

UNITED STATES BANKRUPTCY COURT  
For The Southern District of Iowa

In the Matter of

DAVID DODDER,  
BARBARA DODDER,

Case No. 87-692-D

Chapter 12

Debtors.

ORDER

On February 10, 1988 the following matters came on for hearing in Davenport, Iowa:

1. Rescheduled hearing on motion for relief from stay and resistance thereto;
2. Hearing on confirmation of plan;
3. Objection to application of debtors' attorney for compensation; and
4. Motions to dismiss and resistances thereto.

Dennis D. Cohen appeared on behalf of the debtors. Anita L. Shodeen, Standing Chapter 12 trustee, was present. Steven T. Hunter appeared on behalf of the Production Credit Association (PCA), Kevin R. Query, Assistant U.S. Attorney appeared on behalf of the Farmers Home Administration (FmHA) and Thomas D. Hobart appeared on behalf of Elder Implement Company, Inc. (Elder). The matters have been submitted upon briefs, a factual stipulation between the FmHA and the debtors and the record made at the February 10, 1988 hearing.

The PCA's objection to application of debtors' attorney for compensation will be considered in a separate order.

#### Factual Background

Facts pertinent to the resolution of the disputes between the parties are set forth first. General facts are discussed thereafter.

#### Elder Equipment

On November 20, 1981 Elder sold the debtors a Massey-Ferguson Model 850 combine, cornhead and grain table for \$96,600.00 less than the value of a trade-in. Hills Bank and Trust (Bank) financed the balance and the debtors granted the Bank a security interest in the combine to secure the indebtedness. The Bank later assigned the note and security interest to Elder. The creditor asserts that the outstanding principal and interest total \$77,378.92.

In their original plan, the debtors proposed to fix Elder's allowed secured claim at \$30,000.00 and amortize the amount over 10 years at 10.70% for annual payments of \$6,304.88. Elder objected to the plan, in part, on the ground that the debtors had undervalued the combine. At the August 20, 1987 preliminary confirmation hearing the court directed that the valuation dispute be resolved by use of a third-party appraisal.

Elder and the debtors agreed to retain an appraiser named Hassenfritz to conduct the third-party appraisal. Hassenfritz operates a John Deere implement dealership in

Mediapolis, Iowa. An associate of Hassenfritz valued the combine at \$30,000.00. Thomas Poeltler, a co-owner of Elder, objected to the Hassenfritz appraisal because the debtors contacted Hassenfritz to arrange the appraisal. Apparently Poeltler was concerned that through this contact the debtors may have swayed the appraiser in their favor. David Dodder testified that he spoke to Hassenfritz only to arrange the appraisal and that no discussions concerning value took place.

Consequently the parties agreed to a second appraisal. They retained H.D. Cline Co. (Cline) of West Liberty, Iowa and agreed that neither party would contact or discuss the appraisal with Cline. William K. Yerington, general manager of Cline, performed the appraisal and valued the combine at \$19,000.00. Yerington has been in the business of selling farm equipment for thirty-one years.

On February 10, 1988 the debtors amended their plan to reflect Yerington's conclusion. They fixed Elder's allowed secured claim at \$19,000.00. They also reduced the discount rate on the claim from 10.70% to 10.52%. The debtors amortized the payments over a period of 10 years. Under those arrangements, yearly payments are \$3,969.76.

Elder objected to Yerington's appraisal on the ground the debtors failed to abide by the agreement not to contact the appraiser. David Dodder had approached Yerington to arrange the time and place of the appraisal. However,

instructions from counsel, he refused to answer Yerington's questions concerning value and the results of the prior appraisal.

Thomas Poeltler valued the combine at \$35,000.00. He based his opinion primarily upon seven comparable sales from other dealers. The comparables ranged from \$32,500.00 to \$44,000.00 with most of them falling under \$35,000.00. Yerington testified that the difference between his conclusion and Poeltler's could have resulted from dealer incentives. Yerington explained that dealers will often waive interest on installment sales for a year or guarantee service work which in turn results in higher prices.

