

**UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa**

<b>In re:</b>	:	<b>Case No. 99-2691-CH</b>
<b>FRANKLIN DWIGHT CARRUTHERS</b>	:	
<b>and SHERRY DIANE CARRUTHERS,</b>	:	
	:	<b>Chapter 12</b>
<b>Debtors.</b>	:	
	:	

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**ORDER— CONFIRMATION OF CHAPTER 12 PLAN AND OBJECTIONS THERETO**

On February 14, 2000, hearing was held on Confirmation of Debtors' Chapter 12 Plan and Objections Thereto. Debtors were represented by Donald F. Neiman. Creditor Iowa State Savings Bank of Knoxville was represented by Jon P. Sullivan; Creditor Farm Credit Services was represented by Michael J. Cunningham; Creditor Iowa Department of Revenue was represented by Dale T. Baker for John Waters. Chapter 12 Trustee Carol F. Dunbar appeared on her own behalf. The court considers the matter fully submitted.

The court has jurisdiction of these matters pursuant to 28 U.S. C. § 157(b)(1) and § 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). Upon review of the evidence, memorandums, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

**FINDINGS OF FACT**

1. Debtors filed a petition for protection under Chapter 12 of the Bankruptcy Code on July 12, 1999.

2. Debtors have engaged in farming and farm related business since 1961. Prior to filing for bankruptcy protection they farmed approximately 1900 acres. Debtors own, or are purchasing land under contract, approximately 680 acres and lease the balance. Debtors are also engaged in the sale of seed corn.

3. As of the date of the plan, Mr. Carruthers was 59 years old, and Mrs. Carruthers was 57 years old. Debtors' two adult sons assist in the farming operation.

4. Debtors experienced financial difficulties and became delinquent on certain obligations. The Iowa State Savings Bank Knoxville (hereinafter the Bank) initiated a foreclosure action which precipitated the filing of the Chapter 12 petition.

5. Debtors filed their Chapter 12 plan on December 12, 1999. Several objections were made to the plan. Debtors amended their plan on February 11, 2000. This amendment resolved all the objections except the objection of the Bank.

6. The plan, as amended, provides for a minimum duration of three years with a potential extension to five years if necessary to complete plan payments. "In the event that there is any shortage in any given year, that shortage shall be paid by the Debtors in any subsequent year up to a maximum of five years from the Debtor's disposable income as generated in those subsequent years."

7. The Bank's claim is the Class 3 claim. The plan treats this claim as follows:

The Class 3 claim shall consist of the allowed, secured claim of the Iowa State Savings Bank as allowed by the Court under 11 U.S.C. §506 on the Debtors' interest on the 680 acres of real estate located in Marion County and Lucas County, Iowa, which interest is a second mortgage interest behind the Debtors' interest in the Real Estate Contract with the Quenton Carruthers Estate as to the 240 acre homestead parcel and the 172 acre parcel, and the first mortgage of the Farm Credit Service on the real estate located in Section 26, Township 74 N Range 20 West of the 5th P.M., Marion County, Iowa. The ISB also is the holder of a secured interest in the Debtors' pre-petition crops, machinery and livestock

and to the extent not otherwise provided to a post-petition crop input provided, maintains a secured interest in the Debtors' crops, machinery and livestock on a post-petition basis.

**Class 3 - Secured Claim - ISB (Impaired).** The holder of the allowed, secured claim of Class 3, Iowa State Savings Bank, shall retain its lien securing its claim on the 680-acres of the Debtors' interest in the farmland, together with the current interest in the Debtors' crops and machinery, and the proceeds derived therefrom, until the amount for which the claim is allowed as secured is paid-in-full. Future secured interests in crops generated from the year 2000 production forward shall only be authorized by the Bankruptcy Court to those entities that provide the crop input financing and the lien of the ISB as to future crops and proceeds generated from the year 2000 production and forward will be extinguished. The Iowa State Savings Bank claim will, however, be restructured so as to provide for a 15-year real estate mortgage secured by the 680-acre parcels, based upon a 30-year amortization, with interest at the rate of eight and one-point five percent (8.15%) per annum, with annual payments of principal and interest commencing December 15, 2000, and on the 15th day of December of each year thereafter until the year 2015, at which time the remaining principal and interest then due shall be fully due and payable. The indebtedness due to the Iowa State Savings Bank shall be recognized at an amount not greater than \$630,000 (or lower), based upon the claim as filed, plus attorney fees incurred by the ISB, less any payments paid by the Debtors resulting from the cash collateral order not on file in this case. This real estate also contains the Debtors' homestead and 40-acre parcel which the Debtors have claimed as exempt, subject to the prior secured claims of the Quenton Carruthers Estate based upon the Real Estate Contract and the claim of the ISB.

