UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Northern Division

In re:	)	
	)	Bankr. No. 87-10275
HOFFMAN FARMS,	)	(consolidated case)
	)	
	)	Chapter 7
Debtor.	)	
	)	MEMORANDUM OF DECISION RE:
	)	DETERMINATION OF POST-CONVERSION
	)	CLAIM OF FmHA AND APPROVAL OF
	)	SALE OF 471-ACRE PARCEL OF
	)	ESTATE REAL PROEPRTY

The matter before the Court is the Report of Sale [request to approve sale of certain real estate] filed by Trustee A. Thomas Pokela and the objection thereto filed by Debtors. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum and accompanying Order shall constitute findings and conclusions under F.R.Bankr.P. 7052. As set forth more fully below, the Court concludes that a second hearing should be held to receive upset bids on the 471-acre parcel of land auctioned by the Trustee. Further, the Court concludes that Farmers Home Administration's entire claim should be applied against the sale proceeds at its pre-petition amount, less plan payments received, rather than at the secured value provided in Debtors' confirmed Chapter 12 plan.

I.

Milton P. (Pete) Hoffman filed a Chapter 12 petition on September 21, 1987. His son and daughter-in-law, Joel A. and Sheila D. Hoffman, also filed a Chapter 12 petition on

September 21, 1987. By Order entered April 6, 1988, the cases were substantively consolidated into *In re Hoffman Farms*, Bankr. No. 87-10275. A plan was confirmed on January 26, 1989. The plan stated FmHA had an undersecured claim for $1,649,967.23 less a cash collateral payment of $372.07. The plan provided that FmHA would receive repayment of: $2,000.00 in cash collateral over five years at 5½% interest; a $46,165.00 claim secured by machinery over fifteen years at 5½ interest; a $53,016.99 claim secured by real property over thirty years with 6½% interest; and a $118,819.37 claim secured by real property over thirty years with 5% interest. FmHA's remaining unsecured claim of $1,431,288.74 was to be paid over the life of the plan from disposable income.

On July 8, 1994, prior to entry of discharge, Debtors' case was converted to a Chapter 7 proceeding for fraud.[1] Chapter 12 Trustee A. Thomas Pokela was appointed by the United States Trustee to serve as the Chapter 7 Trustee.

Trustee Pokela filed a Notice of Proposed Action for Sale of Real Estate by Auction Sale Free and Clear of Liens wherein he sought Court approval to sell estate real property in several parcels. One parcel, described as:

> Tract B of the SE¼ of Section 29; NE¼ of Section 29 except Outlot 1 as shown by the plat recorded in Plat Book 2, page 187; Outlots 2 & 3 of Plat of Hoffman's Outlots 1-3 in NE¼ of Section 29 in Plat Book 3 page 15; SW¼ of Section 29 except Outlot 1 in Plat Book 2, page 189; NW¼ of Section 32 all in 123-73, Edmunds County, South Dakota (471 acres more or less)

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[1] Debtors appealed the conversion order but did not obtain a stay pending appeal.

included Debtors' homestead property.[2] FmHA has a secured interest in this 471 acre parcel, including the homesteads, since Debtors waived their homestead claim in the mortgage. The Internal Revenue Service objected to the proposed sale of real property because the Trustee had not determined whether the sale would generate equity for the estate and had not determined the tax consequences of the sale for the estate.

Debtors objected to the real estate sale on October 12, 1994, and contended that the sale should generate equity once FmHA's secured claim -- at the value set forth in the plan and as reduced by plan payments -- was paid. Debtors also objected because the notice did not state that the property is subject to redemption for one year and that the homestead property would be sold separately.

