

**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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November 13, 1989

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Aberdeen, South Dakota 57402

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326 Federal Building & U.S. Courthouse  
Pierre, South Dakota 57401

Re: Junior Sebastian and Joyce C. Hammrich  
Chapter 12 81-10032

Dear Counsel:

The Court, on September 26 1989, entered an order confirming the debtors' amended Chapter 12 plan as modified. Omitted from the order of confirmation was a collateral issue concerning the termination of certain liens held by the Farmers Home Administration. After reviewing the record, the authority presented by counsel, and other applicable authority, the Court holds that the FmHA may not hold its liens until the completion of all plan payments.

The facts are not in dispute. Debtors Junior and Joyce Hammrich filed for protection under Chapter 12 of the Bankruptcy Code on January 26, 1987. As of that date, Hammrichs owed FmHA \$104,013.69 secured by 43 cows, 80 calves, and second mortgage liens on debtors' vehicles and machinery. The value of the livestock securing FmHA's debt totalled \$62,105.00. On December 27, 1988, an adversary proceeding was commenced by debtors against FmHA and the First State Bank of Roscoe to determine the validity, priority and extent of FmHA's and the bank's liens. The pleadings filed in the adversary conceded that FmHA held valid liens on debtors' livestock, vehicles and machinery, subject to First State

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Bank of Roscoe's prior liens on certain cattle and the vehicles and machinery.

On June 14, 1989, after the parties had negotiated a settlement, the Court entered a judgment in the adversary, which provided in part:

(1) That Farmers Home Administration has a security interest in 43 head of cattle valued at \$27,305.00 and a security interest in 80 head of calves valued at \$34,800.00, which provides Farmers Home Administration with a total allowed secured claim of \$62,105.00, which amount will bear interest at 5% from April 17 1989, to January 1, 1990, at which time interest will be brought current with a payment in the sum of \$2,195.00, and the remaining allowed secured claim of \$62,105.00 will then be amortized at 5% interest over a period of fifteen years thereby providing FmHA with a first amortized payment of \$5,984.00 on January 1, 1991, and payments will be made to FmHA in like amount on January 1st of each and every year thereafter until January 1, 2005, at which time all indebtedness to Farmers Home Administration will be deemed paid and satisfied in full, and Farmers Home Administration shall thereupon, and forthwith, satisfy, release and discharge all notes, mortgages, financing statements, liens, and encumbrances whatsoever against the debtors and all of their real and personal property.

(2) First State Bank of Roscoe has an allowed secured claim ... secured by the remainder of debtors' livestock ..., vehicles ..., machinery..., and of the money deposited in the debtors' DIP account, \$137,889.31 is determined to be the proceeds of security of the First State Bank of Roscoe[.]

The judgment further stated that the treatment provided therein would be incorporated by the debtors into their amended Chapter 12 plan and that the treatment provided by the judgment

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constituted a "settlement in full of all claims and counterclaims generated by this adversary proceeding" and that it constituted a "full and complete settlement of any and all claims, causes of action and indebtedness whatsoever between the debtors and First Bank of Roscoe and Farmers Home Administration arising out of all transactions and occurrences whatsoever from prior to the time of first dealings between the parties, to date." The record does not reflect any objections to the form or content of the judgment, nor was any motion made to modify, amend, vacate or otherwise alter its contents. No notice of appeal relative to the judgment was filed within the prescribed time limitations.

Debtors filed their amended Chapter 12 plan on July 24, 1989. Paragraph 8(D) of debtors' plan incorporated the terms of the judgment entered in the adversary. The last two sentences of the paragraph provide:

All payments to FmHA through termination of the plan on January 1, 1993, will be made under the plan, through the office of the Chapter 12 Trustee, and all payments thereafter commencing with the payment of January 1, 1994, will be paid by debtors themselves directly to Farmers Home Administration. Upon termination of the plan on January 1, 1993, FmHA will release all security agreements, mortgages, vehicle title liens and financing statements against the debtors except FmHA's lien against the above-described livestock.