FmHA

On May 13, 1987 the FmHA filed a proof of claim in the amount of \$62,757.28 as of May 4, 1987 with daily accrual thereafter of \$12.67. The FmHA holds an interest in personal property that arose under a security agreement dated April 6, 1985. The security agreement provides in part:

DEBTOR HEREBY GRANTS to secured party [FmHA] a security interest in debtor's interest in the following collateral, including the proceeds and products thereof:

Item 4. All accounts, contract rights and general intangibles, as follows: [nothing listed]

The FmHA properly perfected its interest by filing a financing statement with the Iowa Secretary of State on March 25, 1985.

The debtors signed contracts to participate in the 1986 and 1987 Feed Grain Programs (Program) administered by the Agricultural Stabilization and Conservation Service (ASCS). The ASCS approved the debtors' application for 1986 program benefits in May of 1986. The ASCS approved their application for 1987 program benefits on March 23, 1987. The ASCS divided the debtor's operation into two units in calculating benefits. The benefits paid under the 1986 program are summarized as follows:

Unit	Date	Payment	Amount
Farm No. 1	10/01/87	Check	\$4,192.12
	10/01/87	PIK	4,380.48
	03/19/87	Check	996.94
	03/12/87	PIK	1,057.24
Farm No. 2	10/01/87	Check	4,054.54
	10/01/87	PIK	4,236.72
	03/19/87	Check	970.91
	03/12/87	PIK	<u>1,015.56</u>
		Total	\$20,904.51

The debtors in their plan set the FmHA's allowed secured claim at \$5,580.00. This figure does not reflect the FmHA's alleged interest in program benefits.

#### Production Credit Dissociation

On May 16, 1985 the debtors executed a promissory note to the PCA in the principal amount of \$275,000.00. On that same date the debtors executed and delivered to the PCA a mortgage to the debtors' one acre homestead. The homestead presently is valued at \$55,000.00. People's National Bank of Columbus Junction, Iowa holds a superior interest in the

property in the amount of \$15,473.00. Also on May 16, 1985 Margery Dodder, mother of David Dodder, executed and delivered a mortgage to the PCA. The mortgage covers 160 acres of farmland owned by Margery Dodder and was given to further secure the debtors' obligation to the PCA. The 160 acres currently is valued at \$181,200.00. The Federal Land Bank holds a superior interest in the 160 acres in the amount of nearly \$0,000.00. Nothing in the record indicates that Margery Dodder is a co-obligor on the notes executed by the debtors and the PCA. On May 16, 1985 the debtors and the PCA executed a security agreement whereby the PCA was granted a security interest in the debtors' machinery and equipment.

As of the filing date, the debtors' obligation to PCA, including interest, was \$335,418.20. The FmHA has guaranteed 90% or \$245,500.00 of the debtors' obligation. The FmHA executed the Guarantee on May 16, 1985.

Under the second amended Chapter 12 plan, the debtors propose to divide the PCA's allowed secured claim into three classes which are designated as classes 6, 7 and 7.5. In class 6, the debtors treat the PCA's security interest in crops and machinery as unsecured after accounting for the superior lienholder's interest. In class 7 the debtors treat the PCA's second mortgage lien on their homestead. They fix PCA's allowed secured claim at \$39,526.00 and amortize the claim over 20 years at 11.09%. The debtors

treat the PCA's interest in Margery Dodder's 160 acres in class 7.5. They set the allowed secured claim at \$172,200.00 and amortize the claim over 17 years at 11.12%.

#### General Background

The debtors filed for relief under Chapter 12 on March 17, 1987. The debtors' operation is devoted exclusively to grain production. Its consists of 503 acres, most which are rented.

The debtors' original plan and attendant cash flows did not reflect the PCA's interest in Margery Dodder's 160 acres. On December 31, 1987 this court ruled that the debtors had to treat that interest in their plan. Consequently, the debtors amended their plan to show among other things, an additional yearly payment to PCA of \$20,353.68 derived from amortizing the PCA's interest in the 160 acres worth \$172,200.00 over 30 years at 11.35%. The PCA's feasibility challenge focused primarily upon the debtors' inability to accommodate PCA's interest.

The debtors employed a number of strategies to deal with the additional. payment. First, they changed the commencement date for plan payments from December 31, 1987 to December 31, 1988. With the exception of 1987 operating expenses, this change relieved the debtors of 1987 debt service obligations. That greatly enhances net cash flow which, in turn, fuels the plan.

At the February 10, 1988 hearing, the debtors submitted

amended cash flows for the years 1988, 1989 and 1990. They are summarized as follows:

	<u>1988</u>	<u>1989</u>	<u>1990</u>
Farm income	\$151,857.00	\$138,393.00	\$138,393.00
Nonfarm income	<u>29,134.00</u>	<u>29,134.00</u>	<u>29,134.00</u>
	180,991.00	167,527.00	167,527.00
Expenses	<u>-104,791.00</u>	<u>-108,233.00</u>	<u>-117,754.00</u>
	\$ 76,200.00	\$ 59,294.00	49,773.00
Cash available at the begin- ning of the period.	<u>\$ 39,299.00</u>	<u>\$ 43,584.00</u>	<u>\$ 56,230.00</u>
Cash available for debt serv- ice.	\$1.15,499.00	\$102,878.00	\$106,003.00
Debt service	<u>71,915.26</u>	<u>46,648.26</u>	<u>46,648.00</u>
Net cash flow after debt service.	\$ 43,583.74	\$ 56,229.74	\$ 59,355.00
Cash flow as percentage of income.	24%	34%	35%

The debtors' amended cash flows show that \$39,299.00 derived in 1987 will be carried over into 1988. This figure consists of \$9,460.00 in crop storage payments, \$9,908.00 in PIK certificates, \$13,931.00 in corn proceeds, and \$6,000.00 remaining in a bank account.

The \$39,299.00 carryover is short of the \$49,603.78 cash flow (income less operating and living expenses) the debtors originally projected for 1987. The shortfall resulted even though the debtors' actual 1987 expenses were \$16,000.00 less than their projected



expenses. David Dodder testified that the shortfall resulted from dry weather. He

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stated that fields which normally yield 140 to 150 bushels per acre yielded only 70 to 80 bushels per acre. For purposes of the cash flow, he used the ASCS average yields for the three farms he operated which ran 140 bushels, 132 bushels, and 119 bushels per acre respectively. Dodder explained that ASCS averages are generally 10 to 29% lower than actual yields.

Secondly, the debtors increased nonfarm income in order to accomodate the extra payment. David Dodder is a journeyman millwright and is temporarily employed by a steel company. He is registered at a local union hall and works when called. In 1987 Dodder earned approximately \$8,000.00 and expects to earn the same in 1988.

Thirdly, the debtors show increased government payments. Most noteworthy is the addition of \$13,464.00 in what the debtors assert are proceeds received in 1988 from sealing 1987 corn. The debtors plan to reseal their 1986 corn and collect \$9,460.00 from the government in storage payments. The debtors also anticipate receiving \$6,284.00 from implementing a "PIK and roll" marketing strategy by redeeming sealed grain with payment-in-kind (PIK) certificates at posted county prices and then selling the grain at market prices which are often higher than posted county prices.

Lastly, the debtors reduced expenses. As stated earlier, the 1988 expense projections for the most part are based on actual 1987 expenses.

The differences between the original 1988 cash flows and the amended version is summarized as follows:

	<u>Original</u>	<u>Amended</u>	<u>Difference</u>
<u>Income</u>			
Government Programs	\$45,024.55	\$64,447.00	\$19,422.45
PIK and roll	- 0 -	6,284.00	6,284.00
Barbara Dodder's off-farm income	21,136.96	21,134.00	(2.96)
David Dodder's off-farm income	- 0 -	8,000.00	8,000.00
Carryover from 1987	11,064.00	39,299.00	<u>28,235.00</u>
		Total	\$62,938.49
<u>Expenses</u>			
Seed	\$10,838.00	\$6,238.00	\$ 4,600.00
Fertilizer	9,077.50	8,365.00	712.50
Herbicide and insecticide	8,891.91	6,287.00	2,604.91
Utilities	1,321.19	1,318.00	3.19
Fuel	10,768.45	6,359.00	4,409.45
Repair	4,354.51	4,351.00	3.51
Labor	3,527.50	1,000.00	2,527.50
License and insurance	3,022.00	3,021.00	1.03
Miscellaneous	597.58	596.00	1.58
State and federal tax	- 0 -	4,233.00	(4,233.00)
Self-employment tax	1,596.00	- 0 -	1,596.00
Personal	21,136.92	21,132.00	<u>4.92</u>
		Total	\$12,231.59

As the aforementioned figures show, the changes have resulted in a \$74,170.08 increase in the debtors' cash flow.

