

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Michael Jon Woodford
and Michelle Lea Woodford,

BKY No. 95-3-4766
Chapter 13

Debtors.

ORDER

This matter came on for hearing before the Court on January 11, 1996, on confirmation of Debtors' proposed Chapter 13 Plan. United Southwest Bank (United) objected to confirmation, and sought additional relief from the Court in conjunction with the bankruptcy case. Appearances were noted on the record. The Court, having heard arguments; having reviewed and considered the moving papers and briefs; and, otherwise being fully advised on the matter, now makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

OVERVIEW

The Debtors and United had maintained a borrower/lender relationship for several years prior to the Debtors' bankruptcy filing. The Debtors obtained financing from United for their farming and hog feeding operation. United secured the loans with both real and personal property of the Debtors, and, in one transaction, by placing a mortgage on Michael Woodford's mother's property. The Debtors eventually defaulted on some of the loans, and United began foreclosure. The Debtors responded with the filing of this case under Chapter 13. United now objects to confirmation of the Debtors' proposed Plan.

United asserts that the Debtors' Plan proposes to pay only \$65,000.00 of its \$108,674.81 allowed secured claims, remaining after the Debtors' abandonment of some of the collateral; and, that the Plan improperly strips United of its liens. The plan, United argues, is proposed in bad faith, and is not confirmable. The Court agrees. The Plan is a bad faith proposal that would substantially underpay United on its allowed secured claims.

United is generally undersecured. The Plan would allow the Debtors to use the proceeds from the sale of secured stock to pay otherwise fully secured mortgage notes. The proposal fails to satisfy the requirements of 11 U.S.C. Section 1325(a)(3) and (a)(5), and confirmation of the Plan is denied.

II.

FACTS

United's Debt.

The Debtors filed their petition and proposed Chapter 13 Plan on October 2, 1995. United was owed \$243,543.93, at filing, structured in the following manner:

,real estate mortgage	
Michael's mother's	
property,	\$31,758.46,
,	
real estate mortgage	

Debtors'		
homestead,	11,916.35,	
security interest in		
equipment,		
mach.,		
and crops,	71,697.00,	
security interest in		
Minn. Corn		
Processors stock,	65,000.00,	
unsecured,	63,172.12,	

total debt to		
United,	\$243,543.93,	
	=====	

The mortgage on Michael's mother's property was taken to secure a note in the original amount of \$35,000, executed on October 4, 1993. The mortgage on the Debtors' homestead was taken to secure a note in the original amount of \$13,900, executed on October 7, 1994.

The security interest in the corn stock was created by security agreement, executed on October 5, 1993, which contained a standard "dragnet" clause. The security agreement read that it was taken by United to:

[secure] the payment and performance of each and every debt, liability and obligation of every type and description which Debtor may now or at any time hereafter owed the Secured Party... (Security Agreement, October 5, 1993, par. 1)

No specific note or obligation is identified or referenced in the document. The Debtors owed substantial amounts to United at the time, pursuant to a \$132,000 line of credit.

United's secured position, in the amount of \$71,697, reflects the value of the stated collateral covering various operating and capital loans advanced by the bank. The Debtors have abandoned all of United's personal property collateral, except for \$3,200.00 in exempt farm machinery and the \$65,000 Minnesota Corn Processors stock. (FN1)

Proposed Treatment Under The Plan.

United's remaining debt structure, assuming repossession of the abandoned collateral, is:

,			
real estate mortgage			
Michael's mother's			
property,	\$31,758.46,	fully secured	
real estate mortgage			
Debtors'			
homestead,	11,916.35,	fully secured	
security interest in			
Minn. Corn Proces-			
sors stock,	65,000.00,	fully secured	
,			
undersecured claim,	66,372.12, (FN2)		

total, \$175,046.93,
=====

Disregarding liquidation costs, United would expect to realize \$108,674.81, on its remaining collateral; which is the sum of \$31,758.46, \$11,916.35, and \$65,000.00.

The Debtors' Plan, however, provides for the Debtors to sell the \$65,000.00 stock; and, to use part of the proceeds to satisfy the two real estate mortgages. The proceeds, then, would be applied in this manner:

proceeds from sale, \$65,000.00
=====

applied

Michael's mother's mortgage, \$31,758.46,

Debtors' mortgage, 11,916.35,

, to United under the "dragnet clause", 21,325.19,

total realization by United on all remaining mtgs & collateral,,

\$65,000.00

=====

United objects to confirmation of the Plan on grounds that: the Plan is proposed in bad faith; the Plan does not provide for payment to United of the allowed amount of its secured claims; and, the Plan does not provide for the retention of United's mortgage liens.(FN3)

III. DISCUSSION

11 U.S.C. Section 1325 (a) provides, in pertinent part:

(a) Except as provided in subsection (b), the court shall confirm a plan if

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(5) with respect to each allowed secured claim provided for by the plan

(A) the holder of such claim has accepted 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 under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder;

The Debtors have offered no theory or explanation that would legitimize their attempt to cannibalize United's collateral by using the secured stock proceeds to satisfy the otherwise fully secured mortgage debts owing this generally undersecured creditor; and, the Court is not aware of any. The proposal is in bad faith; and, it clearly fails to fulfill the requirements of 11

U.S.C. Section 1325 (a)(5). Accordingly, confirmation must be denied.

IV.
DISPOSITION

IT IS ORDERED: confirmation is denied.
Dated: February 29, 1996

By The Court:

Dennis D. O'Brien

Chief U.S.

Bankruptcy
Judge

(FN1) The Debtors successfully avoided United's lien on \$3,200.00 of exempt farm machinery, pursuant to 11 U.S.C. Section 522(f).

(FN2) This number reflects the additional amount of \$3,200.00 in unsecured claim resulting from the Debtor's lien avoidance.

(FN3) United also seeks an order awarding attorney's fees and costs for attending a first meeting of creditors at which the Debtors and their counsel failed to appear. The parties dispute certain facts regarding the matter; but, it is not disputed that the Debtors and counsel failed to appear. In any event, United is fully secured under both mortgages, which provide that these charges are to be added to the mortgage balances. United does not need an order awarding attorneys fees and costs to assess the charges.