The creditor's claim is as set forth in Appendix #1 attached hereto and made by this reference a part hereof, and with respect to the creditor's claim, the dollar amount of the value the debtor places upon the secured creditors interest in the estate's property is also set forth for each creditor in Appendix #1. Unless a secured creditor objects to the value affixed herein prior to the hearing on confirmation, the amount set forth will be deemed to be the value of the creditor's interest for the purposes of establishing the secure claim.

The holders of the allowed, secured claims shall receive the value, as of the effective date of the Plan, property to be distributed by the trustee or the Debtor under the Plan on account of such claim in an amount not less than that allowed amount of such claim.

Appendix #1 treats the Iowa State Savings Bank claim as follows:

The claim of the Iowa State Savings Bank was filed in the amount of \$613,102.12 plus interest of \$80,365.21 as of September 22, 1999, the filing date, which accrues at the daily rate of \$169.41 per day. The creditor's claim is secured by Real Estate Mortgages on that property located in Marion County and Lucas County, Iowa. Debtors have executed two Real Estate Mortgages dated

June 19, 1984, two Assignments of Real Estate Contract with the Quentin Carruthers Estate dated June 19, 1984, and two additional Real Estate Mortgages dated June 19, 1984. This creditor holds a second position on the 268 acres of real estate which was secured first to the Farm Credit Services and an Assignment of Real Estate Contract equity position on the 172-acre parcel and the 240-acre parcel that the Debtors are purchasing from the Quentin Carruthers Estate. This creditor further holds an assignment of proceeds on the First Colony Life Insurance Company Policy on Franklin D. Carruthers, as well as a security interest in the Debtor's farming assets consisting of the crops, machinery, livestock, and equipment which interest the Debtor had previously pledged to the Farm Credit Services. Assuming that normal liquidation sales (not forced liquidation), the Debtor feels that this creditor is fully secured.

Debtors' February 11, 2000, amendment to the plan raised the amount of proposed interest on the Bank's claim from 8.15% to 8.223%.

8. All the loans with the Bank are cross-collateralized.

9. Debtors' cash flow projections are as follows:

Year	Income	Expenses
2000	\$463,272.50	\$433,993.55
2001	457,687.50	431,588.50
2002	515,575.00	463,627.55
2003	528,312.50	440,127.55

10. In addition to those listed, Randy Carruthers testified that the projected expenses should be adjusted upwards by \$10,000 to \$12,000 per year to account for interest on crop input financing.

11. Debtors base their grain production upon the basis of 135 bushels of corn per acre and 45 bushels of beans per acre.

12. Debtors' ten-year grain production reveals an average production of 110.5 bushels of corn per acre and 41.5 bushels of beans per acre.

13. Debtors anticipate planting 1600 acres of corn and beans each year of the plan.

14. Debtors contend that their grain will have more value if the plan is confirmed because Debtors would then be able to contract during the first part of the year for fall delivery thereby increasing the per bushel value.

15. Debtors have begun utilizing "no-till" farming methods as a means of reducing costs, conserving soil, and increasing production. They contemplate expanding the use of these methods.

16. Debtors' contract with DeKalb to sell seed has been cancelled, but Debtors have a new contract with a new seed supplier. Debtors estimate income of \$20,000 per year from this contract.

