

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 11
ERROTT HALFORD and JESSIE)
HALFORD; ERROTT J. RICHARD) No. BK 86-30811
HALFORD, JR., and JANET)
HALFORD,)
)
)
Debtors.)

O R D E R

This matter is before the Court on debtors' objection to the liquidating plan of reorganization filed by Ramsey National Bank. The sole issue to be decided is can a creditor in a Chapter 11 proceeding pursue a liquidating Plan of Reorganization where the debtor who is a farmer fails to submit a plan of reorganization within 120 days of filing of the petition and where the debtor objects to the creditor's plan.

On August 1, 1986 Errott and Jesse Halford filed their Chapter 11 petition. On the same day, Errott J.R. Halford, Jr. and Janet Halford, the son and daughter-in-law of Errott and Jesse Halford, also filed a Chapter 11 petition. On October 2, 1986, pursuant to motion of the debtors this Court ordered that the cases be jointly administered.

On December 1, 1986, on motion of the debtors, the Court extended the exclusive period to file the Plan an additional thirty (30) days. Debtors did not file their Plan until March 25, 1987, which was after the expiration of the extended exclusive period. On April 20, 1987 Ramsey National Bank filed its liquidating Plan.

Debtors' disclosure statement was approved May 19, 1987. Ramsey National Bank's second amended disclosure statement was approved on June 15, 1987.

Neither Plan has received sufficient votes for confirmation and the debtors and the Bank have both moved for cramdown hearings on their respective Plans. On September 4, 1987, the Bank filed an amended Plan which it claims satisfies all of debtors' objections with the exception of the issue currently before the Court.

Debtors argue that the Bank's liquidating Plan amounts to an involuntary conversion to Chapter 7 which is prohibited by §1112(c) of the Bankruptcy Code, which provides inter alia:

(c) The court may not convert a case under this chapter to a case under Chapter 7 of this title if the debtor is a farmer...unless the debtor requests such conversion.

Debtors claim that, because they are farmers, allowing the filing of a liquidating plan would, in effect, circumvent Congress' intent that farmers not be liquidated without their consent.¹

Several courts have held that a liquidating plan can be confirmed over a farmer's objection. In Matter of Jasik, 727 F.2d 1379 (5th.Cir. 1984), the debtors argued that it was mere legislative oversight that Congress had not exempted farmers from Chapter 11 liquidation proceedings. The court disagreed stating:

Congress did give farmers special defensive protections under the Bankruptcy Act. However, nowhere in the statutory language or in

¹Although it was not raised in debtors' brief, the Court notes that §303(a) prohibits the filing of an involuntary petition against a farmer under Chapters 7 and 11.

legislative history is there evidence of any congressional intent to confer on a farmer the offensive capability to initiate a Chapter 11 proceeding which both stays collection by his creditors and allows him, by refusing to file, to block the submission of a plan of liquidation. To the contrary, Congress has expressed the intent that debtors in voluntary bankruptcy should not be able, by merely withholding affirmative action, to suspend creditors' rights indefinitely.

In 1979, when considering Amendments to Chapter XI of the Bankruptcy Act, Congress perceived a problem with allowing the debtor the unlimited exclusive right to file a Plan of Reorganization.

[c]hapter XI gives the debtor the exclusive right to propose a plan. Creditors are excluded. The exclusive right gives the debtor undue bargaining leverage, because by delay he can force a settlement out of otherwise unwilling creditors, and they have little recourse except to move for conversion of the case to Chapter X. That is contrary to their interests as it is to the debtor's, and thus is rarely done. The debtor is in full control, often to the unfair disadvantage of creditors.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 231, 1978 U.S. Code Cong. & Admin. News 5963, 6191.

In response to the problem, Congress drafted 11 U.S.C. §1121, which limits the debtor's exclusive right to file a plan to clearly defined periods. Under §1121, for "120 days after the date of the order for relief" the debtor has the exclusive right to file a plan subject to the court's discretion to reduce or increase the period. The debtor must secure acceptance within 180 days from the date of the order for relief. Under 11 U.S.C. §301, "[t]he commencement of a voluntary case under a chapter of this title constitutes an order of relief under such chapter." Once the statutory period expires, or

upon the appointment of a trustee, see 11 U.S.C. §1121(c)(1), the debtor's exclusive right to file a plan ceases. At that time, "any party in interest" may file a plan. 11 U.S.C. §1121(c). This provision eliminates the unfair disadvantage to creditors of giving the debtor perpetual exclusive rights to initiate a plan. Farmer-debtors get neither more nor less. Congress explained:

The granting of authority to creditors to propose plans of reorganization and rehabilitation serves to eliminate the potential harm and disadvantages to creditors and democratizes the reorganization process.

Bankruptcy Act Revision, Serial No. 27, Part 3, Hearings on H.R. 31 and H.R. 32 before the Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary, 94th Cong. 2d Sess. (March 29, 1976).

Id. at 1381-82 (footnote omitted). Other courts are in agreement with the conclusion that farmers are to be treated the same as other Chapter 11 debtors in determining who can file a reorganization plan. See, e.g., Matter of Button Hook Cattle Co., 747 F.2d 483, 486 (8th Cir. 1984); In re Jorgensen, 66 B.R. 104, 107 (9th Cir. BAP 1986); In re Yagow, 60 B.R. 543, 545 (Bankr. D. N.D. 1986); In re Huebner, 58 B.R. 600, 602 (Bankr. W.D. Wisc. 1986).

In the present case, debtors had an exclusive period of 120 days in which to file their plan. This Court extended that period for an additional 30 days. When debtors failed to file a plan within the exclusive period, any party-in-interest was entitled, pursuant to §1121(c), to file a plan, including one which would result in debtors' involuntary liquidation. Ramsey National Bank filed such a liquidating plan. The debtors themselves, through their own failure

to timely file a Plan, gave the Bank the opportunity to file its liquidating Plan. As one court has noted:

A farmer-debtor is not immune from the burdens imposed by filing bankruptcy. He may not comply only with those provisions which aid him but evade those which do not. Upon becoming a debtor the farmer accepts the benefits subject to the risks.

Jorgensen, supra.

IT IS ORDERED that debtors' objection that the Ramsey National Bank is precluded as a matter of law from filing a liquidating Plan of Reorganization is DENIED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: September 30, 1987