK

By \_\_\_\_\_  
Deputy Clerk

(SEAL)