

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
FAX (605) 224-9020

June 22, 1988

Thomas A. Lloyd, Esq.
Assistant United States Attorney
326 Federal Building
Pierre, South Dakota 57501

Curt Ewinger, Esq.
Post Office Box 96
Aberdeen, South Dakota 57402

Re: Robert and Arlene Vander Werff
Chapter 11 385-00070

Gentlemen:

I have considered the record and briefs submitted in this matter and render the following decision.

This dispute is presented to the Court on a scant record. The Vander Werffs filed a Chapter 11 petition on June 17, 1985, and confirmed their plan one year later. In February, 1988 the Debtors filed a motion to compel Farmers Home Administration to release proceeds from the sale of Debtors' calves. FmHA refused to sign a release because the Debtors failed to file an FmHA farm plan and sign an agreement for the use of proceeds and release of the agency's security interest.

The issue presented to the Court is whether confirmation of the Debtors' chapter 11 plan relieves them of their pre-bankruptcy duty to comply with FmHA regulations regarding the farm plan and use of collateral proceeds. Neither side uncovered authority on point.

It is true, as the Debtors point out, that the terms of a confirmed plan control and bind the parties to the plan. 1141(a). However, the Vander Werff's approved disclosure statement and confirmed plan make no provision for the FmHA regulations and forms in question. it is not enough to say

implementing its regulations when the plan is silent on this topic.

Nor is the present issue settled because the plan describes the End-IA secured claim as "impaired". Under Section 1124(1), as relevant, a claim is impaired when the plan alters the legal or contract rights of the holder of the claim. Again, the plan makes no mention of altering FmHA'S rights under its regulations, and the plan did not impair those rights. Attorney Ewinger cites *Prince v. dare*, 67 B.R. 270 (DC. NW. Iii. 1986) as holding that post-confirmation the debtor is free of creditor controls which existed pre-bankruptcy. Prince, however, goes on to explain that the debtor'S control of post-confirmation property is "the same as if no bankruptcy case had ever been filed, except to the extent that the Plan or order confirming the Plan provides otherwise." Id. at 272. The regulations FmHA seeks to implement affected the Vander Werffs use of their property prior to filing bankruptcy, and was not altered by the language of the confirmed plan, confirmation order or findings and conclusions.

The code provision most determinative is Section 1142(a), which in relevant part provides:

Notwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition, the debtor shall carry out the plan and shall comply with any orders of the court.

By this section congress arguably has given the debtor power when carrying out the terms of a confirmed plan to ignore regulations dealing with financial conditions which would otherwise thwart plan action. See 5 collier on Bankruptcy para. 1142.01 and .01[2] (15th ed. 1988). The regulations in question deal with FmHA supervision of loans, proceed use, and debtor finances. I conclude the regulations relate to "financial condition" within the meaning of Section 1142(a). The question is whether the regulations conflict with the terms of the plan.

After reviewing the regulations and forms in question, I hold that they do not necessarily conflict with implementation of the plan. The purpose of the regulations is to protect FmI-IAs interest as a lender by providing management advice to the borrower. 7 C.F. 1924..51. The proceeds "agreement" (form 1962-1, Exhibit 1) requires that the debtor list planned and actual dispositions of FinHA collateral. It states the borrower must receive FmHA approval prior to disposing of collateral, but that the agreement shall not interfere with efficient farm operation. FmHA'S security interest is released in all collateral disposed of consistent with the form. The farm and home plan (form 431-2, Exhibit 2) generally requires the debtor to list assets and liabilities, account for actual and planned production and sales of crops and livestock, and account for expenses -

Very briefly, the regulations provide that if the FmHA and debtor cannot agree on planned uses of proceeds on the forms

(before or after appeal), or if the debtor simply refuses to attempt to agree to a form 1962-1, the FmHA will complete the form and consider it binding- 7 C.F.R. 1924.57(b) (2) and (3). Form 1962-1 must provide for release of sufficient income to pay essential farm and living expenses and make debt payments. 7 C.F.R. 1924.57(c) (4). If the debtor does not abide by form 1962-1 FmHA may as a last resort take criminal or civil action. 7 C.F.R. 1962.18, 1924.57(b) and 1962.49.

None of these requirements of the forms or plans are contrary to the Debtors' confirmed plan. They can be implemented consistently with the debtors' plan, and to that extent the Debtors must follow the procedures. This begins by executing the required forms, or failing this, FmHA may submit its own binding forms consistent with its regulations and the confirmed Chapter 11 plan- See 7 C.F.R. 1924.57(b) -

By enacting the Bankruptcy Code Congress has allowed Debtors some freedom from the press of pre-bankruptcy creditors- However, Congress also established the FmHA as a source of funds to debtors who cannot obtain financing elsewhere. 7 U.S.C. 1922(a) (4). It has allowed the agency to: enact regulations to protect its jeopardized position as a lender of last resort. By the regulations in question the agency has enacted reasonable methods to further this end. The FmHA regulations and Bankruptcy Code do not necessarily conflict and both shall be given effect to that extent.

The Debtors have requested the Court to award them attorney's fees incurred in pursuing the request for release of proceeds. No theory of recovery or authority is provided, and the request is denied.

This matter constitutes a core proceeding under 28 U.S.C. 157. The Court retains jurisdiction even though the plan was confirmed. 11 U.S.C. 1142; 5 Collier on Bankruptcy para. 1142.0114] (15th ed. 1988). FmHA will provide findings of fact, conclusions of law and an appropriate order. The Order shall provide that the Order respecting proceeds entered in this matter March 15, 1988, is vacated effective on the entry of the subsequent Order. The form 1962-1 will provide for release of FmHA's security interest upon disposition of collateral consistent with that form and regulations.

Very truly yours,

Irvin N. Hoyt
Bankruptcy Judge

INH/sh