17. Debtors' 680 acres are appraised at \$675,000.

18. Debtors' machinery and equipment are appraised at \$291,745 based on average farm auction sale price, and \$329,675 based on average retail price.

19. Debtors contemplate the sale of excess machinery this year generating proceeds of \$30,000 to \$50,000. In addition to plan payments, this amount would be paid over to the Bank and/or Farm Credit Services based on priority.

20. Bank acknowledges in its proof of claim that it is currently over-secured.

### **DISCUSSION**

Creditors Iowa State Bank Knoxville, Iowa Department of Revenue, Farm credit Services, and the Chapter 12 Trustee filed objections to Debtors' Chapter 12 Plan. Excepting that of the Bank, the objections to the plan were resolved by the February 11, 2000, amendment. The Bank continues to object to confirmation. It argues that the Plan is not feasible and does not

provide commensurate value for its claim. The court disagrees and for the following reasons will confirm Debtors' plan.

The Bankruptcy Code provides that the court shall confirm a Chapter 12 plan of reorganization if it meets five general requirements, one specific requirement applicable only to secured creditors, and one specific requirement applicable to unsecured creditors concerning disposable income. The issue of the disposable income requirement has been resolved by agreement. Section 1225 provides in relevant part:

- (a) Except as provided in subsection (b), the court shall confirm a plan if—
  - (1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;
  - (2) any fee, charge, or amount required under chapter 123 of title 28 [28 USC §§ 1911 et seq.], or by the plan, to be paid before confirmation, has been paid;
  - (3) the plan has been proposed in good faith and not by any means forbidden by law;
  - (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;
  - (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;
  - ...
  - (6) the debtor will be able to make all payments under the plan and to comply with the plan.

11 U.S.C. § 1225. "Debtors bear the burden of establishing all elements necessary for confirmation of a plan...." Ames v. Sundance State Bank (In re Ames), 973 F.2d 849, 851 (10th Cir. 1992); See also, In re Tofsrud, 230 B.R. 862, 872 (Bankr. D.N.D. 1999).

No party contends that the plan fails to satisfy the first four requirements of §1225. After reviewing the record, the court holds that the plan complies with the provisions of Chapter 12

and the applicable provisions of Title 11, all fees required to be paid before confirmation have been paid, and the plan was filed in good faith. Further, based on the liquidation analysis provided by Debtors, the extent of secured claims, and evidence suggesting a low basis in the property which would produce a large tax obligation upon forced sale, the court finds that unsecured creditors would receive little or nothing in a Chapter 7 liquidation. Because the plan provides for three payments of at least \$20,000 to the trustee for distribution to unsecured creditors, the court finds that the plan provides adequate value to unsecured creditors. The only remaining obstacles to confirmation are the Bank's objections.

#### **Section 1225(a)(6) Feasibility**

The Bankruptcy Code requires that in order for a plan to be confirmable, the debtor must be able to comply with the plan provisions and make all the payments. 11 U.S.C. § 1225(a)(6). In determining feasibility, the court must "ascertain the 'probability of actual performance of the provisions of the plan.'" First Nat. Bank of Malden v. Hopwood (In re Hopwood), 124 B.R. 82, 86 (E.D. Mo. 1991) quoting In re Clarkson, 767 F.2d 417, 420 (8th Cir. 1985). The plan need not be guaranteed to be ultimately successful, Id., or "bomb proof," Miller v. Nauman (In re Nauman), 213 B.R. 355, 361 (B.A.P. 9th Cir. 1997), but it must provide a reasonable assurance that it can work. Id. at 358 citing In re Hopwood, 124 B.R. 82, 86 (E.D. Mo. 1991). "A plan should be confirmed if "it appears reasonably probable that the farmer can pay the restructured secured debt, over a reasonable period of time, at a reasonable rate of interest, in the light of farm prices and farm programs as of the date of confirmation." In the Matter of Bluridge Farms, Inc., 93 B.R. 648, 656 (Bankr. S. D. Iowa 1988) quoting In re Ahlers, 794 F.2d 388, 392 (8th Cir. 1986), rev'd on other grounds sub. nom. Norwest Bank Wothington v. Ahlers, 485 U.S. 197, 108

S. Ct. 963 (1988). On the issue of feasibility, the court will give Debtors any benefit of the doubt. In re Lockard, 234 B.R. 484, 492 (Bankr. W.D. Mo. 1999).