On May 18, 1978 David Dodder's father, Joseph Dean Dodder, executed a last will and testament. The will provided that upon Joseph's death, his real and personal property would be given to his wife Margery. The will also provided that any interest Margery disclaimed would become

part of a trust of which David D. Dodder and his brother Joseph A. Dodder are beneficiaries. Upon the death of Margery, the will prescribes that David and Joseph are to share equally in the corpus of the trust.

Sometime after the execution of the will, Joseph Dean Dodder died. Among the assets passing to Margery was an 80-acre parcel of farmland. On May 21, 1979 Margery as executor of her husband's estate transferred the parcel to the trust. Under the plan, the debtors propose to liquidate David Dodder's interest in the 80-acre parcel and distribute the proceeds on a pro-rata basis to allowed unsecured claims.

#### DISCUSSION

##### I.

The first issue the court addresses is the dispute between Elder and the debtors over the value of the combine. The undersigned's standard approach to resolving most value disputes is to order the parties to obtain a third party appraisal. This approach usually obviates the need for lengthy and costly hearings. A litigant challenging the conclusions of a third-party appraiser must clearly demonstrate that the appraisal is fundamentally flawed. The high standard is based on the assumption that parties will choose an appraiser whom they trust and on the premise that "appraisal shopping" should be discouraged.

The record reveals that Elder has met this standard.

Yerington's testimony was inconsistent in a number of respects. He stated that he relied in part on the National Farm Power Equipment Dealers (NFPED) manual in reaching his conclusion. The manual lists retail prices, loan prices and "as is" prices for particular pieces of farm equipment. Yet on cross-examination he testified that he seldom uses the manual. Yerington also testified that retail prices listed in the manual are inflated by 20% to 25%. However, in making a downward adjustment to account for the inflation, Yerington deducted 20% from the loan price. Furthermore, Yerington stated his calculation was based on a loan price of \$25,495.00. He gave no explanation why he chose this price. On cross-examination, he stated he was not surprised that the 1988 manual listed the combine in question as having a retail price of \$45,884.00.

Dealer's manuals can be useful tools in determining values. In the context of automobiles, this court and others have approved the use of the National Automobile Dealers Association (NADA) manual. Matter of Farrell, 71 B.R. 627 (Bankr. S.D. Iowa 1987); In re Kipping, 40 B.R. 865 (Bankr. W.D. La. 1984); In re Klein, 20 B.R. 493 (Bankr. S.D. Iowa 1982). Appraisers using the manuals must be able to justify their choice of a particular manual entry. Yerington did not do that in this case.

Another troubling aspect of the appraisal of \$19,000.00 is that Yerington arrived at his conclusion before he

visually inspected the combine. Inspection is a vital component to any appraisal since the condition of the property is one of the prime determinants of its value.

Lastly, the court questions Yerington's casual approach to compiling comparable sales. Simply calling other dealers and asking what they would offer for a combine is insufficient. Comparables should be based on actual sales. Adjustments should be made to account for differences in variables that affect value such as condition, time of sale, type of sale (forced or unforced) and model. Furthermore, the price a dealer will pay for machinery does not necessarily reflect market value. Yerington himself testified that he would have listed the combine at a 20% mark-up.