A hearing was held October 18, 1994. The objections of the Internal Revenue Service were resolved by Trustee Pokela agreeing to file an estate tax return and assume all responsibility for taxes generated by the estate. Debtors withdrew their objection that the homestead property was not being sold separately because the Trustee agreed to do so. Debtors' second objection, which claimed they had a right of redemption after the sale, was denied because the Trustee's sale was not a foreclosure sale under state law. Debtors' objection that the sale should generate some equity because FmHA's secured claim should be limited to the plan amount

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[2] There are two homes on the farm site. The two 160-acre homestead parcels claimed by Debtors have not been identified within the larger 471-acre parcel being sold by Trustee Pokela.

was to be determined after the sale. By Order entered October 26, 1994, the auction sale of real property was approved. The Order further provided that after the auction sale a hearing would be held to receive upset bids and confirm the sale.

On November 2, 1994, Trustee Pokela filed a Motion to Determine Interest in Real Estate and Require that Certain Interest in Said Real Estate Attach to the Proceeds. The Motion listed the various judgment liens and the mortgage of FmHA that had attached to the real property to be auctioned and asked that the Court enter an order directing that these interests would attach to the sale proceeds. No objections to that Motion were filed.

By Report of Sale filed November 8, 1994, Trustee Pokela stated that he had sold the 471-acre homestead parcel to Ervin Haar for $207,240.00. The Report also stated Mr. Haar had been informed that his bid was subject to upset at the sale confirmation hearing scheduled for November 21, 1994. On November 17, 1994, Debtors objected to this Report of Sale.[3] They argued that the sale failed to identify their homestead interest separately. Relying on S.D.C.L. § 21-19-29, Debtors further claimed that they could exercise their state homestead exemption rights and keep the 471-acre parcel by paying to the Trustee the portion of the sale price that exceeds their combined homestead exemption of $60,000.00 ($30,000.00 for Debtor Milton Hoffman and another $30,000.00 for Joel and Sheila Hoffman).

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[3] Debtors did not object to the sale of two other parcels of real estate.

A hearing on Trustee Pokela's Report of Sale and Debtors' objection thereto was held November 21, 1994. Appearances included Bruce J. Gering for Trustee Pokela and the United States Trustee, James A. Carlon for Debtors, and Assistant U.S. Attorney Thomas A. Lloyd for FmHA. After meeting with the Court in an attempt to delineate Debtors' homestead rights, the parties agreed that the crucial question was whether FmHA's claim should be applied against the sale proceeds at the secured value stated in the confirmed Chapter 12 plan or at its pre-petition value, less plan payments. If FmHA's claim was applied to the sale proceeds at its pre-petition value less plan payments, the parties agreed that Debtors would be unable to exercise their right to purchase the homestead property under S.D.C.L. § 21-19-29.

Prior to receiving upset bids, the Court recited Debtors' claim under S.D.C.L. § 21-19-29. Mr. Haar then raised his own bid on the 471-acre parcel from $207,240.00 to $225,000.00 in an effort to discourage Debtors from trying to purchase the property. No other parties bid and Mr. Haar was the successful bidder at $225,000.00. The Court took under advisement the question of whether FmHA's claim should be applied against the sale proceeds at the secured value stated in the confirmed Chapter 12 plan or at its pre-petition value, less plan payments, and Debtors' rights under S.D.C.L. § 21-19-29.

II.

Post-conversion Value of FmHA's Claim.

Section 348(a) of the Bankruptcy Code, which sets forth the effects of a conversion, does not answer clearly how a pre-petition undersecured claim is treated when a Chapter 12 case is converted to Chapter 7 after confirmation of a plan. Case law is limited, especially in the Chapter 12 context.[4]

The leading case on this issue is *Liberty National Bank and Trust Co. v. Burba (In re Burba)*, ____ F.3d ____, 1994 WL 620949, slip op. (6th Cir. November 10, 1994). In *Burba*, the debtors' Chapter 13 confirmed plan provided for payment of principal and interest to Liberty National Bank on a claim secured by a car. *Id.* at 1. The unsecured portion also was to be paid over the five-year plan. *Id.* The debtors paid the principal due on the secured portion of the Bank's claim but not the interest on the secured claim. *Id.* They also paid only a portion of the Bank's unsecured claim. *Id.* The debtors then converted their case to a Chapter 7 and argued that they should be allowed to redeem the car by paying only the interest due on the secured portion since the secured claim would then be paid in full and the Bank's lien would be avoided under § 506(d). *Id.* The Bank objected and claimed that