The Bank argues that Debtors' plan is not feasible because the projected income is exaggerated, and the projected expenses are underestimated. In particular, the Bank argues that the crop yield estimates exceed the seven year average; income from custom farming is included although Debtors have no commitments; income from LDP payments is included at the same time Debtors assume they will achieve FSA target prices; and income from seed sales from DeKalb is included when DeKalb has terminated their participation in its program. Finally, the Bank argues that Debtors' historical expense to income ratio averages 77% while Debtors' projected expense to income ratio stands at 64%. It is the Bank's position that such a ratio is only possible because debtor underestimated input expense items, repair items, and totally ignores the cost of funds for inputs and drying expense.

It is true that Debtors are optimistic about their yield figures based on an historical average. However, the court does not believe that their optimism is totally unfounded, nor does it reach a level that is fatal to the feasibility of the plan. Debtors anticipate an average corn yield of 135 bushels per acre and an average soybean yield of 45 bushels per acre. The Bank calculates the average yields to be 110.54 bushels per acre of corn and 41.55 bushels of soybeans. The court does not find the additional 3.45 bushels of soybeans to be egregiously optimistic, particularly when evidence of yields in excess of 50 bushels per acre was presented. While the additional 24.46 bushels per acre of corn is more significant, the court notes the calculations included 1993, the year of the 100-year flood. That season much of Debtors' corn acreage, like that of many other farmers, was decimated. As such a season is hopefully a



centennial occurrence, figures from that year should be discounted in a calculation of average yield. Such an adjustment does not wholly account for the projected yield; however, it does improve the overall picture. Additionally, constant improvement in seed varieties, and farming techniques will account for continued yield improvements. Also the Debtors have attained 190 bushels of corn per acre on some acres and over 150 bushels per acre on others. These factors lead the court to conclude that although the projected yields are optimistic, they do not reach that level of unreasonableness as to preclude confirmation.

Debtors have included income from custom farming based on the amount performed in past years. The court finds this to be a reasonable projection even though no written commitments were presented. The court envisions Debtors making contacts as the season progresses and performing services as opportunities arise.

Bank's contention, that Debtors use target prices for their crops and at the same time include deficiency payments for the same crops, would indeed be troubling if it had provided any evidence or authority to support this contention. However, Bank offered no evidence that the prices used were government target prices and no authority for the proposition that Debtors would receive no government payments if the price were realized. Mr. Carruthers testified that the payments he anticipated receiving were connected with the Freedom to Farm legislation and not a deficiency payment. Evidence was submitted that Debtors received Production Flexibility Contract Payments. Debtors' Exhibit 1, Statement of Annual Contract Payment states, "Note: Payment amounts are calculated by multiplying payment acres, payment yield, share, permitted share, cropland factor and the final payment rate. Background information and payment rates used for these calculations can be obtained from any FSA county office." This calculation

makes no mention of target prices or deficiencies. The court concludes that Debtors did not make the alleged error in governmental payments.

Debtors' exclusion from DeKalb's program is irrelevant because Debtors have a new contract with a new seed provider. They anticipate income of \$20,000.

Finally, the Bank argues that Debtors have understated their expenses. In support of its argument, Bank calculates an income to expense ratio for each of the previous five years, then calculates an average ratio. It applies this ratio to Debtors' projected income and determines that Debtors expenses should be increased by almost \$60,000. Consequently, under the Bank's analysis, Debtors' plan will be deficient by over \$30,000. The court is unconvinced.

Without denigrating its analysis, the court notes that the Bank fails to identify which particular expenses are unreasonably low. The court further notes that Debtors have purchased a no-till grain drill. They previously began moving to no-till farming and are expanding this practice. No-till has several advantages over traditional farming methods not the least of which is the cost savings from trips across the field. Less tillage equates to less equipment and less wear on equipment. Further, the plan envisions the sale of unnecessary equipment. In addition to generating revenue, Debtors will be relieved of maintenance costs for the equipment.