Thomas Poeltler's appraisal methodology was more sound in that he utilized, actual sales of combines. Most of the comparables involved sales of used combines by dealers. However, to induce sales, dealers will often guarantee service work or waive interest for a year on installment sales. The costs of these inducements are often passed on to purchasers in the form of higher prices. These costs should not be taken into account in determining value for Chapter 12 purposes because if the debtors were selling the combine to another farmer they would not offer such incentives. Poeltler was not sure whether the comparable sales involved incentives. The court assumes they did given that most of the sales involved dealers. The court concludes

that Poeltler's appraisal of \$35,000.00 warrants a downward adjustment of \$5,000.00. Accordingly the court values the combine at \$30,000.00.

Elder also challenges the debtors' proposed 7-year payout on its claim. Elder asserts a three-year payout is more appropriate. In examining this issue, 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, with the exception of subsections 1222(b)(5) and (b)(9), a plan may not provide for payment beyond three years, unless the court for cause approves a longer period up to five years. 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 secured 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).

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). See Matter of Halls, No. 87-943-C, slip op. (Bankr. S.D. Iowa February 1, 1988)(claim secured by collateral consisting of used machinery, which made up 75% of the security, and livestock could not be stretched beyond 7 years); Matter of Royona Ranch, No. 137-1118-C, slip op. (Bankr. S.D. Iowa April 11, 1988)(claim secured by livestock could be paid out over 15 years if plan provided for a replacement lien and maintenance of herd levels at a value equal to or greater than the balance of the claim).

Elder contends that combines like the one in dispute have a useful life of 10 years. Elders' assertion that the plan amortization should not extend beyond 3 years is based on the fact the combine is 7 years old. Yerington testified that if the debtors farm the same number of acres and maintain the combine, its useful life should extend another 7 to 9 years. Dodder testified that he performs most of the maintenance work on the combine and that he expects to use it for another 8 to 10 years. The court finds the testimony of Yerington and Dodder persuasive. Accordingly, the court concludes the 7-year payout term is reasonable.

Elder originally objected to the plan on the basis that

its interest in the combine is not protected by insurance. The debtors have satisfied this objection. In their second amended plan, the debtors specify that they will maintain casualty insurance at least to the extent of the outstanding indebtedness.

## II.

Under 11 U.S.C. section 1225(a)(6) a court shall confirm a plan if "the debtor will be able to make all payments under the plan and to comply with the plan." The PCA claims the debtors are unable to satisfy this provision. In other words, the PCA maintains the plan is infeasible.

With respect to feasibility determinations, one court has stated that "[f]easibility is never certain, particularly in farm situations." It is an element of confirmation that is difficult to prove, equally difficult to decide. In re Kloberdanz, No. 87-B-5954-M (Bankr. D. Colo., Feb. 2, 1988) (LEXIS, Bkrtcy library, Bankr. file). The Eighth Circuit has declared that the "feasibility test is firmly rooted in predictions based on objective fact." In re Clarkson, 767 F.2d 417, 420 (8th Cir. 1985). A feasibility finding does not hinge upon a showing that a successful farm reorganization is guaranteed. In re Hansen, 77 B.R. 722, 726 (Bankr. D. N.D. 1987). Rather, 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 light of farm prices



and farm programs as of the date of confirmation." In re Ahlers, 794 F.2d 388, 392 (8th Cir. 1986), rev'd on other grounds, sub nom, Norwest Bank Worthington v. Ahlers, \_ U.S. p 108 S.Ct.: 963 (1988). Projecting income and expenses in the farm context is not an exact science. In re Monnier Bros., 755 F.2d 1336, 1341 (8th Cir. 1985). Labile markets, unpredictable weather, and changes in government programs preclude precise forecasting. In re Furman Ranch, 38 B.R. 907, 912 (Bankr. W.D. Mo. 1984).

In applying these standards in this case, the court first notes that the difference between the original cash flows and the amended cash flows is indeed dramatic. The amended projections show that the debtors will have \$74,170.08 more with which to service debt than originally planned. At first glance, these changes generate skepticism. However, closer examination reveals that the increases are not the result of any major changes in the manner in which the operation is conducted. Rather, the debtors have utilized a reorganization strategy whereby most of the first plan payments are scheduled to be made at the end of 1988 rather than at the end of 1987 as contemplated by the original plan. Instead of bringing \$11,064.00 into the plan, the debtors are bringing \$39,299.00. In essence, the debtors are using the income from two crop seasons to propel the plan. "Front loading" plans in this manner often makes operations look healthier than they actually are. A large

pool of money available at the beginning of the plan may make an operation cash flow through the life of the plan. Unless the operation is generating sufficient income, however, the carryover from year to year will eventually disappear and expose the operation's inability to service debt. Here, the debtors' carryover increases over the life of the plan. Therefore, the court concludes that the cash available to the debtors at the beginning of the plan does not mask any defect in the debtors' operation.