On August 15, 1989, FmHA objected to debtors' amended plan, claiming that the release of its liens at the end of the plan's term violated 11 U.S.C. §1225(a) (3) because the debt to FmHA would survive the term of the plan and that the only code provisions authorizing the release of security interests are §§522 and 552. In its brief, submitted September 22, 1989, FmHA also asserted that debtors were attempting to reforge a term of the settlement agreement which provided that the liens held by FmHA would be released only after all payments to FmHA (which extend to 2005) have been made.

Debtors claim that §506(d) voids those liens held by FmHA to the extent that they secure a claim against the debtor that is not an allowed secured claim. Since FmHA's second mortgage liens on the vehicles and machinery are wholly unsecured, debtors argue that such liens could be released not only upon termination of the plan,

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but even upon the plan's confirmation. However, debtors state that they would be satisfied if all of FmHA's liens, except those covering the 123 head of cattle, were released upon the plan's termination. Debtors also claim that allowing FmHA to retain their admittedly valueless liens would violate §1223(a) (3) by treating FmHA more favorably than other creditors with allowed secured claims who are members of the same class.

The Court first notes that while FmHA has alleged that it has valid (though valueless) liens against debtors' vehicles and machinery, and debtor has conceded the existence and validity of the same, the agreement between the parties and approved by this Court in its judgment in the adversary nowhere mentions the existence or validity of these liens. Without looking beyond the agreement reached by the parties, as fashioned in the Court's judgment, it would appear that the FmHA only claims a lien on the 123 head cattle which secure its allowed secured claim and that the FmHA no longer claims to have a lien upon the debtors' other property.

The absence of any language referring to these other liens, coupled with the judgment's provision that it constituted a settlement of all claims generated by the adversary proceeding, leads this Court to conclude that the FmHA did not retain or has waived any claims against the property except for the expressed liens on the 123 head of cattle. This conclusion is not without legal support. According to Wright & Miller, a judgment entered by consent is to be enforced in accord with the intent of the parties and can be vacated according to basically contractual principles of fraud, ignorance, mistake or mutual breach. 18 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure, §4443 (West 1981). See also, U.S. v. ITT Continental Baking Co., 43 L.Ed. 2d 148 (1975) and U.S. v. Northern Colorado Water Conservancy District, 608 F.2d 422, 430-431 (10th Cir. 1979) . This Court has also expressed this philosophy concerning the enforcement of "drop dead" clauses. See, In re Weiszhaar Farms, Inc., Case No. 186-00226, Opinion Filed October 19, 1989. The preclusive effects of judgments entered by consent are also to be determined by the intent of the parties. Wright, Miller & Cooper, supra. See also, James, Consent Judgments as Collateral Estoppel, 108 U.Pa.L.Rev., 173 (1959).

Because the Court believes that the FmHA is precluded from attacking the consent judgment, it need not reach the issue of whether its liens would survive the debtors' discharge. However, for the edification of attorneys who may present similar issues in

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the future, the Court has reviewed those cases on this issue which were authored by Judge Jackwig and generally agrees with her conclusion. See, In re Hollinrake, 93 B.R. 183 (Bkrtcy. S.D.Ia. 1988), In re Bluridg Farms, 93 B.R. 648 (Bkrtcy. S.D.Ia. 1988) and In re Simmons, 86 B.R. 160 (Bkrtcy. S.D.Ia. 1988).

This constitutes the Court's findings of fact and conclusions of law in this matter. This is a core proceeding pursuant to 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. 87-10032  
)  
JUNIOR SEBASTION HAMMRICH and ) CHAPTER 12  
JOYCE MARIE HAMMRICH, )  
)  
Debtors. ) ORDER OVERRULING OBJECTION  
) OF FmHA TO CONFIRMATION  
) OF DEBTORS' CHAPTER 12 PLAN

Pursuant to the letter memorandum executed this same date,

IT IS HEREBY ORDERED that the objection of the United States of America by and through the Farmer 5 Home Administration concerning the confirmation of the debtors' Chapter 12 plan is hereby overruled.

Dated this 13th day of November, 1989.

BY THE COURT:

Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:  
PATRICIA MERRITT, CLERK

By: \_\_\_\_\_  
Deputy

(SEAL)