



FACTS

The debtor filed for relief under Chapter 7 on June 3, 1987. On November 30, 1987 the debtor converted the case to one under Chapter 12.

On February 10, 1988 the FLB filed proofs of claims evidencing claims in the amount of \$137,410.14 and \$169,507.15. The FLB indebtedness is secured by a mortgage interest in 220 acres. On February 12, 1988 the PCA filed a proof of claim in the amount of \$50,234.43. The PCA indebtedness is secured by a mortgage interest in 140 acres and a security interest in crops, livestock and machinery.

Under its plan, the debtor proposes to treat the FLB claims in two subclasses. In the first subclass, the FLB's allowed secured claim is fixed at \$76,816.00 paid over 30 years with annual payments in the amount of \$8,836.14. This claim is secured by an 80 acre parcel. With respect to the second subclass, the debtor fixes the FLB's allowed secured claim at \$151,856.00 paid over 30 years with annual payments in the amount of \$17,467.99. This claim is secured by a 140 acre parcel. The debtor's plan sets the PCA's allowed secured claim at \$47,234.43 paid over 10 years with annual payments of \$8,020.88.

The debtor illustrates the method by which it proposes to pay the trustee fees as follows:

Amount of Claim:	\$10,000.00
Payments Under Plan:	\$ 2,000.00 per year, plus 5% interest for five years.

Year 1

Debtor makes payment of \$2,500.00 to Trustee. Trustee deducts fee of \$277.78. Creditor receives payment of \$2,222.22. Balance after payment is \$8,000.00.

Year 2

Debtor makes payment of \$2,400.00 to Trustee. Trustee deducts fee of \$266.67. Creditor receives payment of \$2,133.33. Balance after payment is \$6,000.00.

Year 3

Debtor makes payment of \$2,300.00 to Trustee. Trustee deducts fee of \$255.55. Creditor receives payment of \$2,044.45. Balance after payment is \$4,000.00.

Year 4

Debtor makes payment of \$2,200.00 to Trustee. Trustee deducts fee of \$244.44. Creditor receives payment of \$1,955.56. Balance after payment is \$2,000.00.

Year 5

Debtor makes payment of \$2,000.00 to Trustee. Trustee deducts fee of \$222.22. Creditor receives payment of \$1,777.78. Balance after payment is \$0.00.

NOTE:

The foregoing example is an illustration to show how payments through the Trustee are credited to claims. This illustration is not an exact showing of the treatment of a particular creditor in this case.

The FMHA filed a proof of claim on September 21, 1987 evidencing a claim of \$190,453.06. To secure the indebtedness the debtor granted the FMHA an interest in crops, livestock and machinery. The security agreement in question contains an after acquired property clause. The debtors propose to fix the FmHA's allowed secured claim at \$6,510.57.

This figure represents the FmHA's interest in livestock and machinery less the PCA's superior lien of \$47,234.43. The debtor's proposal does not reflect the FmHA's alleged interest in the crops planted prepetition and in the payments made under the 1986 and 1987 Feed Grain Program.

#### DISCUSSION

##### I.

The debtor proposes to deduct the trustee's fees from the amounts paid on allowed secured claims. It relies on 28 U.S.C. section 586(e) which in relevant part provides:

(1) The Attorney General, after consultation with a United States trustee that has appointed an individual ... to serve as standing trustee in cases under chapter 12 or 13 of title 11, shall fix--

....

(B) a percentage fee ....

(2) Such individual shall collect such percentage fee from all payments. received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee ... (emphasis added).

The debtor construes the underscored language to mean that Congress intended fees to be deducted from amounts paid to secured creditors under 11 U.S.C. section 1225(a)(5)(B), which provides that a court shall confirm a plan over the objection of a secured creditor if the creditor will retain the lien securing its claim and will receive value, as of the effective date of the plan, that is not less than the

allowed amount of the creditor's claim. The debtor's strained construction is at odds with principles of statutory construction.

Courts must interpret statutes in a harmonious and comprehensive fashion, giving effect to all provisions, where possible. McCuin v. Secretary of Health and Human Services, 817 F.2d 161, 168 (1st Cir. 1987). Where two provisions of an act appear to be inconsistent, it is the court's duty to reconcile them. Paice v. Maryland Racing Commission, 539 F.Supp. 458, 463 (D. Md. 1982).

To interpret the two provisions in the manner the debtor suggests in essence reads section 1225(a)(5)(B) out of the Code. The purpose of this provision is to ensure that creditors receive the present value of their property to be distributed under the plan. Matter of Doud, 74 B.R. 865 (Bankr. S.D. Iowa 1987) aff'd sub nom., United States v. Doud, No. 87-577-B (S.D. Iowa, filed Dec. 7, 1987). Deducting trustee's fees from the amount that satisfies section 1225(a)(5)(B) deprives a creditor of the value of its allowed secured claim. Matter of Sesker, No. 87-3014-C, slip op. (Bankr. S.D. Iowa June 10, 1988). Such construction renders section 1225(a)(5)(B) a nullity. Interpreting 28 U.S.C. section 586(e) to mean that the trustee's fee must be paid in addition to the amounts required by section 1225(a)(5)(B) gives effect to both provisions.

## II.

The FMHA contends that the debtor fails to recognize

its interest in the 1987 crop that the debtor planted prepetition. The debtor argues that the FmHA's lien did not attach to the crops because the value of the crop was infinitesimal as of the bankruptcy filing date.

Courts have consistently held that, if crops subject to a prepetition security interest are planted before filing, the lien attaches to crops and to proceeds realized postpetition. In re Hardage, 69 B.R. 681, 685 (Bankr. N.D. Tex.1987); In re Hugo, 50 B.R. 963, 967 (Bankr. S.D. Mich. 1985); and In re Hamilton, 18 B.R. 868, 871 (Bankr. D. Colo. 1982).

Iowa Code section 554.9203(1) provides in relevant part that a security interest is not enforceable against the debtor with respect to the collateral and does not attach unless:

- a. the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and
- b. value has been given; and
- c. the debtor has rights in the collateral,

There is no question that the debtor executed a security agreement describing the crops and that the FMHA gave value to the debtor in the form of loan proceeds. The debtor's argument goes to the third criterion. The debtor argues it did not have rights in the collateral until the collateral had measurable value. However, a person acquires rights in crops when crops are planted and thus a security interest in

crops attaches at that time. United States v. Minister Farmers Coop. Ex., Inc., 430 F.Supp. 566, 569 (N.D. Ohio 1977); In re Lemley Estate Business Trust, 65 B.R. 185, 189 (Bankr. N.D. Texas 1986). The value of the property being secured has no bearing on attachment.

The debtor next maintains that even if the court determines that FmHA's lien attached to the 1987 crop, the attachment of the lien is an avoidable preference under 11 U.S.C. section 547(b). The court declines to address this argument since a section 547 action is not properly before the court. Bankruptcy Rule 7001 states that an adversary proceeding includes proceedings to recover money or property. Thus an action to avoid a preferential transfer must be filed as an adversary. The debtor has not filed an adversary complaint. The debtor simply raised the section 547 matter in its brief.

### III.

The FMHA argues that it has an interest in government program payments by virtue of an administrative setoff.<sup>1</sup> This court examined and rejected the identical argument made by the FMHA in Matter of Butz, \_\_\_\_ B.R. \_\_\_\_ (Bankr. S.D. Iowa 1988). The Butz analysis and conclusions of law pertaining to the administrative setoff issue are disposi-

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<sup>1</sup> On both the proof of claim filed September 21, 1987 and the amended proof filed February 29, 1988, the FMHA indicated its claim was not subject to any setoff.

tive of the FmHA's argument in this case.

#### IV.

Finally, the FMHA asserts that the debtor's are not providing the FMHA with the present value of its claim as required by 11 U.S.C. section 1225(a)(5)(B). The debtor states in its plan that the discount rate to be applied to secured claims will be calculated pursuant to this court's decision in In re Doud, 74 B.R. 865 (Bankr. S.D. Iowa 1987), aff'd sub nom. United States v. Doud, No. 87-577-B (S.D. Iowa, filed Dec. 7, 1987). The debtor in its brief states that the Doud formula yields an 11% discount rate. This figure appears to satisfy the Doud requirements. However, the plan should specify the actual discount rate being applied to the FMHA claim.

#### CONCLUSION AND ORDER

WHEREFORE, based upon the foregoing discussion, the court finds that:

1. The trustee's fee must be paid in addition to the amounts the debtor is required to pay creditors under 11 U.S.C. 1225(a)(5)(B);
2. The FmHA's lien attached to the debtor's 1987 crop. at the time the debtor planted the crop;
3. The debtor's arguments concerning an avoidable preference under 11 U.S.C. section 547 are not properly before the court;
4. The FMHA is not entitled to an administrative



offset of the government program payments at issue; and

5. The discount formula proposed by the debtor provides the FMHA with the present value of its claim.

THEREFORE, the PCA's and FLB's objections to the plan are sustained. The FmHA's objection is sustained with respect to its interest in the 1987 crop. The FmHA's other objections are overruled.

The debtor is directed to file an amended plan that comports with this order within 14 days.

Dated this 28th day of June, 1988.

LEE M. JACKWIG  
CHIEF U.S. BANKRUPTCY JUDGE