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UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

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On Docket
04/09/2019

In re:
Robert and Tay Simpson, **Chapter 12**
Debtors. **Case # 17-10442**

JUNE 22, 2018 BENCH RULING
ON WELLS FARGO'S MOTION TO DISMISS CASE & CONFIRMATION OF DEBTORS' 4TH AMENDED PLAN

This Court has a strong preference to issue decisions addressing complicated issues and/or motions that have been the subject of an evidentiary hearing, in writing. However, with respect to the instant contested matters, the Court has determined that issuing a prompt decision is more critical than issuing a written decision. Therefore, the Court is reading into the record its findings of fact and conclusions of law with regard to the Debtors' Amended Chapter 12 Plan and Wells Fargo's motion to dismiss this case. The Court will not issue any written memorandum of decision to memorialize this ruling. Rather, at the conclusion of this bench ruling, it will direct the appropriate parties to file proposed orders consistent with this ruling.[i]

I. Wells Fargo's Motion to Dismiss

On April 11, 2018, Wells Fargo Financial Leasing, Inc. ("Wells Fargo") filed a motion to dismiss this Chapter 12 case (doc. #89, hereafter, the "MTD"). The Court will not describe the background of this case or the longstanding commercial relationship between Wells Fargo and the Debtors. It presumes the parties' familiarity with the legal, procedural, and transactional history pertinent to this MTD.

Wells Fargo acknowledges in the MTD that the decision of whether to dismiss a Chapter 12 case rests in the sound discretion of the Court and quotes this Court's prior reasoning that

> … although Chapter 12 recognizes the national priority to protect farms, it also recognizes that creditors must be treated fairly and that the result under Chapter 12 should be predictable and consistent with the Bankruptcy Code.

Doc. # 89, p. 1. This Court still views that balance as crucial to the adjudication of parties' rights in a Chapter 12 case.

Wells Fargo asserts two grounds demonstrate cause for dismissal of this case. First, Wells Fargo points to this Court's Orders granting relief from stay to Wells Fargo, granting relief from stay to Vermont Agricultural Credit Corp. ("VACC") (doc. ## 42, 43), and finding the Debtors' waiver of their right to oppose relief from stay for Wells Fargo ***enforceable*** (doc. # 41). It argues these orders are fatal to any reorganization effort. Since Wells Fargo and VACC are now authorized to enforce their rights against the Debtors' property – including their right to sell the Debtors' farm – Wells Fargo asserts "there is no possible way" for the Debtors to effectively reorganize. Wells Fargo also points to the Debtors' own statement in their emergency motion for a stay of those orders pending appeal (doc. # 50), that denial of the stay would mean "the Chapter 12 plan will likely fail." This argument gained further potency when the Court denied the Debtors' motion for a stay pending appeal (doc. ## 97, 98).

Wells Fargo's second argument is that since the Court has already determined that the Debtors' reorganization efforts are not feasible, which is thus law of the case and constitutes cause for dismissal.

The Debtors filed opposition to the MTD (doc. # 104, the "Opposition") and present several arguments in support of their position. The Debtors assert Wells Fargo's reliance on a "law of the case" theory is flawed because (i) the Debtors are not asking the Court to change its position on the relief from stay or waiver enforcement determinations, but rather to deny a new motion, for different relief, and (ii) the orders Wells Fargo points to are not yet final as they are on appeal.

The Debtors also insist their circumstances have changed considerably since the Court granted relief from stay to Wells Fargo. They allege the Court should not grant the dismissal motion based on lack of feasibility before giving the Debtors the opportunity to present evidence and show whether they can establish the criteria for confirmation of their new plan. The Debtors emphasize the importance of their new business plan for their farm (namely a shift from dairy farming to a more diversified hay, boarding, and mealworm operation) and the two purchase contracts they have for sale of substantial portions of their property, sales which will yield significant debt reduction payments to Wells Fargo and VACC.

Additionally, the Debtors maintain Wells Fargo has failed to demonstrate any grounds for relief under § 1208, and in particular have not shown the Debtors will be unable to successfully reorganize through the transformation of their operation and sale of property, as proposed in their amended plan. The Debtors assert that to prevail on the MTD, Wells Fargo must show the Plan is not feasible. In support of this argument, the Debtors rely on case law holding that, in the context of a motion to dismiss, the creditor has the burden to show lack of feasibility - and it is not the debtor's burden to establish a plan is feasible.

The Debtors' final argument in their Opposition is that Wells Fargo failed to show that it would suffer any harm if dismissal were denied, citing Wells Fargo's acknowledgement to the contrary in footnote # 1 of its MTD.

The Debtors also filed a supplemental opposition to the Motion (doc. # 114, the "Supplemental Opposition") emphasizing that any relief granted to a creditor under a relief from stay order is superseded by the terms of plan confirmation. The Debtors cite case law showing that, notwithstanding the granting of relief from stay, the Court can bind a creditor to the terms of a confirmed plan. They observe that Wells Fargo has taken no action to enforce its relief from stay rights, and contend that, until it does, this Court can confirm a Chapter 12 plan the Debtors propose and bind Wells Fargo to its terms. In support of this position, the Debtors cite several cases including Atalanta Corp v Allen, 300 F.3d 1055 (9th Cir. 2002) (applying this principle in a chapter 11 case); In re Lemma 394 B.R. 315 (Bankr. E.D.N.Y. 2008) (applying this principle in a chapter 13 case).

In their Supplemental Opposition, the Debtors also claim that since the 3rd amended plan pays all secured creditors in full, including Wells Fargo (even though the Debtors previously disputed the amount Wells Fargo claims is due), that amended plan is in the best interest of all creditors.

Additionally, the Debtors assert that § 1225 controls whether a plan is confirmable – not whether relief from stay has been granted; and that case law under § 1325 is applicable. The Debtors stress they are entitled to an evidentiary hearing to demonstrate they are eligible to reorganize under Chapter 12 and, if this Court agrees and grants confirmation of their Amended Plan, then Wells Fargo is bound by the corresponding confirmation order and cannot take any position or action inconsistent with the Amended Plan or confirmation order, notwithstanding its relief from stay. The Debtors cite COLLIER and the Hileman case, 451 B.R. 522 (Bankr. C.D. Ca. 2011) to support this position. See 1 COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE ¶ 20.05 (2018). The Court also finds the decision in the Garrett bankruptcy case quite instructive. It held "[t]he terms of the plan as confirmed fix the legal rights of the parties and the only cause for relief from the stay after confirmation is the debtor's material failure to adhere to the payment terms set forth in the plan … the preconfirmation lift stay order terminated the automatic stay … but does not change the binding effect of an order of confirmation …" Green Tree Financial Corp. v. Garrett (In re Garrett), 185 B.R. 620, 623 (Bankr. N.D. Ala. 1995). There, like here, the stay had been lifted in a debtor's repeat filing case and the bankruptcy court found the creditor was nonetheless bound by debtor's confirmed plan and unable to proceed with its foreclosure action even though it had an order – entered prior to confirmation – granting it relief from stay to do so.

On June 19, 2018, the Court held an evidentiary hearing on the Wells Fargo MTD and the confirmation of the Debtors' 4th amended plan.

In support of its motion to dismiss, Wells Fargo presented the testimony of a well-respected Burlington, CPA, John McSoley. Unfortunately, Wells Fargo was not able to establish Mr. McSoley was an expert on farm operations, farm lending, or Chapter 12. Consequently, Mr. McSoley's testimony with

respect to the reliability and sufficiency of the record in this case to support the Debtors' financial projections and business plans was of very limited value. THE COURT FINDS neither Mr. McSoley's testimony nor the cross-examination testimony of the Debtors' witnesses (Robert Simpson or Joshua Pfiel) was sufficient to demonstrate the Debtors' 4th amended plan is not feasible.

Based upon the cases cited by the Debtors, the testimony at the June 19th hearing, and the record in this case, THE COURT FINDS Wells Fargo has not met its burden of proof for dismissal of the case, and the fact that it obtained relief from stay does not support application of a law of the case theory, to deprive the Debtors of the opportunity to pursue confirmation of an amended plan.

THE COURT FURTHER FINDS the Debtors have shown there is a significant likelihood they will be able to successfully reorganize, within a reasonable time, based upon the 4th amended plan, the change in both their circumstances, and their approach to reorganization of their farm operations, and Wells Fargo has not rebutted the Debtors' proof on any of these issues.

THEREFORE, IT IS HEREBY ORDERED that Wells Fargo's motion to dismiss this case is DENIED.

II. Confirmation of the Debtors' 4th Amended Plan

The Debtors filed their 4th Amended Plan on June 6, 2018 (doc. # 124, the "Amended Plan") and presented testimony and documentary evidence in support of this Amended Plan at a hearing held on June 19, 2018. This Amended Plan obligates the Debtors to make payments to the Trustee totaling **$1,926,260.44**. This represents an average monthly plan payment of $11,760 over a 5-year term, with the actual payments varying over the term of the Plan, and increasing from year to year. In addition to these payments, derived from farm operations, the Debtors will need to make several lump sum payments, which will be funded through the sale of land and equipment they no longer need, based on their decision to cease dairy farming. The specific payments the Debtors have committed to make from operations are:

- $4,000/month from June 2018 through September 2018,
- $6,000/ month from October 2018 through May 2019,
- $11,500/ month from June 2019 through May 2021,
- $14,500/ month from June 2021 through May 2022, and
- $15,855/ month from June 2022 through May 2023.