[4] With the enactment of the Bankruptcy Reform Act of 1994 on October 22, 1994, the Court may no longer rely as heavily on Chapter 13 cases for precedence on the issue of what constitutes the post-conversion estate. The Code has been amended to provide that when a case is converted from Chapter 13 to Chapter 7, estate property will consist of the debtor's property at the time the Chapter 13 petition was filed unless the debtor converted the case in bad faith.

after conversion the debtors could redeem the car under 11 U.S.C. § 722 only if its claim was redetermined. *Id.* The Bank argued that once the debtors abandoned their plan, the entire balance of the Bank's claim came due under the original contract terms less the plan payments received. *Id.*

The court agreed with the Bank and concluded that the Bank's lien was not extinguished during the Chapter 13 proceeding because the secured claim had not been paid in full; interest had not been paid during the Chapter 13 to give the Bank the present value of its secured claim. *Id.* at 8. Moreover, the court concluded that the debtors could not redeem the car in the Chapter 7 proceeding by paying only the interest due. *Id.* at 9.

The court followed the line of Chapter 13 cases that have found that bifurcation of an undersecured claim and stripping down of a lien to the value of the collateral in the Chapter 13 proceeding does not survive for redemption purposes after conversion to Chapter 7. *Id.* at 8. The court concluded that a creditor is bound by a chapter 13 plan only so long as the debtor complies with it and that only after a Chapter 13 discharge is entered does the plan operate as a final determination of rights between a debtor and his creditor. *Id.* at 9.

The court in *Burba* recognized that value under § 506 is to be determined "in light of the purpose of the valuation and of the proposed disposition or use of such property. . . ." *Id.* at 12. It found no statutory reason for holding a creditor to a valuation made for Chapter 13 confirmation purposes after the plan has been

abandoned. *Id.* The court also noted that to allow the debtor to redeem secured property in a case converted to Chapter 7 by paying only the secured value determined in the abandoned Chapter 13 plan would encourage debtors to convert a case to Chapter 7 and redeem property after only paying the secured portion of a claim under their plan. *Id.* at 9.

Bankruptcy courts have reached different results. In *Foulston v. White (In re White)*, 151 B.R. 274 (Bankr. D.N.M. 1993), the court concluded that upon conversion from Chapter 12 to Chapter 7, the unconsummated Chapter 12 plan does not bind the debtor and that the plan controlled creditors only between confirmation and discharge. In *White*, the Chapter 12 plan provided that most of the estate property would revest in the debtors at confirmation. *Id.* at 275. However, the court reasoned that the confirmed plan was subject to "defeasance if the debtor fails to obtain a discharge" and "all property included in the bankruptcy estate pursuant to section 541, supplemented by all property included pursuant to section 1207 is property of the post conversion Chapter 7 bankruptcy estate." *Id.* at 277.

In *In re Leach*, 101 B.R. 710 (Bankr. E.D. Okla. 1989), the court concluded that the confirmed Chapter 12 plan continued to bind the Chapter 12 trustee and Chapter 12 creditors after conversion. Consequently, the court ordered the Chapter 7 trustee to return all pre-conversion funds to the Chapter 12 trustee and the Chapter 12 trustee was ordered to disburse those pre-conversion funds in compliance with the plan. The court did *not* address

clearly how post-conversion funds would be applied to pre-petition claims addressed in the plan.

