

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

IN RE:)
)
J. KENT RYAN and PEGGY RYAN,) Bankruptcy Case No. 99-60669
)
Debtors.)

OPINION

This matter having come before the Court on an Objection of Bank of America, N.A. to Debtors' Application for Final Decree; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

On December 5, 2000, the Court entered an Order of Confirmation confirming the Debtors' Second Amended Plan of Reorganization which was filed with the Court on October 23, 2000. In paragraph 3 of the Order of Confirmation, the Court ordered that "[a]fter the plan has been fully administered, Debtor shall file an application for a final decree pursuant to Bankruptcy Rule 3022." Although there is no dispute that the Debtors confirmed Second Amended Plan of Reorganization has been substantially consummated, Creditor, Bank of America, N.A., objects to the Debtors' Application for Final Decree arguing that the Debtors' Second Amended Plan of Reorganization has not been fully administered. In its Objection, Bank of America states that "the Debtors have failed to carry out critical terms of the Confirmed Plan and are in default under the Confirmed Plan" in two ways. First, Bank of America asserts that the Debtors have failed to place deeds, bills of sale, and secured vehicle titles with an escrow agent

as is required by Article III of the confirmed Plan. Second, Bank of America asserts that the Debtors are breaching the terms of the confirmed Plan by refusing to sell certain tracts of real estate subject to Bank of America's liens.

As for the Debtors' failure to place deeds, bills of sale, and secured vehicle titles with an escrow agent, the Court is advised that the Debtors have no objection to finalizing the requirements under Article III of their confirmed Plan, and, in fact, the deeds, bills of sale, and secured vehicle titles are ready to be placed with an escrow agent. That will be done as soon as a successor agent is agreed to by the parties. The Court finds that the parties should complete the arrangements for the escrow at the earliest possible moment, thus resolving the issue.

Having disposed of the issue concerning the escrow, the Court turns to the more important issue wherein Bank of America alleges that the Debtors have breached the terms of their confirmed Plan by failing to sell tracts I and II of their real estate no later than April 1, 2001, as set forth in Article II of the Amended Plan or Reorganization, which was filed with this Court on May 1, 2000. It is the Debtors' position that they are no longer under an obligation to sell tracts I and II of their real estate by virtue of the Second Amended Plan of Reorganization which was the plan that was ultimately confirmed by Order of this Court on December 5, 2000. In support of their position, the Debtors cite the language of their Second Amended Plan of Reorganization which states:

Presently the Bank of America and Purina Ag Capital have elected to have their claims treated pursuant to Bankruptcy Code §1111(b). Should each creditor not rescind their 1111(b) Election, the claims shall be treated as follows:

Bank of America filed a claim in the amount of \$823,981.34. This amount will be reduced by post-petition payments received from the Debtors with the remaining balance to be paid over a 25-year period, at no interest, with annual payments on March 15 of each year, commencing in the year 2001. . .

The Second Amended Plan of Reorganization, as confirmed by the Court, further states:

Should either Bank of America or Purina Ag Capital rescind their 1111(b) Election, treatment of their claim is addressed under Class G & H for Bank of America and Class I for Purina Ag Capital, including all subclasses.

The Debtors indicate, and the record reflects, that they did, in fact, make their March 2001 payment to Bank of America. As such, the Debtors claim that they are no longer under an obligation to sell tracts I and II of their real estate. Debtors claim they would only be obligated to do so had Bank of America rescinded its 1111(b) Election, thus, triggering treatment of Bank of America's claim under Class G & H of the Amended Plan of Reorganization, filed on May 1, 2000.

In opposition to the position taken by the Debtors as to the sale of tracts I and II of their real estate, Bank of America asserts that the Second Amended Plan of Reorganization left all terms and conditions of the original Amended Plan of Reorganization, which was filed on May 1, 2000, in full force and effect, unless expressly changed by the Second Amended Plan of Reorganization. Bank of America asserts that the provision to sell tracts I and II of the Debtors' real estate remains in full force and effect in that it was not clearly amended by the Second Amended Plan of Reorganization.

Having reviewed the arguments of counsel in this matter and the record of the Debtors' bankruptcy pleadings, including the Second Amended Plan of Reorganization, the Court finds that the Second Amended Plan of Reorganization is clear on its face. In light of the 1111(b) Election of the Bank of America, the treatment of the claim of Bank of America is set forth in the Second Amended Plan of Reorganization in full, such that the terms of the original Amended Plan of Reorganization, which was filed on May 1, 2000, no longer apply. Given the 1111(b) Election of Bank of America and its failure to rescind said election, the Court has no choice but to conclude that there is no requirement for the Debtors to sell tracts I and II of their real estate. The claim of Bank of America shall be treated as stated in the Second

Amended Plan of Reorganization filed on October 23, 2000, and confirmed by Order of this Court on December 5, 2000. Given the fact that the Debtors have made their March 2001 payment to Bank of America, the Court concludes that the Debtors' Plan has been substantially consummated and has been fully administered as required under Bankruptcy Rule 3022; thus, making the Debtors eligible for a final decree under Chapter 11 of the Bankruptcy Code.

ENTERED: April 25, 2001.

/s/ GERALD D. FINES
United States Bankruptcy Judge