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

IN RE:	)	
	)	
ROY DON STANT and LADONNA STANT,	)	Bankruptcy Case No. 94-30632
	)	
	)	
Debtors.	)	

OPINION

This matter having come before the Court for hearing on confirmation of the Debtors' Chapter 12 Plan or Reorganization and on an Objection thereto filed by the First National Bank of Oblong; the Court, having heard sworn testimony and 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.

Under Chapter 12 of the Bankruptcy Code, the Debtors have the burden of proof to establish each of the elements necessary for confirmation of a Chapter 12 Plan of Reorganization pursuant to 11 U.S.C. § 1225. The Debtors must introduce sufficient evidence to permit the Court to make the determination that the requirements of § 1225 have been met in support of confirmation. In re Adam, 92 B.R. 732 (Bankr. E.D. Mich. 1988); In re Crowley, 85 B.R. 76 (Bankr. W.D. Wisc. 1988); and In re Snider Farms, Inc., 83 B.R. 977, at 986 (Bankr. N.D. Ind. 1988). Section 1225 imposes five general requirements that must be satisfied before a plan can be confirmed. Additionally, § 1225 contains a requirement as to secured creditors which must be satisfied as well as the other five general requirements. A Court cannot confirm a Chapter 12 plan of reorganization where insufficient evidence has been introduced by the debtor to permit the Court to find that the requirements of § 1225 have been met.

Pursuant to 11 U.S.C. § 1225(a)(6), the Court shall confirm a plan if "the debtor will be able to make all payments under the plan and to comply with the plan." This section is in essence a "feasibility" test similar to that found in the confirmation requirements of both Chapter 11 and Chapter 13. See: 11 U.S.C. §§ 1129(a)(11) and 1325(a)(6). Under the feasibility test, the Court is required to analyze the debtor's proposed plan payments in light of the debtor's projected income and expenses in making a determination whether the debtor is likely to be able to make all payments required by the plan. In analyzing the feasibility of a debtor's plan under Chapter 12, one of the important questions which a Court must consider is whether the debtor has access to sufficient supplies and equipment to produce the debtor's crop or operate the debtor's livestock operation. See: Collier on Bankruptcy, ¶ 1225.02, at page 1225.13 (Collier, 15th Ed., 1994).

In considering the evidence submitted by the Debtors as it relates to the issue of feasibility under § 1225(a)(6), the Court must conclude that the Debtors have failed to meet their burden of proof on this issue. The evidence shows that the Debtors have virtually no operational farming equipment and that they must barter for the use of equipment necessary in all phases of their farming operation. The Debtors' continuing ability to obtain farm machinery is not based upon any written agreement, and the Court finds that the Debtors' arrangement for obtaining farm machinery is far too tenuous to support the Debtors' ability to make the payments proposed under their Chapter 12 Plan of Reorganization. Furthermore, the Court finds that the Debtors' plan to amortize the debt of their major secured creditor over a period of 30 years is not feasible given the age of Mr. Stant and the present financial circumstances of the Debtors in general. In addressing the feasibility issue under § 1225(a)(6), the Court has also examined the projected income and expense calculations of the Debtors and finds that these calculations are questionable and leave little room for unexpected expenses and losses. In all, the Debtors have failed to show that their future income stream will be both sufficient and steady enough to support all of the payments as proposed under the Debtors' Chapter 12 Plan.

In addition to the Debtors' failure to establish the feasibility of their Chapter 12 Plan, the Court finds that the Debtors have failed to establish that the value as of the effective date of their plan of property to be distributed by the Debtors to secured Creditor, First National Bank of Oblong, is not less than the allowed amount of the Bank's claim. In this regard, the Court finds that the Debtors' proposal to cram down the secured claim of the Bank to the value of the Bank's collateral, with said amount being paid over a 30 year time period at 8% interest per annum, does not represent present value as that term is defined under 11 U.S.C. § 1225(a)(5)(B)(ii). Given the Debtors' circumstances, the Court finds that the 30 year period of amortization is not reasonable and the 8% interest rate fails to adequately compensate the Bank for the time value of its claim in light of the risks to the Bank's security and the risk of default by the Debtors. <u>See</u>: <u>In re Rose</u>, 135 B.R. 603 (Bankr. N.D. Ind. 1991).

In ruling that the Debtors have failed to meet their burden to establish their right to a confirmation of their Chapter 12 Plan of Reorganization, the Court has also determined that there is nothing that the Debtors can do to amend their Plan such that a confirmation would be possible. Based upon 11 U.S.C. §§ 1208(c)(5) and (9), the Court finds that the Debtors' case should be dismissed, making all other matters presently before the Court moot.

ENTERED: February 23, 1995.

/s/ GERALD D. FINES
United States Bankruptcy Judge