They have also committed to make the following lump sum payments from sales of certain property:

- $525,000, minus the costs of sale, from a sale to the Wakefields, to close by July 1, 2018,
- $265,000, minus the costs of sale, from sale to the Bahnemans by July 1, 2018
- $98,000 from the sale of personal property (other than milking equipment), and
- $100,000 from the sale of milking equipment, by a date that is yet to be determined.

Additionally, the Debtors will make lump sum payments totaling $234,000 from the funds to which they are entitled in their Agrimark account, as follows:

- the Debtors will pay $152,940 to the Trustee upon confirmation of the Plan, and

- pay the balance of their funds in this account, as they receive them from Agrimark, expected in May 2019 and May 2020.

The Debtors have already paid the claim of Peoples United Bank in full, and through the 4th Amended Plan, going forward, they propose to pay

- all other allowed secured and priority claims in full, and
- pay just over $13,000 to their general unsecured creditors, for a dividend of approximately 8.14%.

The Debtors have been in active negotiation with their creditors since this case was filed, and in litigation with some. At this time, all creditors except Wells Fargo have voiced support for the 4th Amended Plan. Wells Fargo filed an objection to each of the Plans the Debtors have filed in this case.

The Wells Fargo Objection

Wells Fargo's objection to the Debtors' 4th Amended Plan has three bases: (i) the Debtors have not filed sufficient documentation to support the financial projections upon which the 4th Amended Plan is based, (ii) the Amended Plan is not feasible, and (iii) the Amended Plan fails to pay Wells Fargo's $1.746 million claim in full.

Turning first to Wells Fargo's argument that the Plan fails to pay its claim in full, the Court points out that the only proof of claim Wells Fargo filed to date in this case asserts an amount due of $1,548,808 and the 4th Amended Plan proposes to pay Wells Fargo $1,659,989, i.e., more than the amount on the Wells Fargo's proof of claim. It is unclear from the record where the Debtors obtained this figure for the Wells Fargo debt, but unless and until Wells Fargo provides the Court and Debtors with an updated claim amount, the Court finds this argument insufficient to warrant denial of confirmation.

The Debtors propose to pay Wells Fargo as follows:

- $201,300 from the sales of real property - expected to close by July 1, 2018 (consistent with Plan)
- $97,000 from the sale of milking equipment - expected to close by August 30, 2018, and
- The remaining balance (projected by Debtors to be $1,355,690) to be paid over 15 yrs @ 4 % int:
    - $7,155.83/ month during the 5-year term of the plan, and then
    - $12,011.62/ month for 10 years thereafter.

While Wells Fargo is adamant it never intended to enter into a long-term loan transaction with the Debtors – or any loan transaction at all – the repayment plan the Debtors propose is not unreasonable. They are paying a debt of nearly $2 million with approximately 18% of that amount paid within 60 days and the balance over 15 years at 4% interest – a low, but not commercially unreasonable interest rate.

The Court turns next to Wells Fargo's primary objection: that the Plan is not feasible. Under Bankruptcy Code § 1225(a)(6), the Court must find "the debtor will be able to make all payments under the plan and to comply with the plan" in order to confirm it. It is the Debtors' ability to satisfy this statutory obligation that Wells Fargo challenges.

At the June 19th hearing, Wells Fargo charged that the Debtors' failure to file the financial projections before the Court for that hearing until just a few hours before the hearing was inconsistent with the Court's Scheduling Order and put Wells Fargo at a disadvantage in preparing for the hearing. It is entirely correct.

The Debtors' attorney's failure to file the most current financial projections at least one day in advance of the hearing – and her failure to notify the Trustee, Wells Fargo's attorney, and the other attorneys actively involved in this case to the fact the Debtors were working on new projections that had been delayed due to circumstances beyond their control and would not be ready until the next morning – is troubling. When confronted with this issue at the hearing, the Debtors' attorney credibly explained that the farm consultants with whom the Debtors were working encountered unexpected difficulty in their efforts to timely complete the projections. However, that does not explain why the Debtors' attorney did not communicate this to other counsel in this case. Her failure to do so complicated the hearing for the Court, the Trustee, and all attorneys who attended the hearing – and wreaked particular hardship on Wells Fargo's attorney. However, responsibility for this defalcation rests on the Debtors' attorney and should not be a basis for denying the Debtors relief to which they would otherwise be entitled under the law and equities applicable to the Amended Plan. Although Wells Fargo did not request a continuance – or even a brief recess – to review the last minute filing, this sort of practice is unacceptable, unprofessional, and punishable by financial sanctions. To the extent the witness or attorney for Wells Fargo incurred additional time and expense in preparing for the hearing as a result of this 11th hour filing, the Court will consider an application to assess fees against the Debtors' attorney personally.