The PCA contends that the debtors' failure to meet the 1987 projections is evidence of their inability to make plan payments. Whereas the debtors' original cash flow showed income exceeding expenses by \$49,603.78 for 1987, actual income for 1987 exceeded expenses by \$39,299.00--a shortfall of \$10,304.78. Mr. Dodder explained that extremely dry weather markedly reduced yields which, in turn, reduced the margin between income and expenses. The court finds his explanation credible. Certainly substandard yields occur from time to time, but one year of reduced yields does not necessarily mean subsequent years will also be substandard. A better gauge of future performance is to average yields over a number of years. In calculating farm program yields, the ASCS generally averages yields from five crop years, excluding the years with the highest and lowest yields. See 7 C.F.R. section 713.6. The debtors used ASCS yields in preparing their cash flows. Hence, the court finds that the

debtors' failure to meet the 1987 projections does not warrant a finding that the plan is not feasible.

One troubling aspect of the case is the debtors' failure to set out the price assumptions in the cash flows. Surprisingly, the PCA did not object to the plan on this ground. Without this information the court is precluded from making a final feasibility determination. Therefore the debtors will be given an opportunity to submit for the court's review the price assumptions upon which they relied.

The PCA also objects to the debtors' expense projections. Given that the 1988 projections are based largely on 1987 actual expenses, the court concludes that the projections are reasonable.

Next, the PCA argues that the debtors' plan does not satisfy the requirements of 11 U.S.C. section 1225(a)(5). Specifically, the PCA argues:

A. The provisions of the Debtors' Plan providing for payment over a term of 30 years exceed the period for which the mortgage against the real estate of Margery A. Dodder will be enforceable. Pursuant to Section 614.21 of the Code of Iowa the Mortgage of Margery A. Dodder will expire 20 years from its date of May 16, 1985 or May 16, 2005. The payments under the Debtors' Plan are proposed to be made over a period extending to the year 2018. The provisions of the Debtors' Plan are ineffective to extend the lien of the PCA mortgage on real estate of Margery A. Dodder as Margery A. Dodder is not a Debtor and is not bound by the provisions of the Debtors' Plan.

B. The provisions of the Debtors' Plan providing for payment of the allowed amount of the secured claim of the PCA over a 30 year period exceeds the period in which the Debtors will have an interest in the real estate of Margery A. Dodder under any lease. The executory contract of lease proposed to be assumed by the Debtors pursuant to Section 8.01 of the Plan is for a twelve month period only. No provisions of the Debtors' Plan grant to the Debtors any leasehold interest in the real estate of Margery A. Dodder for a term equal to the terms of payment of 30 years proposed under the Plan. Pursuant to Section 24 of Article I of the Iowa Constitution no lease of agricultural lands shall be valid for a longer period than 20 years. Consequently it is not possible for the Debtors to enter into any type of enforceable arrangement with Margery A. Dodder providing for lease of her agricultural property for the 30 year term of payment proposed within the Debtors' Plan.

C. The Debtors' Amended Plan of Reorganization does not provide for any consent by Margery A. Dodder to the extension of time for payment of the indebtedness secured by the mortgage on her real estate. The mortgage of Margery A. Dodder secures payment of the original Note of the Debtors dated May 16, 1985 which provided for full payment on January 1, 1992. Any extension or modification of the terms of payment of such indebtedness without the consent of Margery A. Dodder may impair the enforceability of the lien of the PCA mortgage with Margery A. Dodder.

The debtors have satisfied objections A and B by amending their plan to provide for a 17-year amortization period. With respect to objection C, Margery A. Dodder has submitted an affidavit consenting to the extension of time for payment of the indebtedness to the PCA. Hence the court

considers objection C satisfied.