In *In re Hargis*, 103 B.R. 912 (Bankr. E.D. Tenn. 1989), the court concluded that an undersecured creditor's lien did not "spring back into existence" to secure all or a portion of the creditor's remaining claim upon conversion from Chapter 13 to Chapter 7. At the time of conversion, the debtors had fully paid the creditor's secured claim under the terms of the plan and had paid all but $245.00 of the creditor's unsecured claim. After conversion, the creditor sought a determination that it had a purchase money security interest in the collateral (some furniture the debtors had purchased on credit) to the extent of its unpaid unsecured claim. The court reasoned that the lien had been satisfied by the plan payments. *Id.* at 915-16. The court further concluded that once a creditor's claim had been bifurcated under 11 U.S.C. § 506(a) into secured and unsecured portions in the Chapter 13 proceeding, there was no reason to divide the claim again after conversion to Chapter 7. *Id.* at 916.

As in *Hargis*, the court in *In re Bunn*, 128 B.R. 281 (Bankr. D. Idaho 1991), concluded that an undersecured creditor's claim would not be revalued when the case was converted from Chapter 13 to Chapter 7. The court acknowledged that the creditor's lien would be revived upon dismissal, but it relied on §§ 348(a) and 506(d) to conclude that a similar result did not result when the case was converted. It reasoned that Congress intentionally did not give Chapter 13 creditors rights analogous to a Chapter 11 § 1111(b)

election.

In *In re Muzzey*, 134 B.R. 800 (Bankr. D. Vt. 1991), a Chapter 12 case was converted to a Chapter 7 after confirmation of a plan. The court, when considering the extent of a pre-petition creditor's secured interest in post-petition property under § 552(a), concluded that the Chapter 12 plan no longer bound the debtor and creditor after conversion. *Id*. at 807. Relying on the language of § 348, the court concluded that all claims -- whether pre-petition or post-confirmation -- are to be treated as if filed on the petition date once a case is converted to Chapter 7. *Id*. The court further concluded that the Chapter 12 estate that exists on the date of conversion becomes the Chapter 7 estate. *Id*.

In this Circuit, it is well-established that a Chapter 7 estate includes the Chapter 13 estate that existed at conversion. *Resendez v. Lindquist*, 691 F.2d 397 (8th Cir. 1982). Even if confirmation of a plan vests estate property in the debtor, the estate continues to exist as a legal entity. *Security Bank v. Neiman*, 1 F.3d 687, 690-91 (8th Cir. 1993).

In *Neiman*, 1 F.3d at 690-91, the court addressed the apparent tension between 11 U.S.C. §§ 1306 and 1327(b). Section 1306 provides that the Chapter 13 estate includes all property the debtor acquires after commencement of the case but before the case is closed, dismissed, or converted. Section 1327(b) provides that upon confirmation of a plan, all property of the estate is vested in the debtor. The court was not persuaded by the reasoning in another line of cases that equated "vesting" estate property in the

debtor at confirmation to transforming estate property into the debtors' property. *See also In re Brownlee*, 93 B.R. 662 (Bankr. S.D. Iowa 1988)(upon conversion from Chapter 12, Chapter 7 estate includes property the debtor inherited post-petition). This result is consistent with several other Code sections that recognize that the estate continues to exist after confirmation. *Id.*; *see also Phillips v. White (In re White)*, 25 F.3d 931, 933 (10th Cir. 1994)(the post-conversion Chapter 7 estate includes all funds and property of the Chapter 12 estate at the time of conversion).[5]

The conclusion that the reorganization estate continues post-confirmation to the extent necessary to insure the debtor's compliance with the plan was adopted by this Court in the Chapter 12 context in *In re Brandenburger*, 145 B.R. 624, 629 (Bankr. D.S.D. 1992). That holding is now extended to encompass the conclusions in *Resendez* and *Neiman* that the Chapter 7 estate includes all property of the Chapter 12 estate after conversion. Further, consistent with the decisions in *Burba*, *White*, and *Muzzey*, this Court concludes that a creditor is not bound by a Chapter 12 valuation of its secured claim if the plan is abandoned and the case is converted to Chapter 7.

