

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
PATRICK DOUGLAS CROUSE and )  
JAROLYN KAY CROUSE, ) CASE NO. BK86-3206  
 )  
DEBTORS ) Chapter 11

MEMORANDUM OPINION

Confirmation hearing in this Chapter 11 case was held on September 10, 1987. Appearing on behalf of the debtor was Thomas Danehey of Alliance, Nebraska. Appearing on behalf of Production Credit Association of the Midlands and Federal Land Bank Association of Omaha was John Ballew of Scottsbluff, Nebraska.

Statements of Fact

Debtors filed their Chapter 11 petition November 28, 1986, and in January 1987 filed their reorganization plan. Debtors propose as part of their plan the transfer of three real estate contracts where debtor is vendor, to Production Credit Association of the Midlands (PCA) and Federal Land Bank Association of Omaha (FLB) as partial payment of their debt owed to those creditors. Creditors apparently are willing to accept the contracts; however, creditors object to the debtors' proposed method to establish their present value. The three real estate contracts, each with differing terms, are as follows:

1. "Powell": outstanding balance of \$373,850 with a five-year repayment at 10%. FLB and PCA Memorandum Brief at 2 and Crouse Supplemental Brief at 2;

2. "Nielsen": outstanding balance of \$46,200 with a seven-year repayment at 12.75%. FLB and PCA Memorandum Brief at 2 and Crouse Supplemental Brief at 3;

3. "Essay": outstanding balance of \$31,500 with a seven-year repayment at 12.75%. FLB and PCA Memorandum Brief at 2 and Crouse Supplemental Brief at 3.

Creditors argue that because the contracts will be paid on an installment basis, a present value calculation is required. Creditors propose a discount rate higher than the interest rate specified in the three contracts. They argue that a higher rate is necessary to reflect the risks and costs involved in their acceptance of the contracts. Debtors argue that the rationale of In re Wichmann, \_\_\_ Bankr. \_\_\_, No. BK87-521, Slip Op. (Bankr. D. Neb., July 10, 1987), is applicable. Applying Wichmann to the three real estate contracts would result in a discount rate lower than the interest rates established in the real estate contracts as well as lower than creditors proposed rates.

Issues

1. What methodology should be utilized to ascertain the value of real estate contracts transferred by debtor to creditor as partial payment of debt owed creditor?

2. When should the contracts be considered transferred by debtor to creditor?

Analysis

In re Wichmann dealt with a Chapter 12 debtor and the valuation of an allowed secured claim which the debtor proposed to pay over a thirty-year period. In the instant case, debtors are not the contract obligors, in contrast to Wichmann, and each of the real estate contracts' payback periods is less than seven years. Additionally, in both the "Powell" and "Nielsen" contracts the loan to value ratio provides an adequate equity cushion. In "Essay" the ratio is larger.

Therefore, this Court finds that the five-year payback period and the equity cushion of the "Powell" contract can support a discount rate equal to the interest rate contained in that contract. This Court also finds the negotiated interest rate in the "Nielsen" and "Essay" contracts acceptable as the discount rate for valuation purposes. The payback period of these two contracts is longer than "Powell"; thus, an increased risk is present, justifying a higher discount rate. Because these discount rates equal the interest rates for each of the three contracts, the three contracts should be valued at their face value. The Wichmann methodology shall not be utilized in situations such as the instant case where the discount rate calculated according to Wichmann is less than both debtors' and creditor's proposed rates.

The promissory notes should offset debtor's debt on December 31, 1986. The briefs appear to be in agreement on this issue. See FLB and PCA Memorandum Brief at 7 and Crouse Brief at 8.

DATED: October <sup>20</sup>~~19~~, 1987.

BY THE COURT:

  
\_\_\_\_\_  
U.S. Bankruptcy Judge

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