

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

LOREN L. WAGNER,

KATHRYN S. WAGNER,

DEBTORS

CASE NO. BK80-695

MEMORANDUM OPINION

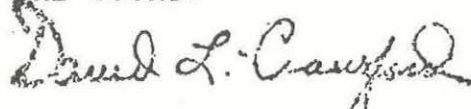
Before me are the objections to confirmation filed by Charles T. Pauley and Sarah G. Pauley, unsecured creditors and American National Bank, an unsecured creditor. The creditors object to confirmation on the basis that the debtors' plan is not proposed in good faith. Debtors' second amended plan proposes the payment of \$333.00 per month for a period of sixty months in addition to paying other mortgage payments outside the plan. The allegation that the second amended plan is not in good faith is without merit.

The balance of the objection by both creditors is that the unsecured creditors will not receive at least the amount they would be paid in liquidation under Chapter 7 of the Code. Here the dispute centers on the valuation of real estate owned by the debtors which is their home. The objecting creditors have introduced evidence that the fair market value of the home is either \$80,000.00 or \$84,000.00. The debtors put the value of their home at \$70,000.00. I am unpersuaded that if a trustee in bankruptcy were to sell the home at a forced sale in a Chapter 7 bankruptcy that the trustee would receive \$84,000.00 or \$80,000.00 for the home. Nevertheless, assuming that a trustee could sell the home for \$84,000.00, there exist liens and other encumbrances against the home of \$39,000.00. Assuming the trustee's expenses included a 7% selling commission to a real estate agent and a 7% obligation to pay points and assuming further trustee's fees of approximately \$1,700.00 and assuming the debtors claim their \$15,000.00 homestead exemption as provided in §522 of the Code, there would be left without further expenses less than \$17,000.00. Debtors' plan proposes the payment of \$19,980.00 over the 60-month period and I conclude, based upon the fair market values testified to by the objecting creditors, that the debtor's plan proposes more than the amount unsecured creditors would receive in liquidation. This assumes that a trustee could sell the property for \$84,000.00, an assumption which is doubtful.

In consideration of the foregoing, a separate order is entered overruling the objections to confirmation and confirming the debtors' plan.

DATED: August 14, 1981.

BY THE COURT:



U.S. Bankruptcy Judge