

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK09-41473
)
TERRY RAY BAIN,) CH. 12
)
Debtor(s).)

ORDER

Hearing was held on August 10, 2011, regarding Fil. #120, Amended Chapter 12 Plan, filed by the debtor; Fil. #121, Objection to Confirmation of Plan, filed by Farmers State Bank of Maywood; Fil. #122, Objection to Confirmation of Plan, filed by Farm Service Agency; and Fil. 123, Objection to Confirmation of Plan filed by trustee James A. Overcash. James Nisley appeared for the debtor, James Overcash appeared as Ch. 12 Trustee, Tim Thompson appeared for Farmers State Bank of Maywood, and Paul Boeshart appeared for USA/FSA.

This debtor has been in a Chapter 12 bankruptcy since the spring of 2009. The debtor has filed five different Chapter 12 plans, the first four of which were denied confirmation. This fifth plan is also denied confirmation.

It is clear on the face of the plan and cash flow requirements of the plan that it is not feasible. In addition, it does not include any amount the debtor is required to pay as criminal restitution. The total amount of criminal restitution is more than \$55,000.00 and the debtor is to pay it at the rate of 7% of his gross income on an annual basis until paid in full. There is no indication in any of the documents filed that he will be able to do so.

The income projections are high compared to the proceeds the debtor has shown during his farming over the last six years. The expense projections are low compared to historical numbers.

This plan does not comply with Local Rule 3015-1A. That rule requires a statement disclosing any change of the debtor's assets or liabilities from the date of filing of the petition through the date of the filing of the plan, assumptions and sources upon which the cash flow projection is based with historical or other data justifying such assumptions, projected administrative expenses, including attorney fees, and projected disposable income statement for the term of the plan.

For all of the above reasons, the plan is denied confirmation and the case is dismissed pursuant to 11 U.S.C. § 1208(c)(5). Although counsel for the debtor has requested additional time to consider liquidation of some of the assets to make the plan more feasible, the assets are totally encumbered and it is time to allow the creditors to attempt to liquidate their collateral.

IT IS ORDERED that the confirmation of the Amended Chapter 12 Plan, Fil. #120, is denied and the case is dismissed.

DATED: August 15, 2011

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:

*James Nisley
James Overcash
Tim Thompson
Paul Boeshart
U.S. Trustee

* Movant is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.