UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re: **DEAN C. DILLON, and MARY F. DILLON,** Debtors.	Case No. **87-40349-12**

O R D E R

At Butte in said District this 10th day of February, 1997.

In this Chapter 12 bankruptcy, AgAmerica, FCB, and Northwest Farm Credit Services, ACA, ("Creditors"), filed a Motion to Annul Stay on October 28, 1996. Debtors' filed an objection to the motion on November 1, 1996. On November 8, 1996, the parties filed a Stipulation of Facts and Briefing Schedule. Debtors and Creditors then submitted memoranda in support of the respective position, and separate reply briefs in response. The matter having been fully briefed, and no further hearing required, the Court finds the matter ripe for adjudication.

Creditors argue that Debtors' Plan does not provide in its references to secured claims for the treatment of certain of Debtor's bank stock upon which Creditors hold statutory liens. The omission from the Plan, Creditors further argue, should be construed against Debtors. Thus, the $270,000 in secured claims referred to in the Plan, and an underlying stipulation with Debtors curing Creditors' objections thereto, should not be interpreted to include the claims against the bank stock. Since the liens survive the instant bankruptcy, Creditors contend that, while they erred in not seeking to modify the § 362 automatic stay before doing so, they acted within their in rem rights against the bank stock itself when they retired such, and therefore, the Court should retroactively modify the stay with regard to their actions. Creditors furthermore aver that retirement of the stock should not be counted toward payment of the secured claims referred to in the plan. To do so, Creditors conclude, because Debtors lack equity in the stock and do not need it for effective reorganization, would give Debtors an unwarranted windfall of $55,230.

Debtors concede the liens pass through bankruptcy. They oppose Creditors motion, however, on the grounds that it would have the effect of allowing Creditors to increase the valuation of their secured claims over the amounts settled upon in Debtors' Chapter 12 Plan and the settlement stipulation executed in connection with the Plan. Debtors do not object to retirement of the stock per se. Rather, they contend that if the Court retroactively modifies the automatic stay to approve Creditors' stock retirement, then Debtors should receive credit against the total secured claims owing under the Plan.

STIPULATED FACTS

1. Debtors filed a Petition in this Court under Chapter 11 of the Bankruptcy Code on May 20, 1987.

2. FCB filed a Proof of Claim in the Chapter 11 case dated June 8, 1987, asserting a secured claim in the amount of $307,875.17, to which is attached notes and mortgages evidencing FCB's collateral. FCB's Proof of Claim describes a security interest held for FCB's claim including a security interest in $13,200 in stock in the Interstate Federal Land Bank, successor to the Federal Land Bank of Glasgow. FCB's claim was reduced by stipulation from $343,742.28 to $270,000.

3. On April 14, 1988, Debtors converted this case to a case under Chapter 12.

4. ACA filed a Proof of Claim in this case dated May 9, 1988, asserting a secured claim in the amount of $646,719.16 to which is attached loan agreements and security agreements evidencing ACA's claim and collateral. ACA's Proof of Claim specifies that ACA holds security interests in farm equipment, irrigation system and real estate. Loan agreements attached to ACA's Proof of Claim discuss commitments by the Debtors for the purpose of capital equities of ACA in varying amounts. ACA's claim was reduced by stipulation from $646,719.16 to $90,000.

5. Prior to entry of the stipulation, real property secured to FCB was appraised to have a value of $270,000 and the farm equipment to be retained and secured to ACA was appraised to have a value of $90,000.

6. No objections to the Proofs of Claim were filed by the Debtors.

7. Both FCB and ACA have liens against their respective stock owned by the Debtors pursuant to the promissory notes and loan documents. The liens were obtained against the stock, and perfected on the date each loan

was made, as authorized and required by the Farm Credit Act, 12 U.S.C. § 2022.

8. The Debtors did not file a Motion to Avoid FCB's and ACA's liens against stock, which liens are granted by federal statute; and the Debtors did not file an adversary proceeding seeking to determine the validity or extent of FCB's and ACA's liens on their stock during the pendency of the bankruptcy case.

9. The Debtors' Second Amended Chapter 12 Plan does not provide for the surrender of stock to FCB and ACA and does not otherwise make any provision for the stock.

10. On October 17, 1988, this Court entered its order confirming the Second Amended Chapter 12 Plan.

11. On January 17, 1989, three months after the confirmation order, the Debtors, FCB and ACA entered into a stipulation addressing confirmation of the plan.

12. The stipulation does not provide that the stock was to be surrendered and makes no mention of stock whatsoever.

13. On January 20, 1989, this Court entered its order approving the stipulation between FCB, ACA and the Debtors.

14. No stipulation between the Debtors, FCB and ACA was ever filed specifically addressing FCB and ACA stock.

15. FCB and ACA bank stock are both accounting entries, no physical certificates exist.

16. The fair market value of FCB's stock collateralizing loan 302 was/is $9,500 and loan 303 was/is $3,700.

17. The fair market value of ACA's stock collateralizing its loan was/is $42,030.

18. On October 30, 1989, without obtaining relief from the automatic stay and without notice to the Debtors, FCB and ACA retired their respective bank stock when the Debtors refused to enter into a stipulation providing for the surrender or retirement of such stock.

19. The Debtors seek credit for $55,230 against FCB's and ACA's allowed secured claims provided for under the stipulation between the parties. FCB and ACA decline to credit the Debtors with $55,230 against the claim amounts provided for in the stipulation. FCB and ACA contend that their liens against stock passed through the bankruptcy unaffected.

20. The Debtors, FCB and ACA stipulate that the Court shall take judicial notice of the following pleadings:

(a) Debtors' Petition, Schedules and Statement of Financial Affairs, including amendments;
(b) FCB's Proof of Claim and attachments;
(c) ACA's Proof of Claim and attachments;
(d) Debtors, Second Amended Chapter 12 Plan;
(e) Confirmation Order entered October 17, 1988;
(f) Stipulation between FCB, ACA and the Debtors dated January 17, 1989;
(g) Order Approving Stipulation entered January 20, 1989;

together with any other pleadings submitted in this bankruptcy case which this Court deems necessary, appropriate or relevant to these proceedings.

DISCUSSION

In Colman v. Farm Credit Bank of Spokane, the Court previously held:

> The effect of confirmation of a Chapter 12 Plan is governed by § 1227 of the Code, which reads:
>
> > (a) Except as provided in § 1228(a) of this title, the provisions of a confirmed plan bind the debtor, each creditor, each equity security holder, and each general partner in the debtor, whether or not the claim of such creditor, such equity security holder, or such general partner in the debtor is provided for by the plan, and whether or not such creditor, such equity security holder, or such general partner in the debtor has objected to, has accepted, or has rejected the plan.
> >
> > (b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.
> >
> > (c) Except as provided in § 1228(a) of this title and except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.
>
> [Section] 1227 specifically states the provisions of the confirmed Plan bind the parties. The language of In re Herron, 60 B.R. 82, 84 (Bankr.W.D.La.1986), is particularly appropriate ....
>
> > Once a plan is confirmed, the preconfirmation debt is "replaced" with a new indebtedness as provided in the confirmed plan. The new indebtedness is in

> essence a new and binding contract between the Debtor and the creditors. Upon confirmation the Debtor is free to conduct business and, as a consequence, is similarly liable for post-confirmation obligations and conduct.

Colman v. Farm Credit Bank of Spokane (In re Coleman), 7 Mont.B.R. 404, 416-417, 104 B.R. 338, 343-344 (Bankr. Mont. 1989). From the foregoing, the Court concluded: "It is clear, therefore, each party to [a Chapter 12] Plan is bound by its provisions." Id. Thus, once a court has confirmed a Chapter 12 plan, the parties may not unilaterally depart from its terms to cure missteps they might have made prior to confirmation.

On the other hand, parties may request modification of a Chapter 12 Plan. 11 U.S.C. § 1229. For instance, section 1229(a) provides that a court may order modification of a plan on motion of "the debtor, the trustee or the holder of an allowed unsecured claim." Furthermore, stipulations underlying confirmation of a Chapter 12 plan may be modified in extreme circumstances when the interests of justice so dictate and if the parties can be restored to their pre-stipulation position. See Meyer v. Lennox (In re Lennox), 902 F.2d 737, 739-740 (9th Cir. 1990). Notwithstanding the foregoing, however, once a debtor completes payments under a Chapter 12 plan, all opportunities for modification end. 11 U.S.C. § 1229(a); In re Meadors, 9 Mont.B.R. 284, 288-289 (Bankr. Mont. 1991). In the case sub judice, Debtors have completed payments on their Plan, and even assuming arguendo that the secured creditors could make a case for modifying the stipulation they entered into with Debtors, the time for modification has passed. Consequently, the parties are bound by the terms of the instant Chapter 12 Plan and stipulation, and each document's treatment of Creditors' allowed secured claims.

Even so, in support of their motion, Creditors imply that a court's post-completion interpretation of ambiguous or unclear plan terms does not amount to modification. Creditors point out that no explicit provisions for payment or retirement of the claims secured by the stock appear anywhere either in the Plan or their later stipulation with Debtors, and argue that such silence gives rise to an ambiguity with regarding the treatment of such collateral and claims. Thus the Court may reevaluate the language of the Plan.

The Court disagrees with Creditors' premise. The ambiguity Creditors

assert disappears on review of the Creditors Proofs of Claim allowed by their stipulation with Debtors. Both Proofs of Claim specifically refer to security agreements encumbering the land bank stock. Creditors knew this when they signed the stipulation. Further, the provisions of the Plan and the stipulation refer to and incorporate the allowed secured claims. Thus, the Plan and stipulation unambiguously reference the collateral represented by the land bank stock. As a result, valuation of Creditors secured claims includes the value of the land bank stock.

Even assuming that the asserted ambiguity did exist, however, the Court also disagrees with Creditors proposition that such should work to their advantage. Instead, the maxims of contract interpretation instruct that courts should resolve ambiguities in written agreements against the instruments' drafters. See Adelman v. Minnwest Bank of Ortonville, 97 B.R. 569, 572 (D.S.D. 1988) (interpreting terms of stipulation underlying a Chapter 11 plan). Creditors, as the drafters of the stipulation, must bear the risk of any ambiguities included therein.

Creditors had ample opportunity to dispel any ambiguities in the Plan or the stipulation. On their review of the Plan language, had they wanted specific treatment of their claims secured by stock, they had sufficient time and incentive to recognize and cure what they now perceive as the Plan's silence on this account. Nevertheless, three months after confirmation, Creditors drafted and signed a stipulation identical to Debtors' Chapter 12 Plan in its lack of specific language providing for separate valuation and treatment of their claims secured by bank stock. Given their ability to review the terms of the Plan at leisure, and to remedy the purported ambiguities in the Plan if they so chose, the Court must interpret any ambiguity appearing in the stipulation, to the extent that such exists, against its drafters. In other words, if the terms of the Plan and the stipulation resolving Creditors' objections to the Plan provide for no separate stock valuation apart from the general valuations of secured claims, the fault lies with Creditors. At this late date, after completion of all Plan payments, the Court can no longer cure their error.

Finally, the Court fully recognizes that "liens pass through bankruptcy unaffected," which gives full credit to secured parties' lien rights. Dewsnup v. Timm, 502 U.S. 410, 112 S.Ct. 773, 778, 116 L.Ed.2d 903 (1992). Nevertheless, Dewsnup does not apply when parties have effectively agreed to valuation

of secured claims. The difficulty in the instance case arises from Creditors' failure to provide for any value on their land bank stock collateral (which they had described in detail in their Proofs of Claim) in their stipulation with Debtors. Their neglect has the effect of valuing the security at zero, and so, while the liens pass through, they pass through on what Creditors stipulated to as valueless property. Thus, retirement of the land bank stock can have no effect on the total value of the allowed secured claims.

CONCLUSION

The Court holds that the parties must abide by the terms of the confirmed Plan and the stipulation filed January 19, 1989. Such provisions set the amount of the secured claims of Creditors FCB and ACA at $270,000 and $90,000 respectively without specifically separating or treating the claims secured by certain land bank stock. Nevertheless, the Plan's and stipulation's silence gives rise to no ambiguity with regard to the valuation of the secured claims, because the filings refer to the Creditors' allowed secured claims, proofs of which include detailed references to the land bank stock. In addition, even if the purported ambiguity did exist, interpreting that ambiguity against Creditors, the Court finds the instant valuations to include all secured claims. Consequently, the value of the bank stock securing Creditors' claims and retired by the Creditors on October 30, 1989, must be credited against the total outstanding on the Creditors' secured claims as expressed in the stipulation of January 19, 1989. Accordingly,

IT IS ORDERED:

1. The Motion to Annul Stay filed October 28, 1996, by Creditors, AgAmerica, FCB, and Farm Credit Services, ACA, is granted to the extent necessary to retroactively modify the stay to an extent necessary for retirement of the land bank stock;

2. The value of the returned land bank stock of AgAmerica, FCB, in the amount of $13,200 shall be credited against their allowed secured claim of $270,000; and

3. The value of the returned land bank stock of Farm Credit Services, ACA, in the amount of $42,030 shall be credited against their allowed secured claim of $90,000.

BY THE COURT
HON. JOHN L. PETERSON
Chief Judge
United States Bankruptcy Court
District of Montana