

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

IN RE:) In Proceedings
) Under Chapter 12
JAMES KIRCHNER,)
) No. BK 87-40162
Debtor.)

MEMORANDUM AND ORDER

This matter is before the Court on the Trustee's objection to confirmation of debtor's Second Amended Plan. In the Plan, debtor proposes to disburse one single payment to unsecured creditors on January 10, 1990. The Trustee objects and contends that the unsecured creditors should be paid on January 10, 1988 and each year throughout the Plan.

Section 1225(b)(1)(B) of the Bankruptcy Code provides that "all of the debtor's projected disposable income to be received in the three-year period...will be applied to make payments under the plan." Debtor contends that unpredictable circumstances, particularly weather conditions, may reduce available funds and thereby affect the debtor's ability to make payments. It is for this reason that debtor wishes to disburse one single payment in 1990. In support of his position, debtor states that nothing in section 1226 of the Code requires annual installment payments.

The Court disagrees with debtor's position. The same argument (i.e., that a change in circumstances could reduce available funds) could certainly be made in any Chapter 12 or Chapter 13 case. The Court does not believe that the provisions of these chapters allow what debtor proposes. While the Court appreciates the unpredictable

conditions that farmers face, the Court also finds that the Code provides mechanisms for dealing with these situations. Specifically, section 1229(a) provides a method to deal with any unforeseen circumstances in a debtor's income situation through modification of plan payments after confirmation. The debtor in the present case can, therefore, request that the plan be modified under section 1229 if a change in circumstances results in debtor's inability to make payments under the plan.

Accordingly, for the reasons stated above, the Trustee's objection to confirmation is SUSTAINED. IT IS ORDERED that debtor's Third Modified Plan of Reorganization be filed nunc pro tunc October 13, 1987.

/s/ Kenneth J. Meyers
United States Bankruptcy Judge

ENTERED: October 30, 1987