UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

IN RE:	)	CASE NO. 186-00254
	)	
ROGER LEE OLETZKE and	)	CHAPTER 12
DELORES ANNETTE OLETZKE,	)	
	)	
Debtors.	)	

MEMORANDUM OF DECISION RE:
FARM CREDIT BANK OF OMAHA'S MOTION FOR
POST-CONFIRMATION MODIFICATION OF RESTATED CHAPTER 12 PLAN

The matter before the Court is Farm Credit Bank of Omaha's Motion for Post-confirmation Modification of Restated Chapter 12 Plan and the objection thereto filed by Debtors Roger L. and Delores A. Oletzke. It is a core proceeding pursuant to 28 U.S.C. § 157(b) (2). This ruling shall constitute Findings and Conclusions as required by Bankr. R. 7052.

I.

Debtors Roger L. and Delores A. Oletzke (Debtors) filed a Chapter 11 petition for relief on September 23, 1986. The case was converted to a Chapter 12 proceeding on April 16, 1987. Farm Credit Bank of Omaha (FCBO) filed an amended claim for $306,753.55 plus interest, attorneys fees, and costs. A stipulation regarding the treatment of this claim was approved by Order entered December 17, 1987. That Stipulation provided inter alia that FCBO had a secured claim of $208,000 on certain described real property.

Debtors' Chapter 12 plan of reorganization, as restated, was confirmed January 28, 1988. The Restated Chapter 12 Plan's treatment of FCBO's secured claim reflected the Stipulation. The Plan also pledged disposable income toward payment of unsecured claims,

including FCBO's.

On March 16, 1990, FCBO filed a Motion for Post-confirmation Modification of Restated Chapter 12 Plan. The creditor argued that the value of the real property which secured a substantial portion of FCBO's claim was now $286,600 and that payments to FCBO on its secured claim should be modified to reflect this increase in value. Debtors objected to the Motion and argued inter alia that an increase in the value of secured property is not an appropriate basis for modification of the confirmed plan. Further, Debtors argued all matters with FCBO had been resolved by the Stipulation for plan treatment and that FCBO should be held to their agreement.

A hearing was held April 17, 1990. Debtors conceded that the real property had increased in value but the present value was not established. Both parties agreed that key questions of law should be resolved first. The matter was taken under advisement upon receipt of briefs by both parties.[1]

---

[1] With its brief, FCBO filed a Motion to Strike or, in the Alternative, for Partial Summary Judgment on May 21, 1990. FCBO argued that several of Debtors' grounds for their Objection to FCBO's Motion for Post-Confirmation Modification were invalid defenses as a matter of law under Bankr. R. 7012(f) and that those grounds should be stricken from the Objection or that FCBO should be granted a summary judgment on them. The grounds which FCBO requested be stricken or overruled as a matter of law are, in essence, that: FCBO does not having standing under 11 U.S.C. § 1129 or Local Bankr. R. 309 t.o seek post-confirmation modification of its secured claim; FCBO failed to identify all parties affected by the proposed modification; an increase in the value of secured property is not an appropriate basis for post-confirmation modification; the proposed modification did not comply with Local Bankr. R. 309(E)(3)(c); and FCBO's Motion to modify violated Bankr. R.9011. Debtors filed a response to this summary judgment Motion on June 15, 1990. The Motion, however, is rendered moot by the Court's decision on FCBO's Motion to modify.

II.

Post-confirmation modification of Chapter 12 plans "is intended as a method of addressing unforeseen difficulties that arise during plan administration and [it] is warranted only when an unanticipated change in circumstances affects implementation of the plan as confirmed[.]" In re Pearson, 96 B.R. 990, 992 (Bankr. D.S.D. 1989). Post—confirmation modification of a Chapter 12 plan is governed by 11 U.S.C. § 1229. It provides:

> (a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, on request of the debtor, the trustee, or the holder of an allowed unsecured claim, 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.
>
> (b)(1) Sections 1222(a), 1222(b), and 1223(c) of this title and the requirements of section 1225(a) of this title apply to any modification under subsection (a) of this section.
>
> (2) The plan as modified become the plan unless, after notice and a hearing, such modification is disapproved.
>
> (c) A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

11 U.S.C. § 1229 (emphasis added). As set forth in § 1229(b) (1) above, the modified plan must comply with 11 U.S.C. §§ 1222(a) and 1222(b), which govern the contents of a plan, § 1223(c), which governs a claim holder's acceptance or rejection of a modification, and § 1225(a),

which sets forth the requirements for confirmation. The subsection of § 1225 that is a key to this modification proposal is (a) (5), which provides:

> [W]ith respect to each allowed secured claim provided for by the plan--
>
> (B) (i) the plan provides that the holder of such claim retain the lien securing such claim; and
>
> (ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim[.]

