

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
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June 29, 1999

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Michael E. Ridgway,
Assistant U.S. Attorney
Counsel for Farm Service Agency
Post Office Box 5073
Sioux Falls, South Dakota 57101

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

Subject: *In re Michael L. and Sandra L. Kreber,*
Chapter 12; Bankr. No. 97-40197

Dear Counsel and Trustee:

The matter before the Court is Debtors' motion to modify their confirmed plan and the objections thereto filed by Trustee Lovald and the Farm Service Agency (FSA). This letter decision and subsequent order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As discussed below, the Court concludes that Debtors may modify their confirmed plan as provided in their motion and incorporating the additional provisions to which Debtors agreed on the record May 11, 1999 regarding the shared appreciation agreement with FSA and a 9% interest rate on the deferred payment on FSA's second claim.

SUMMARY. On March 23, 1999, Debtors filed a motion to modify their confirmed plan to, in essence, delay the 1999 payments on two of FSA's claims, the first from January 1, 1999 to January 1, 2001 and the second from January 1, 1999 to January 1, 2004, both with stated interest accruing. Both claims are secured by real property in which Debtors have over \$40,000 in equity.

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Trustee Lovald objected to the motion on the grounds that his trustee's fees had not been paid, a delinquent seed bill was not addressed, and the status of the plan payment to Security State Bank was not addressed. Those objections were resolved before the hearing.

FSA objected to the motion on the grounds that Debtors were essentially trying to utilize a loan restructuring option offered by FSA but for which Debtors were not eligible because they were in bankruptcy. FSA also complained that the modification would allow Debtors to circumvent the Code requirement that they pay the market rate of interest. In lieu of a feasibility objection, FSA offered an alternative modification that would include a "drop dead" clause providing for dismissal of the case upon default.

A hearing was held May 11, 1999. Appearances included Trustee Lovald, John E. Harmelink for Debtors, and Assistant U.S. Attorney Michael E. Ridgway for FSA. At the hearing, Debtors acknowledged that they wanted to modify their plan to reflect the loan restructuring option that had been offered by FSA to other farmers in their area due to crop disasters. Debtors offered in evidence a letter dated January 5, 1999 they had received from the local FSA office telling them to come in and apply for the loan restructuring program due to area crop disasters. Their status as Chapter 12 debtors was not set forth as a disqualifying condition for participation. Assistant U.S. Attorney Ridgway advised the Court that federal regulations made Debtors ineligible for the program because they were in bankruptcy but he did not have the cite at hand.

Debtors agreed to recognize their shared appreciation agreement with FSA in any post-confirmation modification. They also agreed to an interest rate of 9% on the one deferred payment on FSA's second claim. The Court directed Assistant U.S. Attorney Ridgway to identify the applicable regulations and Debtors were given an opportunity to respond. The matter was taken under advisement.

DISCUSSION. FSA is correct that this Court has previously recognized those federal regulations that prohibit farmers in bankruptcy from participating in certain government programs. The issue here, though, is not whether Debtor can participate in the current FSA loan restructuring program but whether Debtors should be allowed to modify their confirmed plan under § 1229 in a manner similar to the current loan restructuring program. FSA has offered no specific objections showing how Debtors' proposed modification does not meet the requirements of § 1229. Therefore, the motion will be granted as filed except that the order granting the

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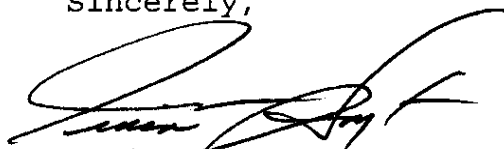
modification shall incorporate Debtors' agreement at the hearing regarding the shared appreciation agreement with FSA and a 9% interest rate on the deferred payment on FSA's second claim.¹

That Debtors are effecting a modification to their confirmed plan that is similar to a current government loan restructuring program is not the same as actually participating in the program. As recited by Debtors in their post-petition brief, a note by FSA to 7 C.F.R. 1951.954(a)(3) recognizes that a debtor in bankruptcy, though not eligible for the program, may want or need to modify his plan in a similar manner.

Finally, FSA's letter of January 5, 1999 essentially advised Debtors they could participate in the program. Despite a regulation to the contrary, Debtors have a strong argument that they nonetheless should be allowed to participate. In the future, FSA must take responsibility for insuring such letters are accurate and complete or it will be estopped from subsequently relying on contrary regulations.

Attorney Harmelink shall prepare a proposed Order Modifying Confirmed Plan that complies with the agreements made on the record May 11, 1999 and this letter decision.

Sincerely,



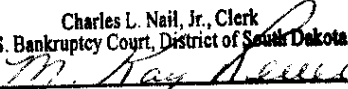
Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve copies by fax on parties in interest)

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

JUN 29 1999

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

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

JUN 29 1999

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

¹ The Court stated at the hearing that Debtors would not be forced to pay the 9% market-rate of interest on FSA's second claim if Debtors were otherwise eligible for FSA's loan restructuring option.

Case: 97-40197 Form id: 122 Ntc Date: 06/29/1999 Off: 4 Page : 1
Total notices mailed: 12

Debtor Kreber, Michael L. RR 1, Box 89, Tabor, SD 57063
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Aty Ridgway, Michael E. PO Box 5073, Sioux Falls, SD 57117-5073
Aty Ronayne, Robert M. PO Box 759, Aberdeen, SD 57402-0759

*** ERROR TX REPORT ***

TX FUNCTION WAS NOT COMPLETED

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sent parcel post

*** TX REPORT ***

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*** TX REPORT ***

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*** TX REPORT ***

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*** TX REPORT ***

TRANSMISSION OK

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*** TX REPORT ***

TRANSMISSION OK

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*** TX REPORT ***

TRANSMISSION OK

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