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[5] In *White*, the Court relied on Chapter 13 case law to reach its conclusion and emphasized that 11 U.S.C. §§ 1206 and 541(a)(6) and (7) specifically bring post-petition property into the Chapter 12 estate. The court also emphasized that the Chapter 12 debtors had not received a discharge prior to conversion of their case. However, the debtors in *White* had obtained only a conditional confirmation, so it is unclear how the court would have ruled if a plan had been confirmed and if the property had "vested" in the debtors under § 1227 before the case was converted to Chapter 7.

Foremost, a Chapter 12 debtor does not receive a discharge until plan payments are completed or a hardship is shown. 11 U.S.C. § 1228. Unlike a Chapter 11 confirmation order, the entry of a Chapter 12 confirmation order does not represent the final adjudication of a creditor's claim against the debtor. *Compare* 11 U.S.C. § 1141. Only when plan payments have been completed are the debts for which the plan provides discharged. 11 U.S.C. § 1228(a). Congress apparently did not intend the same binding effect of a confirmation order in Chapter 12 as in Chapter 11.

Second, to hold that a creditor is bound by the plan's valuation would unnecessarily ignore what has happened to the value of the secured property after confirmation. Nothing in § 506 states that a valuation for plan purposes in binding post-conversion. *See, e.g.*, 11 U.S.C. §§ 348 and 506(a) and F.R.Bankr.P. 3008. Instead, "value is to be determined in the light of the purpose of that valuation and the proposed disposition or use of such property." 11 U.S.C. § 506(a). Therefore, when the proposed disposition changes, a re-valuation is appropriate. In some cases, a new valuation after conversion will work to the undersecured creditor's benefit. The secured property may have appreciated in value. In other cases, if the secured value has decreased, the secured creditor may receive less than contemplated by the plan.

Further, to hold that the value of a secured claim cannot be revalued upon conversion to Chapter 7 unnecessarily may discourage undersecured creditors from seeking conversion of a case when fraud

is found. If the case were dismissed, the creditor's full claim is restored. 11 U.S.C. § 349(b); *see In re Soper*, 152 B.R. 985, 989 (Bankr. D. Kan. 1993). To hold the creditor to the plan valuation if the case is converted, however, may lead some creditors to bargain with a debtor to dismiss the case rather than to bring a fraud and potential conversion to the Court's attention. As noted in *Burba*, to bind the creditor to the plan valuation also would encourage debtors to convert cases and redeem secured property after paying only the secured value under the plan. *Burba*, slip op. at 9. Moreover, if a conversion does not reinstate the claims of creditors treated in an abandoned plan, the prospect of conversion for fraud would be no deterrence to a reorganization debtor.

Finally, since post-confirmation creditors are treated as pre-petition creditors under § 348(d), pre-petition creditors should be given similar treatment. Sections 348(a) and (d) do not dictate that these creditors should be distinguished. In fact, F.R.Bankr.P. 1019 supports equal treatment because subsection (3) provides that claims filed in the Chapter 12 are deemed filed in the Chapter 7 after conversion.

III.

Debtors' Homestead Rights under S.D.C.L. § 21-19-29.

Validity of Homestead Claim. Before Debtors' rights under S.D.C.L. § 21-19-29 can be considered, the Court must first determine the status of Debtors' homestead exemption claims. The Trustee now disputes Debtors Joel and Sheila Hoffman's entitlement

to a homestead claim.

As noted above, Debtor Milton Hoffman and Debtors Joel and Sheila Hoffman, husband and wife, initially filed two separate petitions. On his schedule of real property, Debtor Milton Hoffman listed 453 acres in Edmunds County. He claimed exempt a homestead under S.D.C.L. § 43-45-3(1) at a value of "all." A legal description of the homestead property was not given. Debtors Joel and Sheila Hoffman listed 880 acres in Edmunds County. They also claimed exempt a homestead under S.D.C.L. § 43-45-3(1) at a value of "all." No objections to these exemption claims were filed during the Chapter 12. Debtors have not amended their schedules to claim different property exempt after conversion.