11 U.S.C. § 1225(a)(5) (in pertinent part).

Determination of the secured status of a claim is governed by 11 U.S.C. § 506:

> (a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. **Such value shall be determined in light of the purpose of the valuation and of the proposed distribution or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.**

11 U.S.C. § 506(a) (emphasis added). Valuation of a secured claim, to insure that a plan or proposed modification complies with 11 U.S.C. §1225(a) (5) (B), is determined as of the effective date of the plan. Education Assistance Corp. v. Zellner, 827 F.2d 1222, 1225 (8th Cir.

1987)[2]; In re Durr, 78 B.R. 221, 223 (Bankr. D.S.D.1987); In re Mikkelsen Farms, Inc., 74 B.R. 280, 289—90 (Bankr. D. Or. 1987). The effective date of a plan is not altered by any post-confirmation modification. Haliaeetus Mills v. Tedford, 691 F.2d 392, 393 (8th Cir. 1982).

III.

The question presented is whether FCBO, as an undersecured claim holder, may request a post—confirmation modification that increases the total amount to be paid to FCBO on its secured claim. If the total value to be paid on account of a secured claim cannot be modified post—confirmation or if an undersecured claim holder cannot seek modification of its secured claim under § 1229, FCBO's Motion for modification must be denied.

A.

Upon consideration of § 1229 and related case law, the Court concludes that a confirmed Chapter 12 plan, upon the motion of an undersecured creditor,[3] may not be modified to alter the total value of

---

[2] For a good review of the precise holding of Zellner and other related decisions, see In re Bremer, 104 B.R. 999 (Bankr. W.D. Mo. 1989).

[3] Whether the Court will approve a post—confirmation stipulation by a debtor and a secured creditor that alters the value of a secured claim or a motion to modify by a debtor that alters the value of a secured claim are issues not presented or decided here.

the secured claim to be paid under the plan. Section 1229(a) allows modification of a plan to increase or reduce the amount of payments on a claim or to alter the time frame during which payments will be made. FCBO, however, wants a modification that increases the value of its secured claim. There is no provision under § 1229 for modifying the total value of the claim itself. Instead, two Chapter 12 provisions insure the finality of the value of a secured claim established prior to or within a confirmed plan. First, § 1225(a) (5) states that the value of a secured claim is determined as of the effective date of the plan. Pearson, 96 B.R. at 992-93; see also Sentry Financial Service Corp.v. Pitrat (In re Resources Reclamation Corp. of America) , 34 B.R. 771 (9th Cir. BAP 1983) (cases cited therein). There is no "new" effective date if the plan is modified under § 1229.

Second, § 1227 states that the effect of confirmation is that the provisions of a confirmed plan bind both the debtor and creditor. Those matters that can and should be determined at confirmation are thus given the requisite finality contemplated by §§ 1227 and 1229.[4] Id.; see also In re Cooper, 94 B.R. 550, 552. In this case, the binding effect of the confirmed plan is to Debtors' advantage; in other cases this may not be so. See In re Wickersheim, 107 B.R. 177 (Bankr. E.D. Wisc. 1989); Cooper, 94 B.R. at 551-52. In any event, since both § 1225(a) (5) and § 1227 contemplate that value of a secured claim is fixed upon confirmation, 11 U.S.C. § 507, which governs the valuation

[4] The Court would be amiss if it failed to note that in this case the parties entered into a stipulation that also memorialized the parties' agreement.

of claims under all Chapters, should not take precedence over specific Chapter 12 provision.

B.

The Court also concludes that FCBO, as an undersecured creditor, does not have standing under § 1229 to seek modification of the plan treatment of its secured claim. A secured creditor is not expressly authorized under § 1229(a) to file a motion to modify; only the debtor, trustee, or an unsecured creditor with an allowed claim may make that request. FCBO, however, is trying to use its status of an unsecured creditor to modify its secured claim. That scenario is not recognized by § 1229(a). If FCBO were allowed to use its unsecured status to seek modification of its secured claim, it would have a privilege not granted to fully secured creditors.

An order will be entered denying FCBO's Motion for Post-confirmation Modification of Restated Chapter 12 Plan. A separate order will be entered resolving Debtors' request for sanctions under Bankr. R. 9011 against FCBO.

Dated this 11th day of December, 1990.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

IN RE:	)	CASE NO. 186-00254
	)	
ROGER LEE OLETZKE and	)	CHAPTER 12
DELORES ANNETTE OLETZKE,	)	
	)	ORDER RE: FARM CREDIT BANK
Debtors.	)	OF OMAHA'S MOTION FOR
	)	POST-CONFIRMATION MODIFICATION
	)	OF RESTATED CHAPTER 12 PLAN

In recognition of and in compliance with the Memorandum of Decision Re: Farm Credit Bank of Omaha's Motion for Post-Confirmation Modification of Restated Chapter 12 Plan entered this day,

IT IS HEREBY ORDERED that Farm Credit Bank of Omaha's Motion for Post-Confirmation Modification of Restated Chapter 12 Plan is DENIED.

So ordered this 11th day of December, 1990.

BY THE COURT:

_____
Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
PATRICIA MERRITT, CLERK

By: _____
Deputy Clerk

(SEAL)