

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
KEITH SCHNELLER,) CASE NO. BK93-80432
)
) DEBTOR) CH. 12
) Fil. 24, 30, 57, 60, 61

MEMORANDUM

Hearing was held on September 7, 1994, on a Motion to Dismiss or in the Alternative for Relief filed by Prudential Insurance Company of America. Appearing on behalf of debtor was Jim Loerts of Dwyer, Pohren, Wood, Heavey, Grimm, Goddal & Lazer, Omaha, Nebraska. Appearing on behalf of Prudential was Kathryn Derr of Dixon & Dixon, P.C., Omaha, Nebraska. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(L).

Background

The debtor filed this Chapter 12 case in the spring of 1993 after failing to make a January, 1993, real estate mortgage payment to Prudential Insurance Company of America (Prudential). That payment was due pursuant to the terms of a confirmed Chapter 11 plan. The Chapter 11 case was filed in this district on March 10, 1988. The plan was confirmed on June 29, 1990. In that case, the debtor and Prudential negotiated the terms of payment to Prudential, and Prudential agreed to accept a substantially reduced principal if the debtor was able to make complete and timely payments under the confirmed Chapter 11 plan. That plan provided that if the debtor defaulted on his payments to Prudential and failed to cure such default within a specified amount of time, Prudential was allowed to assert the full amount due and owing.

At the time the Chapter 12 case was filed, and as a result of the default in payment and the reinstatement of the full amount of the debt, the Prudential claim was \$577,459.21. At the date of the trial, September 7, 1994, Prudential was owed \$679,271.44.

Prudential has objected to the Chapter 12 plan because, among other things, the plan does not propose to pay what Prudential believes is the full amount of the value of the land, but instead proposes a payment of an amount far less than the debt and far less than the actual value of the land which secures the debt. In addition, Prudential objects to the proposed interest rate and the ten-year repayment term. At trial, the parties agreed that an interest rate of 9.1% was appropriate, although debtor's plan had proposed a rate of 7%.

Prudential not only objected to the plan, but moved to dismiss the case and moved for relief from the automatic stay.

The main issues before the Court are whether the plan is feasible and whether the value of the land is the amount presented by the debtor or the amount presented by Prudential.

Decision

The Court finds as a fact that the value of the land is \$635,000.00. The minimum interest rate required to comply with the statute is the Wichmann rate as of the date of the trial, or 9.1% per annum. The Court further finds as a fact that the proposed plan, as amended by the cash flow statement and testimony presented at trial, is not feasible.

Therefore, the Court does deny confirmation of the plan and does dismiss this Chapter 12 case.

Findings of Fact

A. Land Value

The debtor presented two written appraisals, and Prudential presented one written appraisal plus written opinions given by Prudential's appraiser concerning the deficiencies in the appraisals presented by the debtor. All three appraisers testified at the trial. The Court finds that the detail presented by Prudential's appraiser and the fact that the Prudential appraiser presented relatively recent sales which were actually comparable to the type of land owned by the debtor make the appraisal presented by Prudential more credible than the appraisals presented by the debtor. The value of the land subject to its mortgage of Prudential is \$635,000.00.

B. Feasibility

There was no evidence presented to convince the Court that the debtor is capable of generating sufficient annual revenues to

pay all operating expenses, plus pay, over ten years, the amount needed to amortize \$635,000.00 at 9.1%. The evidence presented by the debtor concerning feasibility was that he would change the type of crops which he would plant in the future from those which he had planted in the past. He would reduce certain crop input amounts, at least for one year, and would have limited machinery repair and replacement, both for one year and into the future. Other than the debtor's own opinion of what could be accomplished by such changes, there was no other evidence in support of the numbers presented. The debtor, although acknowledging that he would require loans for operations, did not include any interest expenses in his cash flow analysis. The gross and net revenues projected are totally inconsistent with his revenue history. Acknowledging that the 1992 and 1993 crop years were disastrous, and, from the debtor's point of view, not usual, the Court still finds that there is insufficient evidence to convince the Court of the credibility of the debtor's projections.

The debtor, pursuant to the terms of the Chapter 11 confirmed plan, was required to generate gross and net revenues significantly lower from those he now projects for 1994 and 1995. Because of crop failures apparently due to weather, he was unable to generate sufficient income to even meet the lower annual payments required by the confirmed Chapter 11 plan. Now he proposes to make significantly higher payments based not upon any significant increase in actual per bushel or per hundred weight crop prices, but upon his plan to plant more acres of particular crops and thereby harvest more crops to sell at whatever the current market value is.

This Court generally gives a farm debtor the benefit of the doubt on crop and revenue projections, at least the first time around. However, this is not the first time around in this case. The Court has before it the debtor's experience both prior to filing the Chapter 11 case, during the Chapter 11 case, after the Chapter 11 case and during the Chapter 12 case. The experience of the debtor is that he never has been able to generate the type of revenue that he suggests will be generated in the future. And, because of weather problems, he has not been able to generate sufficient revenue to properly service the Prudential debt, at least since 1988, except for two reduced payments paid in 1991 and 1992.

C. Conclusion

This plan proposed by the debtor is not feasible. It does not appear from the evidence presented at trial, or from the history of this debtor that he will be able to propose any feasible plan and, therefore, under 11 U.S.C. § 1222(5) this

Court denies the debtor the right to file another Chapter 12 plan and does hereby dismiss this case. The Court also finds that this case should be dismissed under 11 U.S.C. § 1208(c)(1) because of unreasonable delay by the debtor that is prejudicial to Prudential. Since before 1988, Prudential has received two payments. Interest has accrued to such an extent over the years that the Prudential claim, which was fully secured several years ago, is now significantly undersecured. Such a delay in payments has been and continues to be prejudicial to Prudential and is sufficient ground on its own for dismissal of the case.

Separate journal entry to be entered.

DATED: December 9, 1994

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

DERR, KATHRYN	345-0965
LOERTS, JIM	392-1011

Copies mailed by the Court to:

Richard Lydick, Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