The cases were substantively consolidated on April 6, 1988. This order combined the assets and liabilities of the estates but did not change title to the property or alter the property in which a secured creditor could claim an interest. *See In re N.S. Garrott & Sons*, 63 B.R. 189 (Bankr. E.D. Ark. 1986); *see also First National Bank v. Giller (In re Giller)*, 962 F.2d 796, 799 (citing *In re N.S. Garrott & Sons* with approval). Consequently, the consolidation order did not give Debtors Joel and Sheila Hoffman an interest in Debtor Milton Hoffman's property; it only allows their unsecured creditors to look to Debtor Milton Hoffman's assets for payment of their claims.

In their November 17, 1994 objection to the Trustee's Report of Sale, Debtors argued they each could redeem a 160-acre homestead from the 471-acre parcel being sold by the Trustee by paying the

sales price less $60,000.00. At the November 21, 1994 hearing on the objection, no one disputed Debtors' homestead claims. Subsequently by letter dated December 5, 1994, Trustee Pokela advised the Court that insurance records indicated Debtors Joel and Sheila Hoffman had no ownership interest in the 471-acre parcel that was sold. Therefore, he argued, they could not claim a homestead interest in that parcel.

Trustee Pokela's objection is untimely. F.R.Bankr.P. 4003(b). Trustee Pokela did not object within thirty days after the Chapter 7 § 341 meeting.[6] Moreover, Debtors have not amended their schedules of exempt property and triggered another thirty-day objection period since their schedules were first filed on November 9, 1987.[7] Consequently, the exemptions stand as

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[6] Case law is meager and split on whether the post-conversion § 341 meeting creates another 30-day period in which to object to exemptions when the debtor does not file an amended schedule of exempt property. *Compare In re Jenkins*, 162 B.R. 579, 580 (Bankr. M.D. Fla. 1993), and *Redfield v. Peat, Marwick, Mitchell and Co. (In re Robertson)*, 105 B.R. 440, 447-48 (Bankr. N.D. Ill. 1989). Here, Trustee Pokela's letter was filed more than thirty days after the conclusion of the Chapter 7 § 341 meeting. Consequently, the Court need not consider whether another thirty-day objection period was created after conversion to Chapter 7.

[7] *Compare Armstrong v. Lindberg (In re Lindberg)*, 735 F.2d 1087 (8th Cir. 1984), where debtors amended their claim of exemptions after their case was converted from Chapter 13 to Chapter 7. The court allowed the debtors to utilize exemptions available on the date of the conversion and did not restrict them to exemptions available when they first filed their petition. Since the *Lindberg* decision, F.R.Bankr.P. 1007(c) has been amended. Rule 1019 now governs how and when schedules are amended after conversion from Chapter 12 to Chapter 7. A debtor is not required to file a new schedule of exempt property upon conversion but may do so. Here, Debtors have not filed a new schedule of exempt property after conversion.

scheduled. *Taylor v. Freeland & Kronz*, 112 S.Ct. 1644 (1992).

Debtors Joel and Sheila Hoffman should not take solace in that conclusion, however. The only real property on which they may claim a homestead exemption is the 880 acres listed on their schedules. If there is no house on that scheduled real property that they occupy as their residence, their claim is a nullity. *See Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 13190-20 n.6 (9th Cir. 1992)(ambiguity in exemptions claimed are construed against the debtor).

Applicability of S.D.C.L. § 21-19-29. Section 21-19-29 of the South Dakota Code provides that an order directing the sale of a homestead shall provide

> unless waived by the debtor that sale of the homestead be not had for sixty days, and that at any time prior to the sale the debtor may, at his option, pay to the officer the surplus of the determined valuation of said homestead over and above such homestead exemption plus all encumbrances.