Finally, it is axiomatic that Debtors must reduce their expenses in order to achieve a successful reorganization. The question is not whether Debtors propose to reduce expenses from their historical levels, but whether Debtors' projected expenses are reasonable under the circumstances. Without identification of which items the Bank contends are unreasonable, the court will give Debtors the "benefit of the doubt."

The court finds that the Plan is reasonably workable. Therefore, the plan is feasible.

### **Section 1225(a)(5) Cram Down**

The Code provides that if a secured creditor objects to its treatment under the plan, the plan can only be confirmed over the objection if the creditor retains its lien and receives the value, as of the effective date of the plan, of its claim. 11 U.S.C. § 1225(a)(5). The market rate is the test of present value. United States v. Doud (In re Doud), 869 F.2d 1144, 1146 (8th Cir. 1989). The appropriate interest rate is a risk-free rate, plus additional interest to compensate the creditor for risks imposed by the plan. Id. An acceptable risk-free rate is supplied by the current yield on a United States Treasury bond of similar duration. Id. For judicial economy and ease of administration, the rate should be fixed rather than floating. Id. In Doud, the Eighth Circuit affirmed the bankruptcy court determination that the proper rate was a Treasury bond yield plus 2% risk factor.

In this case the Bank argues that the nature of the security collateralizing its claim and the proposed duration of the payments precludes confirmation of the plan. The court disagrees.

The Bank chose to cross-collateralize all of the loans made to Debtors. All the loans are secured by a blanket security agreement and real estate. While 30-year farm real estate loans are no longer the norm, farm real estate loans amortized for 30 years with a 15-year balloon provide fair treatment to a secured creditor. In re Koch, 131 B.R. 128, 133 (Bankr. N.D. Iowa 1991); see also, In re Lockard, 234 B.R. at 496 (20-year amortization with 10-year balloon appropriate).

The court concludes that the Plan provides the Bank with the present value of its claim. Debtors provided evidence that the 30-year Treasury bond yield was 6.223%. The court determines that this is the appropriate risk-free interest rate. The court additionally finds that the 2% rate for added risk as set forth in Doud is appropriate under the current circumstances. The

Bank is over-secured. It correctly points out that Debtors' equipment will continue to depreciate over the life of the plan. However, Debtors will sell unneeded equipment and transfer the proceeds to Farm Credit Services and/or the Bank. Farm Credit Services has a prior lien on some of the real estate; therefore, any payment under the plan will improve the Bank's secured position on the farmland. It is also quite possible that land prices will increase, further adding to its security. Lastly, the plan provides that if the year 2000 payments are not made, Debtors will sell 268 acres and transfer the proceeds to Farm Credit Services and the Bank. The court concludes that 8.223% is the appropriate discount rate for the Bank's claim.

The court concludes by noting that the Chapter 12 Trustee indicated her willingness to allow the Debtors the opportunity to save their farm. As the Eight Circuit recognized in United States Dept. of Ag. v. Fisher (In re Fisher), 930 F.2d 1361,1362 (8th Cir. 1991), "Chapter 12 was created to 'give farm families facing bankruptcy a fighting chance to reorganize their debts and to keep their land.'" The court believes that Debtors should have that chance. However, the court is cognizant of the burden placed on the secured creditors. It realizes that the first years of the Plan will necessarily dictate its success or failure. The court anticipates that the secured creditors and the trustee will closely monitor Debtors' performance and based on that performance or lack thereof, act accordingly.

**ORDER**

IT IS ACCORDINGLY ORDERED as follows:

1. Iowa State Bank of Knoxville's objections to Debtors' Chapter 12 Plan are  
OVERRULED.
2. The Amended Plan is hereby CONFIRMED.

Dated this \_\_\_\_\_ day of September, 2000.

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RUSSELL J. HILL, CHIEF JUDGE  
U.S. BANKRUPTCY COURT