

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

FAYE P. STEVENS,

DEBTOR

)
)
)
)
)

CASE NO. BK87-1379

Chapter 12

MEMORANDUM OPINION

Before a United States Bankruptcy Judge for the District of
Nebraska regarding Confirmation - hearing September 30, 1987.

APPEARANCES

Michael Heavey, Attorney for Debtor, 1823 Harney Street, #300,
Omaha, NE 68102

Patrick Nelson, Attorney for Prudential, P.O. Box 1060, Kearney,
NE 68848-1060

IT IS ORDERED:

Debtor is an individual more than 70 years of age. She owns certain land which her son has crop share rented for 28 years. She has signed a note to Prudential and executed a mortgage on her land securing the note. Her son and others also signed the note and executed the same mortgage instrument which grants Prudential a mortgage in debtor's interest in land as well as the son's interest in part of the land. The son has a remainder interest in part of the land subject to debtor's life estate and has granted a mortgage to Prudential regarding that interest. The note was in default prepetition and Prudential obtained a judgment of foreclosure in December 1986.

Debtor proposes a Chapter 12 plan to pay the allowed secured claim of Prudential over 30 years, commencing one year after confirmation date, such claim to be paid in equal annual installments including 10.5% interest.

Prudential objects on several grounds but the real issues seem to be feasibility and the right of the debtor to stop Prudential from exercising its remedies against co-obligors or co-mortgagors.

The Court will address the issues in reverse order. Neither the plan nor the Bankruptcy Code prohibits Prudential from collection attempts directed at nonbankruptcy debtors. In other words, Prudential can sell the son's interest in the mortgaged premises. Prudential can sue the son and his wife on the note. The Court does not accept Prudential's argument that when the interests of bankruptcy debtors and others are involved in debt or security instruments running to the benefit of a creditor, that such financial or business arrangement should prohibit one of the parties from receiving the benefit of the bankruptcy laws.

With regard to feasibility, the Court finds the evidence of future income amounts to be speculative at best. Such evidence, as Prudential suggests, predict income, both gross and net, considerably higher than in previous years. Debtor's only support for such a future cash flow is a bare assertion that converting the business relationship between debtor and son from a crop share lease to an owner/custom operator will create the significant income increase needed to fund the plan. Such evidence, without more, such as income records of the son, is insufficient to meet debtor's burden to show the plan is feasible.

Next, debtor's plan suggests the son agrees to perform the obligations of debtor under the plan if debtor dies before the plan is completed. This statement is not sufficient. First, upon death of debtor, that land in which debtor enjoys a life estate, will pass to the son by operation of law. It may or may not be subject to the terms of the confirmed plan.

Second, there is no documentation executed by the son, a nondebtor, binding him, his assets, his family, or his labor services to any terms of the plan. Even if there were such documentation, slavery was outlawed by amending the United States Constitution. This Court could not force him to perform the services necessary to complete the plan.

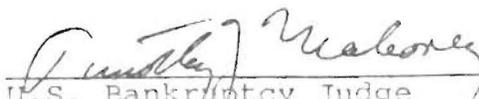
In conclusion, the Court finds as a fact that the plan is not feasible. It will require a major change in the operation. It will require a significantly different gross income than has been enjoyed in past years. It will require honest labor and management services of an individual who has a vested interest in property of the estate without the Court having any jurisdiction to deal with or bind such individual to the plan terms.

Therefore, the feasibility objection of the creditor is sustained. All other objections are overruled. This case is dismissed.

Separate Journal Entry to be entered.

DATED: December 11, 1987.

BY THE COURT:


Prudential Malone
U.S. Bankruptcy Judge