The PCA also claims that the debtors' plan fails to comply with the "best interest of creditors test" found at 11 U.S.C. section 1.225(a)(4). This provision requires that unsecured claims must receive under a plan not less than they would have received under a Chapter 7 liquidation. The PCA maintains that because the debtors assign no value to Mr. Dodder's interest in the 80 acres that was placed in trust, it is impossible to determine whether the PCA as an undersecured creditor would fare better in a liquidation. In their second amended plan the debtors propose to liquidate his interest and to turn the proceeds over to the trustee for distribution. Since this is what would be done in a Chapter 7 liquidation, the debtors' treatment of interest in the 80 acres satisfies the best interest of creditors test.

### III.

The FmHA advances a number of arguments in support of its position that it has an interest in 1986 program benefits. The court considered these arguments carefully in other cases and rejected them. See Matter of Hunerdosse, \_\_\_B.R.\_\_(Bankr. S.D. Iowa 1988)(government payments not property of the estate, government payments not crop proceeds) and Matter of Butz, \_\_\_B.R.\_\_(Bankr. S.D. Iowa 1988)(government payments not "rents and profits" of the land). Accordingly, the court overrules the FmHA's objections in this case. The conclusions of law pertaining

to government payments set forth in the aforementioned cases are incorporated by reference in the present case.

#### IV.

The FmHA and the PCA also move to dismiss the case under 11 U.S.C. sections 1208(c)(1) and (9) on grounds that there has been unreasonable delay in the case, a continuing diminution of the estate and an absence of a reasonable likelihood of rehabilitation.

The delay in this case is not attributable to the debtors. The case has required an unusual amount of court intervention because it has been particularly contentious. Typically, cases wherein the parties cannot informally resolve their differences will progress more slowly because of the court's crowded docket.

With respect to diminution of the estate, neither the FmHA nor the PCA has made any showing of such diminution,

As for absence of a reasonable likelihood of rehabilitation, the court finds that rehabilitation is indeed likely. By virtue of this order, the debtors will have to amend their plan one more time to comport with the court's finding that the value of Elder's secured claim is \$30,000.00 rather than \$19,000.00. Examination of the debtors cash flows shows that there is a sufficient cushion with which to accommodate higher yearly payments to Elder. Also, it is more likely than not that the cash flow assumptions the debtors must submit for the court's review will be reasonable.

v.

In the order of December 31, 1987, this court ruled that a permanent injunction against the PCA's executing upon Margery Dodder's 160 acres would not issue unless the debtors could show that a successful plan of reorganization was probable. The court ordered that the matter be addressed at the confirmation hearing. As discussed above, the court finds that a successful reorganization is likely. Therefore, the PCA is enjoined from executing upon the 160 acres.

CONCLUSION AND ORDER

WHEREFORE, for the reasons expressed above, the court finds the following:

1. The value of the combine in question is \$30,000.00;
2. The debtors' proposed 7-year payout for the Elder claim meets the requirements of 11 U.S.C. sections 1222(b)(9) and 1225(a)(5);
3. The court is unable to make a final determination that the debtors' plan is feasible only because no price assumptions for crops have been submitted;
4. The plan otherwise comports with the requirements of 11 U.S.C. section 1225;
5. The FmHA does not have an interest in the program benefits in question; and
6. There has been no unreasonable delay by the debtors, no continuing loss to or diminution of the estate, and no absence of a reasonable likelihood of rehabilitation.





THEREFORE, IT IS HEREBY ORDERED that:

1. Elder's objections to the plan are overruled with the exception of the objection as to the value of the combine;

2. The PCA's objections to the plan are overruled;

3. The FmHA's objections to the plan are overruled;

4. The PCA's motion for relief from stay is denied;

and

5. The PCA's and FmHA's motions to dismiss are denied.

IT IS FURTHER ORDERED that the debtors submit an amended plan that comports with this order, an affidavit of compliance and a proposed order of confirmation within 10 days of this order.

Signed and dated this 31st day of May, 1988.

LEE M. JACKWIG  
CHIEF U.S. BANKRUPTCY JUDGE