

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

MARLYN S. JENSEN,

Debtor.

Case No. 87-707-C

Chapter 12

ORDER ON OBJECTION TO PLAN

On August 12, 1987 a preliminary hearing on confirmation of plan was held in Des Moines, Iowa. Among those present at the hearing were Marlyn S. Jensen, appearing pro se, and Linda R. Reade, Assistant United States Attorney, appearing on behalf of the Farmers Home Administration (FmHA). On August 5, 1987 the FmHA objected to the plan on a number of grounds including the discount rate the debtor proposed to apply to the FmHA's allowed secured claim. The debtor contends that operation of the present value provisions of 11 U.S.C. section 1225(a)(5)(B)(ii) denies him equal protection under the law. This matter has been submitted on briefs.

FACTS

The debtor has executed a number of promissory notes that are held by the FHA. The nature of the notes are summarized as follows:

Date of Note	Interest Rate	Type of Loan
05/21/81	12¼%	Farm Ownership
05/21/81	12¼%	Economic Emergency
08/03/81	13 %	Economic Emergency
03/08/82	14¼%	Economic Emergency
03/29/82	14¼%	Operating
06/01/83	10¼%	Operating
05/14/84	7¼%	Operating

The debtor's Chapter 12 plan calls for a 8.25% interest rate to be applied to the FmHA's allowed secured claim.

DISCUSSION

The basis of the debtor's equal protection challenge to the operation of section 1225(a)(5)(B)(ii) is twofold. First, he maintains that to apply a present value calculation based on a rate that includes a risk factor denies the debtor equal protection because the Secretary of Agriculture has failed to properly conduct a cost of production study as required by 7 U.S.C. section 1441(a).¹ He argues that creditors and debtors are thereby being treated disparately without any rational basis. Secondly, the debtor contends that providing for the present value of the FmHA's allowed secured claim results in discrimination against debtors. He asserts that the FmHA is financing sales of acquired land at 8¼ or 8½ interest whereas a present value calculation in bankruptcy

¹ 7 U.S.C. section 1441(a) provides:

The Secretary of Agriculture, in cooperation with the land grant colleges, commodity organizations, general farm organizations, and individual farmers, shall conduct a cost of production study of the wheat, feed grain, cotton, and dairy commodities under the various production practices and establish a current national weighted average cost of production. This study shall be updated annually and shall include all typical variable costs, including interest costs, a return on fixed costs, and a return for management.

11 U.S.C. section 1225(a)(5)(B)(ii) 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. In other words, this provision entitles a creditor to the present value of its property to be distributed under the plan. This court has ruled that the discount rate to be utilized in Chapter 12 involving conventional loans shall be computed using a treasury bond yield with a remaining maturity matched to the average amount outstanding during the repayment period of the allowed claim plus 2% to account for risk. 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). With respect to FmHA loans that bear interest rates that reflect the government's cost of money or a subsidized rate, this court held that the discount rate shall equal the contract rate. Id. The FmHA argues that the majority of the loans were made at conventional, not subsidized, rates and that it should be entitled to 10.85 percent interest on its allowed secured claim under the Doud formula. ²

Equal protection ensures that persons similarly situated

² The interest rate applied to the farm ownership, operating and economic emergency loans generally is the government's cost of money. 7 U.S.C. section 1927(a) (farm ownership); 7 U.S.C. section 1946(a)(operating); and section 204(b) of the Emergency Credit Adjustment Act of 1978, Pub. L. No. 258, 96 Stat. 1391 (economic emergency).

are treated alike. In re Success Tool and Mfg. Co., 62 B.R. 221, 224 (N.D. Ill. 1986). The federal government is prohibited from denying persons equal protection of the law under the due process clause of the Fifth Amendment. Bolling v. Sharp, 347 U.S. 497, 499, 74 S.Ct. 693, 98 L.Ed. 884 (1954). "(I]n all equal protection cases ... the crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment." Police Dept. of Chicago v. Mosely, 408 U.S. 92, 95, 92 S.Ct. 2286, 2290, 33 L.Ed.2d 212 (1972). Bankruptcy laws concern economics and social welfare and therefore only require a determination of whether a classification is rationally related to a legitimate governmental interest. United States v. Kras, 409 U.S. 434, 446, 93 S.Ct. 631, 638, 34 L.Ed.2d 626 (1973). The debtor must clearly show that the statute in question is unconstitutional. In re Volk, 26 B.R. 457, 459 (Bankr. D. S.D. 1983).

With respect to his first argument, the debtor fails to contend that individuals are being treated disparately. The comparison the debtor makes is the treatment accorded the FmHA, a governmental agency,, versus the treatment accorded himself. The FmHA is not an individual but rather a part of the government. Furthermore, the court fails to see what relationship the Secretary of Agriculture's duties under 7 U.S.C. section 1441(a) has on the operation of 11 U.S.C. section 1225(a)(5)(B)(ii). Additionally, the debtor has not

offered a scintilla of evidence to support his claim that the secretary has failed to carry out the mandate of section 1441(a).

Turning to the debtor's second argument, he correctly states that the FmHA has a number of loan programs that bear interest rates lower than the rate required by section 1225(a)(5)(B)(ii). See, Doud, 74 B.R. at 870-872. The fact that a FmHA borrower in bankruptcy may be required to pay higher interest than a borrower not in bankruptcy does not constitute a denial of equal protection. By virtue of the bankruptcy action, the borrower in bankruptcy is not similarly situated as the typical FmHA borrower that qualifies for such loans. The former is afforded certain protections such as the automatic stay but must satisfy certain standards, of which present value in a confirmation context is one.

Even if the debtor were construed to be similarly situated as a qualified FmHA borrower, the operation of section 1225(a)(5)(B)(ii) would meet the rational relation test. The term "present value" is based on the "self-evident proposition that a dollar in hand today is worth more than a dollar to be received a day, a month or a year hence." Doud, 74 B.R. at 867, quoting 5 Collier on Bankruptcy, 1 1129.03 at 1129-62 (15th ed. 1986). Legislative history addressing "value, as of the effective date of the plan" indicates Congress sought to protect creditors who

receive deferred cash payments from the effects of the time value of money. H.R. Rep. No. 595, 95th Cong., 2nd Sess. 414-415, reprinted in, 1978 U.S. CODE CONG. & ADMIN. NEWS 5963, 6370-6371 (addressing language found at 11 U.S.C. section 1129(b)). This is a legitimate government interest. Therefore, any differential treatment that may result from application of section 1225(a)(5)(B)(ii) is rationally related to a legitimate government interest.

CONCLUSION AND ORDER

WHEREFORE, for the reasons expressed above, operation of section 1225(a)(5)(B)(ii) does not deny the debtor equal protection under the law.

THEREFORE, the FmHA's objection concerning the appropriate discount rate to be applied, as of the effective date of the plan, to its allowed secured claim is sustained.

IT IS HEREBY ORDERED that the debtor file and properly serve any and all amendments to his plan by February 5, 1988; that all objections to the plan, as amended, be filed and properly served by February 19, 1988; and that confirmation of the plan and all pending matters and adversary proceedings be scheduled for hearing as soon thereafter as the court calendar permits.

Signed and filed this 19th day of January, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE