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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

DEREK LYNN SANDE,
Debtor.

Case No. **19-61079-12**
Substantively consolidated
With:

In re

SANDE FARMS, LLC,
Debtor.

Case No. **19-60962-12**

ORDER

At Butte in said District this 27th day of March, 2020.

In the above referenced Chapter 12¹ bankruptcies, a hearing was held March 27, 2020, on confirmation of the Debtors' Amended Chapter 12 Plan ("Plan") filed at ECF No. 164, and on the Motion for Approval of Stipulation and Agreement and approval of the Stipulation and Agreement Regarding Plan Treatment ("Stipulation") between Debtor and FBN Inputs, LLC ("FBN") filed at ECF No. 187. Appearances were noted on the record.

I. The Stipulation and Agreement Between Debtor and FBN

The Court set approval of the Stipulation for hearing to afford the parties an opportunity to clarify certain provisions and give other parties an opportunity to object to the Stipulation, to

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure. All references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the Clerk of the Court.

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the extent the terms of the Stipulation had a material impact on their treatment under the Plan. Based on the comments of counsel, there emerged 2 discrete issues: (i) the Trustee objected to the payment structure that contemplated payments by the Debtors to FBN outside the purview of the Trustee; and, (ii) Western Equipment expressed concern over what he characterized as FBN's "unique control" over the Debtors' future budgets.

After hearing the statements made by the Debtors and FBN's counsel, the Court concluded that the Stipulation was not onerous and that the Stipulation is in the Debtors' best interests. Also, following a colloquy between the parties and the Court, the Chapter 12, counsel for the Debtors and FBN agreed to supplement the Stipulation to cure the Trustee and Western Equipment's concerns. Based on the parties willingness to make slight changes to address the concerns, the Court approved the Stipulation, subject to the parties providing a supplement that addressed the issues discussed at the hearing.

II. Confirmation

Objections to confirmation of the Debtors' Plan filed by the Internal Revenue Service ("IRS") at ECF No. 173, Commodity Credit Corporation ("CCC") at ECF No. 174, Dan Bauste at ECF No. 175, and Rolling Plains Land LLLP ("Rolling Plains") at ECF No. 176 were resolved by stipulations filed at ECF Nos. 191, 188 and 181, respectively. The sole remaining objection was filed by Deere Credit, Inc. ("Deere") at ECF No. 177, which objection is, for the reasons discussed below, overruled.

Deere objected to confirmation of the Plan arguing Debtors assumption of Lease No. 1001 with Deere, does not comply with the requirements of § 365(b)(1), and as a result does not satisfy § 1225(a)(1). Deere explained in its objection:

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Debtor may not assume an unexpired lease without curing, or providing adequate assurances that Debtor will promptly cure, a default of an unexpired lease. Debtor remains in default of his obligations under Lease No. 1001 in the amount of \$66,358.40. Paragraph 3 of the Amended Plan states that Debtor plans to assume Lease No. 1001 at confirmation, but his Amended Plan does not provide any payments to Deere to cure Debtor's default.

ECF No. 177. The objection does not address prior stipulations between Debtors and Deere that considered Lease 1001, and Deere's treatment under the Plan.

Early in these cases, Deere filed two Motions for Relief from Automatic Stay; or alternatively Motions to Compel Assumption or Rejection of Leases and for Interim Pro-Rated Lease Payments, which were filed in Case No. 19-60962 at ECF Nos. 34 and 42. Lease No. 1001 was the subject of Deere's motion filed at ECF No. 34. On February 7, 2020, the Debtors and Deere filed a Stipulation and Agreement at ECF No. 92 ("First Stipulation"). The First Stipulation reads in relevant part:

3. Sande shall begin making pro-rata monthly payments to John Deere on Lease No. 1001 for the John Deere 4940 Self-Propelled Sprayer (S/N 029168) (the "Sprayer") in the amount of \$3,100.79 on or before the 28th of each month, provided, however, that the monthly payments for November, December, and January (\$9,302.37) shall be made no later (3) three days after the Court issues an Order approving this Stipulation. If the payments for November, December and January are not made on or before such date, Sande consents and agrees to automatic relief of the automatic stay with respect to Lease No. 1001 on John Deere's behalf without further order of the Bankruptcy Court. Said monthly payments shall continue up to and until confirmation.

4. Except as provided in Paragraph 3, above, in the event of Sande defaults in making any of the pro-rated monthly payments on Lease No. 1001, John Deere shall give Sande written notice of default with 15 days' opportunity to cure said the default. If Sande fails to cure any default(s) within that period, then Sande agrees to promptly, voluntarily and peacefully surrender the Sprayer to John Deere without need for Deere to seek further relief from the Bankruptcy Court.

5. In the event of Sande's uncured default in making the pro-rated payments on Lease No. 1001, after repossession and disposition of the Sprayer, John Deere shall have an unsecured claim against the bankruptcy estate for the lease deficiency, but shall be entitled to an administrative claim for any pro-rata payments missed from November, 2019 forward, and until and including the

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missed payment.

As the case progressed, on February 14, 2020, at ECF No. 115, the Court entered an Order directing all parties that had not resolved their plan objections to participate in a plan conference on February 28, 2020. The Chapter 12 Trustee filed a report on March 3, 2020, at ECF No. 143 representing that, “As of the time of the conference ending at about 4:00 pm, all issues with all creditors, except for FBN, had been resolved in principal, subject to written stipulations or incorporation into the Amended Plan.” This broad statement included Deere. Deere had resolved its issues with Debtors.

Consistent with the Trustee’s report, the Debtors, Deere and the Chapter 12 Trustee entered into a subsequent Stipulation and Agreement that was filed on March 5, 2020, at ECF No. 147 (“Second Stipulation”). The Second Stipulation set forth Deere’s treatment under Debtors’ to be filed amended Chapter 12 Plan. According to the Second Stipulation, “Deere will consent to an amended Chapter 12 Plan filed by Debtor, provided that such amended plan incorporates the terms of this Stipulation.” The Second Stipulation was approved by the Court at ECF No. 151. Debtors’ Plan at ECF No. 164 incorporated the terms of the Second Stipulation.

At the hearing, the Court inquired of Deere and Debtors’ counsel whether the Plan’s proposed treatment of Deere deviated from the Second Stipulation at the hearing. Counsel did not identify any Plan term that was inconsistent with the Stipulation. Instead, Deere argued at the hearing that by mistake arrearages from 2018 noted in Deere’s Proof of Claim No. 15, were overlooked in the Stipulations and Agreements filed at ECF Nos. 92 and 147. Counsel for Deere also noted that the Debtors have not objected to Proof of Claim No. 15. Counsel for the Debtors countered that at this late date, the Debtors do not have the financial wherewithal to amend their Plan to provide for the claimed arrearage.

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Collectively, the First and Second Stipulations conclusively resolved the issues involving Lease 1001, between Debtors and Deere. Further, under the Second Stipulation, Deere agreed to consent to Debtors' plan, so long as the plan was consistent with the terms of the Second Stipulation. As one Court explained:

A stipulation is an enforceable contract. Where the terms are unambiguous, the Court must enforce a stipulation as written. Stipulations may be modified by Courts only where necessary to prevent a "manifest injustice."

In re Forde, 507 B.R. 509, 521 (Bankr. S.D.N.Y. 2014) (internal citations omitted). In this Circuit generally, "stipulations are not to be lightly set aside. But at the same time bankruptcy courts, as courts of equity, have the power to reconsider, modify or vacate their previous orders, so long as no intervening rights have become vested in reliance on the orders." *In re Lenox*, 902 F.2d 737, 739-740 (9th Cir.1990) (internal citations omitted). In this reorganization case, the Court will not reconsider, modify or vacate its prior orders approving the First and Second Stipulations.²

Reorganization under Chapter 12 is intended to proceed expeditiously. Pursuant to § 1221, not later than 90 days after the order for relief under this chapter the debtor shall file a plan. Once a plan is filed, § 1224, requires that the court hold a hearing on confirmation not later than 45 days after the filing of the plan, except for cause. As one commentator explains:

. . . . none of the other reorganization chapters of the Code prescribes a maximum period of time in which the court must conclude a confirmation hearing. The reason for establishing a maximum 45-day period for ruling on confirmation of a plan is consistent with the expedited nature of chapter 12 cases.

² Ordinarily, requests to reconsider are made pursuant to Rule 9024. In this case, there is no motion requesting relief from the Orders. Instead, Deere objected to the Plan. However, sustaining the objection to confirmation would be tantamount to granting such relief because the Plan, as proposed is in accord with the First and Second Stipulation and the Orders approving them.

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8 COLLIER ON BANKRUPTCY P 1224.01 (16th 2020). To facilitate this process, this Court has ordered parties to attend plan conferences because often, the debtor's ability to reach an agreement with one creditor is dependent on the terms agreed to with other creditors. Certain efficiencies are achieved by requiring all counsel to commit themselves to this process in one location on the same day. In this case, the process was successful. All issues were resolved between Debtors and their creditors, except FBN (which was subsequently resolved) at the Plan conference.

The resolutions reached between Debtors and the other creditors at the plan conference did not leave Debtor with an additional \$60,000 to direct towards assumption of Deere's lease on the eve of confirmation. If payment of \$60,000 was an important plan term to Deere, the time to raise it was at the plan conference. Having failed to raise the issue and include it as a term of the Second Stipulation, Deere waived it as a material term of its negotiated plan treatment. As a practical matter, Deere is asking this Court to modify its prior Orders approving the First and Second Stipulations with Debtors, and set aside every other agreement Debtors reached with its creditors, agreements that form the basis of the Plan. On this record, doing so would be inequitable and unjust for every constituency in the case, except Deere. Deere is bound by the terms of the Stipulations and Agreements it reached with the Debtors. Therefore, Deere's objection to confirmation of the Debtors' Plan is overruled.

In light of the foregoing, and after notice and a hearing, this Court finds that the Debtors' Plan contains reasonable income and expense projections and that it satisfies all of the provisions of 11 U.S.C. § 1225. Accordingly,

IT IS ORDERED that the Debtors' Motion for Approval of Stipulation and Agreement filed at ECF No. 187 is granted; and the Stipulation and Agreement Regarding Plan Treatment between

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Debtor and FBN filed at ECF No. 187 is approved, subject to the Trustee, the Debtors' counsel and counsel for FBN filing on or before April 3, 2020, a supplement that addresses the issues discussed at the March 27, 2020, hearing. The Debtors and FBN shall henceforth be bound by and shall perform according to the terms and conditions of the approved Stipulation and Agreement as amended by the supplement that shall be filed on or before April 3, 2020.

IT IS FURTHER ORDERED:

1. The Debtors' Amended Chapter 12 Plan filed at ECF No. 164 is **CONFIRMED**, subject to the filing of the amended stipulation between FBN and Debtors (the Chapter 12 Trustee shall be included as a signatory to the changes), on or before **April 3, 2020**;

2. The Debtors shall pay over to the Trustee all amounts set forth in the Plan, at the times set forth in the Plan;

3. The value of the collateral securing debts due holders of secured claims is fixed at the value stated in the Plan;

4. That upon completion of the Plan, according to its final terms, all judgments and U.C.C. filings shall be satisfied; and

5. Pursuant to 11 U.S.C. § 326(b), the Chapter 12 Trustee, Joseph Womack is awarded compensation of five percent of all payments under the plan and reimbursement for actual, necessary expenses.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana