

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

STEPHEN F. SESKER and
SANDRA L. SESKER,

Case No. 87-3014-C
Chapter 12

Debtors.

ORDER - OBJECTIONS TO PAYMENT OF TRUSTEE'S FEES
UNDER CHAPTER 12 PLAN

On February 16, 1988, a preliminary hearing was held on the confirmation of Debtors' Plan. Jerrold Wanek appeared on behalf of the Debtors, and Jon P. Sullivan appeared on behalf of Maxwell State Bank (hereinafter "Bank"). At the conclusion of said hearing, the Court ordered the parties to file briefs on payment of trustee's fees in the proposed plan on or before March 11, 1988. The Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(L). The Court, having reviewed the file, briefs, and arguments of counsel, now enters its findings and conclusions pursuant to F.R. Bankr. P.

FINDINGS OF FACTS

1. On December 10, 1987, Debtors filed their Chapter 12 Petition.
2. On January 8, 1988, Debtors filed their Plan of reorganization.
3. In Appendix 1 of said Plan, Debtors used the

following illustration of their payment procedure through trustee:

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.

4. Three secured creditors, Maxwell Savings Bank, Farmers Home Administration, and Federal Land Bank of Omaha, objected to Debtors' payment procedure for trustee's fees.

DISCUSSION

The issue presented in this case concerns the method of payment of the trustee's fee under a Chapter 12 plan. Resolution of the issue requires construction of section 1225(a)(5)(b)(ii) of the Bankruptcy Code. Section 1225(a) in relevant part states:

(a) except as provided in (b) [dealing with cram down of unsecured claims], the court shall confirm a plan if--

...

(5) with respect to each allowed secured claim provided for by the plan--

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder;....

11 U.S.C. §1225(a). Debtors argue that under section 1225(a)(5)(B)(ii), they can pay trustee the yearly secured claim payment, and that trustee can then deduct her fee from that yearly payment. The secured creditors, on the other hand, argue they are entitled to the full amount of their

secured claim payments, and that the trustee's fee must then be paid in addition to the payments to the secured creditors.

In construing a statute, the Court must first look to the plain language of the statute in order to determine congressional intent. Consumer Product Safety Comm'n v. GTE Sylvania, 447 U.S. 102, 108, 100 S.Ct. 2051, 2056, 64 L.Ed. 2d 766 (1980). The plain language of section 1225(a)(5)(B)(ii) requires the trustee or debtor to distribute to the holder of the secured claim property with a value not less than the allowed amount of such claim. This Court has construed "value" under section 1225(a)(5)(B)(ii) to mean present value. Matter of Doud, 74 B.R. 865, 867 (Bankr. S.D. Iowa 1987). Unless the secured creditor will receive the present value of its property, the Plan violates section 1225(a)(5)(B)(ii). See id. Thus, in order to give effect to section 1225(a)(5)(B)(ii) as construed in Doud, the Court must construe the requirements for payment by the Debtors of trustee's fees to the trustee to be a payment in addition to the required present value payments to secured creditors under section 1225(a) (5) (B) (ii).

The Court recognizes Debtors' argument that section 1202, by incorporating the language of section 586 of Title 28, requires the trustee to collect her percentage fee from all payments received by the trustee in a Chapter 12 Plan.

Debtors argue this provision allows the trustee to collect her fee from the payments, not in addition to the payments. Such an interpretation would be squarely at odds with the Court's interpretation of 1225(a)(5)(B)(ii). Where two provisions of an act appear to be inconsistent or contradictory, the Court has a duty to reconcile them in order to effectuate legislative intent. Paice v. Maryland Racing Comm'n, 539 F.Supp. 458, 463 (D. Md. 1982). Thus, the Court concludes that a payment for trustee's fees must be a payment in addition to the required present value payments to secured creditors.

In the case at bar, the secured creditors will not receive the present value of their property under Debtors' Plan. In the illustration of Debtors' payment procedure through the trustee in Appendix I of their Plan, the total payments paid by Debtors to the trustee during the 5-year term are \$11,500.00 which represents the present value of the secured claim (\$10,000.00 principal plus \$1,500.00 interest) but the total payments actually paid to the secured creditor to apply on the secured claim are only \$10,133.34. As a result, the secured creditor will be paid \$1,366.66 less than the present value of its secured claim. Therefore, Debtors' proposed plan cannot be confirmed because it violates section 1225(a) (5) (B) (ii).

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that section 1225(a) (5) (B) (ii) requires the Debtors' payment of trustee's fees to be a payment in addition to the required present value payments to secured creditors.

FURTHER, Debtors' proposed plan violates section 1225(a)(5)(B)(ii) because the trustee's fees are deducted from the secured creditors' present value yearly payments.

IT IS ACCORDINGLY ORDERED that the objections of the Federal Land Bank, Farmers Home Administration, and the Maxwell State Bank concerning the payment of trustee's fee are sustained.

Dated this 10th day of June, 1988.

RUSSELL J. HILL
UNITED STATES BANKRUPTCY JUDGE