

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

JAMES LYLE HALLS,
a/k/a J. L. Halls,
COLLEEN HALLS,
Engaged in Farming,

Case No. 87-943-C

Chapter 12

Debtors.

ORDER ON OBJECTION TO PLAN

On December 2, 1987 a hearing on confirmation of plan came on for hearing in Des Moines, Iowa. Among those present were Paul H. Wieck, II appearing on behalf of the debtors; and Kevin R. Query, Assistant U.S. Attorney, appearing on behalf of the Farmers Home Administration (FmHA). The dispute in this case concerns whether the debtors' payment of FmHA's allowed secured claim may be extended beyond a term of 7 years. The matter has been submitted on briefs and a stipulation of facts.

FACTS

A part of the FmHA's claim is secured by livestock and machinery. In their amended plan, the debtors propose the following treatment of the allowed secured claim held by FmHA arising from its interest in personal property:

<u>Loan</u>	<u>Allowed Secured Amount</u>	<u>Plan Interest Rate</u>	<u>Plan Annual Payment</u>
44-12	\$83,316.46	7.25%	\$11,999.84
44-18	\$59,581.76	6.5 %	\$ 1,772.89

Within 30 days of confirmation, the debtors plan to pay \$46,937.00 to be applied against the allowed secured amount of Loan #44-18.

Payments on Loan #44-12 and the remaining balance of Loan #44-18 are proposed to be amortized over a 10-year period.

Most of the debtors' machinery is over 8 years old and in good condition. The machinery is valued at \$72,200.00. The debtors' livestock herd consists of 20 cows, 2 bulls and 10 heifer calves. The livestock is valued at \$17,500.00. The plan provides that FmHA's lien shall be retained on the property unless the property is sold. If sold, the plan directs that the remaining balance of the claim is to be paid in full or a replacement lien is to be granted.

DISCUSSION

In examining the FmHA's challenge to the debtors' proposed 10-year payout, the court turns to 11 U.S.C. section 1222(b)(9) which provides that a plan may "provide for payment of allowed secured claims consistent with section 1225(a)(5) of this title, over a period exceeding the period permitted under section 1222(c)." Section 1222(c) states that a plan shall not provide for payments over 3 years, unless the court extends the plan for a longer period. In In re Janssen Charolais Ranch, Inc., 73 B.R. 125, 127 (Bankr. D. Mont. 1987), the court explained the limits placed upon payment of secured debt in the Chapter 12 context:

The only time limits on payment of secured debt are those which are implied

by the present value language of 1225(a)(5), and the feasibility test of 1225(a)(6). Under 1225(a)(5), the rights of the nonconsenting secured creditor can be modified only if, among other things, the creditor retains its lien on the security and receives collateral with a present value not less than the amount of the second claim.

Additionally, the court must ensure secured creditors' claims are protected by the plan. In situations where property is depreciating, debtors must show that the value of the collateral is equal to the amount remaining on the claim. In re White, 36 B.R. 199, 204 (Bankr. D. Kan. 1983). The promise of future replacement liens may be insufficient to protect creditors where the decision to acquire replacement collateral is in the discretion of the debtor. Id.

Typically, chattel liens should not exceed 5 to 7 years. In re Dunning, 77 B.R. 789 (Bankr. D. Mont. 1987); In re Martin, 78 B.R. 598 (Bankr. D. Mont. 1987). The debtors argue that the useful life of the machinery is 10 years. However, the record indicates that the major pieces of machinery have been in use between 9 and 13 years. Absent compelling evidence to the contrary, it is unreasonable to expect that the machinery will retain a value that will exceed the amounts owing to the FmHA for 10 years.

The debtors correctly represent that this court approved a term exceeding 7 years in another Chapter 12 case. There chattels securing the claim consisted solely of a cattle herd and the plan provided for replacement liens in offspring. This case is different. Here the value of the

livestock constitutes only 25% of the value of the chattel security less exemptions. Older machinery accounts for 75% of the collateral. Accordingly, there is a greater risk to creditors which, in turn, calls for a shorter term.

CONCLUSION AND ORDER

WHEREFORE, for the reasons set forth above, the term of the FmHA's claim secured by chattel cannot exceed 7 years.

THEREFORE, the FmHA's objection to plan is sustained and confirmation of the plan is denied. The debtors shall submit a plan that comports with this order within 14 days.

Signed and filed this 1st day of February, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE