

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

MAHLOCH FARMS, INC.,)
HARVEY and ALICE MAHLOCH,)

DEBTORS)

CASE NO. BK82-669
CASE NO. BK82-670

MEMORANDUM

This memorandum is supplemental to the ruling made on August 29, 1983, at the hearing on confirmation of the plan then considered. After reflection, although I believe the ruling made at the hearing, "Plan not confirmed." was appropriate, the reasons articulated on the record in open court are unsatisfactory. This memorandum is an attempt to satisfactorily explain that ruling.

In substance and without considering the amendment, the plan can be said to provide a period of some eighteen months in which the trustee of this Chapter 11 could attempt to sell property of the estate. That eighteen-month period could be extended. The plan can be said to provide a "safe harbor" for the trustee for a period of time during which the secured creditors must wait, having neither their property nor the cash value of their claims. While it is true that the plan proposes at a subsequent time to give the secured creditors either the value of their claims or their property, the plan provides no assurance that creditors will ultimately receive the value of their claims because there is no assurance that the value of the property will not decrease. Nor does the proposed plan assure the creditors that they will receive the equivalent of their property during the period of the plan, enabling them to invest the proceeds for a return to the secured creditors.

Again, without reference to the proposed amendment, in my view, the plan cannot be said to be fair and equitable since it does not give the secured creditors what they could expect in a Chapter 7, that is either their property or the value of their claims.

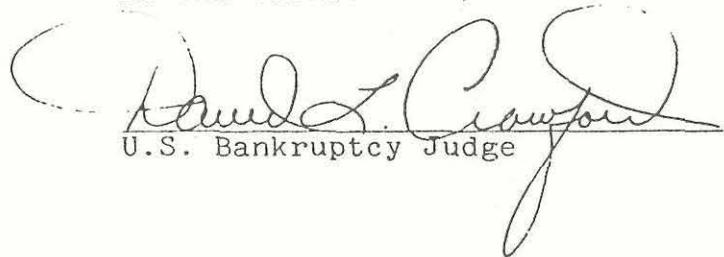
The effect of the proposed amendment to the plan was too lightly considered in the hearing on confirmation held August 29, 1983. As I understand the amendment, it gives secured creditors the right to apply for relief from the stay during the eighteen-month period or any extension of the period in which the trustee would be attempting to sell the property. In my view, the proposed amendment does "adversely" change the treatment of claims of unsecured creditors in that it changes the forum for determination of equity which may

exist for their benefit from the marketplace to the courtroom and changes the time for determination of equity from the future to the present. In other words, the time for finding a buyer who will pay value for any existing or future equity may be significantly reduced. An unsecured creditor could, at the end of the eighteen-month period, find that all secured creditors had obtained relief from the stay and there was no property left for unsecured creditors.

Given that conclusion, it would seem appropriate that notice of the amendment be given to creditors with an opportunity for them to re-evaluate whether they wish to vote for the plan as amended or not.

DATED: September 2, 1983.

BY THE COURT:


U.S. Bankruptcy Judge

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