Contrary to Debtors' assertion, this provision does not give Debtors the right to purchase the homestead parcel *after* the sale. It is a right to be exercised before the sale. Debtors did not do so. Debtors did not raise any objections to the sale based on potential rights under S.D.C.L. § 21-19-29 in their October 12, 1994 objection to the Trustee's Notice of Proposed Action for Sale of Real Estate by Auction Sale Free and Clear of Liens. Consequently, the Court concludes that Debtors may not rely on S.D.C.L. § 21-19-29 now in an attempt to purchase the homestead property from the Trustee at the sale price less their homestead

claim.[8]

Finally, Debtors may claim a homestead exemption only to the extent that equity up to $30,000.00 exists over and above encumbrances. *Peck v. Peck*, 212 N.W. 872 (S.D. 1927); *First National Bank of Beresford v. Anderson*, 332 N.W.2d 723, 726 (S.D. 1983). After application of FmHA's mortgage, no equity exists on which Debtors may claim a homestead exemption and Debtors have no rights under S.D.C.L. § 21-19-29 that they may exercise.

IV.

Second Hearing to Receive Upset Bids

The Court is concerned that at the sale confirmation hearing purchaser Ervin Haar raised his bid on the 471-acre parcel due to the erroneous recitation of Debtors' potential rights under S.D.C.L. § 21-19-29. It also is possible that other purchasers were dissuaded from bidding because of Debtors' assertions. Therefore, a second hearing shall be held to receive upset bids. Notice of that second hearing shall be given by the Trustee in the same manner as the original sale was noticed. If no upset bids are received, sale of the 471-acre parcel to Ervin Haar for $207,240.00 will be approved.

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[8] If Debtors had raised potential rights under S.D.C.L. § 21-19-29 prior to the sale, the next issue would be whether § 21-19-29 applies to a Trustee's sale under 11 U.S.C. § 363.

IV.

Summary.

An order will be entered which provides that FmHA's secured claim shall be determined as of the date of Trustee Pokela's sale, less plan payments received. Further, the order shall deny Debtors any rights under S.D.C.L. § 21-19-29 and shall provide that a second hearing shall be held to receive upset bids on the 471-acre parcel auctioned by the Trustee.

Dated this ____ day of December, 1994.

BY THE COURT:

_____
Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Northern Division

In re:	)
	) Bankr. No. 87-10275
HOFFMAN FARMS,	) (consolidated case)
	)
	) Chapter 12
Debtor.	)
	) ORDER DETERMINING POST-CONVERSION
	) CLAIM OF FmHA, DENYING DEBTORS'
	) CLAIM UNDER S.D.C.L. § 21-19-29,
	) AND REQUIRING SECOND HEARING FOR
	) RECEIPT OF UPSET BIDS

In recognition of and compliance with the Memorandum of Decision Re: Determination of Post-conversion Claim of FmHA and Approval of Sale of Homestead Parcel of Estate Real Propery entered this day,

IT IS HEREBY ORDERED that Farmers Home Administration's secured claim shall be revalued as of the date of Trustee Pokela's sale of the estate real property. The value shall recognize payments received by Farmers Home Administration during the Chapter 12 proceeding; and

IT IS FURTHER ORDERED that a second sale confirmation hearing shall be held January 31, 1995 at 11:45 a.m. in the Fourth Floor Courtroom, U.S. Post Office and Courthouse, 102 4th Avenue South East, Aberdeen, South Dakota, on the following property auctioned by Chapter 7 Trustee A. Thomas Pokela:

> Tract B of the SE¼ of Section 29; NE¼ of Section 29 except Outlot 1 as shown by the plat recorded in Plat Book 2, page 187; Outlots 2 & 3 of Plat of Hoffman's Outlots 1-3 in NE¼ of Section 29 in Plat Book 3 page 15; SW¼ of Section 29 except Outlot 1 in Plat Book 2, page 189; NW¼ of Section 32 all in 123-73, Edmunds County, South Dakota (471-acres more or less)

for the receipt of upset bids at a minimum of 5% over the successful bid at auction of $207,240.00 by Ervin Haar. Trustee Pokela shall provide notice of this second sale confirmation hearing in the same manner as notice of the original auction sale was given; and

IT IS FURTHER ORDERED that Debtors are denied any rights under S.D.C.L. § 21-19-29.

So ordered this ____ day of December, 1994.

BY THE COURT:

_____
Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)