Wells Fargo is also correct that the Debtors have changed how they propose to use their property, operate their farm, and repay their creditors several times over the course of their two Chapter 12 cases, and based upon financial projections the Debtors admit may not be rock solid. The Court finds this to be the most probative and compelling argument in the Wells Fargo Objection.

Assessing the feasibility of a farm reorganization plan requires a different analysis than evaluating the feasibility of plans filed in other types of bankruptcy cases. The Court must take into account the unique, difficult, and unpredictable nature of farming. These Chapter 12 Debtors, like all farmers, are at the mercy of the weather, commodity pricing, and possible disease – all of which can single-handedly determine the outcome of their operations and are totally beyond their control. See, e.g., In re Lockard, 234 B.R. 484, 493 (Bankr. W.D. Mo. 1999). The Debtors are not able to present projections that they – or anyone – can accurately characterize as "rock solid." As Mr. Simpson stated during cross-examination, "yes, prices of farm products change." Indeed they do.

As experts have observed, to be successful, a farmer must

- be attentive to the market for the products he or she produces,
- be agile enough to pivot to other farm products when the economy makes clear they cannot operate profitably otherwise,
- be smart and attentive enough to stay on top of current agricultural science and techniques, and
- be courageous enough to change course, if needed, to make the best use of their resources.

See Arnele Dohm, Farming in the 21st Century, U.S. BUREAU OF LABOR STATISTICS (2005). Farmers, especially in the current economy, are facing daunting odds and, while "today's family farmers are not facing the type of full-blown crisis that occurred in the 1980s, many are nonetheless facing significant income and cash flow pressures." Jeffrey Coe, Making Chapter 12 More Viable for Family Farmers, ABI JOURNAL (Dec. 2017).

The Court must factor in all of this when it assesses the feasibility of Chapter 12 plans. Farm debtors need not demonstrate their proposed reorganizations are ***certain to succeed***, but they must demonstrate they have done sufficient research, possess sufficient experience, and have developed sufficient expertise to show that, under the current circumstances, their plan has a reasonable assurance of success and is based upon a sound foundation. See Bank One, N.A. v. Blackwater Farms, Inc. (In re Baker), 2003 Bankr. LEXIS 9, *16 (9th Cir. B.A.P. 2003) Farm debtors must also persuade the Court they will be able to adjust the proposed business plan as needed, to continue making the payments due under the plan if factors beyond their control change and compel immediate and/or significant changes. See In re Stallings, 290 B.R. 777, 791 (Bankr. D. Idaho 2003). This is different from Chapter 13 cases which require only that the debtor retain their current employment (or other source of regular income), and Chapter 11 cases, which tend to be dramatically less dependent upon factors as unpredictable as the weather, the health of animals, and the impact of invasive insect species. As the Lockard court observed, "If Chapter 12 plans cannot be confirmed because the future is uncertain, then no Chapter 12 plan … would ever be confirmed." In re Lockard, 234 B.R. 484, 493 (Bankr. W.D. Mo. 1999). In sum, in this case the Debtors do not have to prove they will operate their farm for the next 5 years in the precise way the plan describes. But, they do have the burden of proving that the 4th Amended Plan meets the requirements of § 1225 and, in particular, that they will be able to make all the payments required by that Amended Plan.

When construing feasibility requirements, the Court gives Chapter 12 debtors "the benefit of the doubt and will reasonably resolve conflicts in the evidence in the debtor's favor 'when the debtor's projections, using reasonable inputs in light of the current economic climate, indicate that it is reasonably probable that the debtors will be able to make the plan payments.'" In re Foertsch, 167 B.R. 555, 556 (Bankr. D. N.D. 1994). The Court finds the Debtors have demonstrated they owe no domestic support claims and have paid all required fees due before confirmation, their Chapter 12 Amended Plan has been

proposed in good faith, complies with the Bankruptcy Code, and satisfies the "best interests" test. Additionally, the Court gives great weight to the fact that all secured creditors, except Wells Fargo, have accepted the Amended Plan. The Court also observes that if Wells Fargo contends the Plan does not pay its claim in full, it may file an amended proof of claim to add the attorneys' fees it has incurred, and the Court will address that claim, and what impact it has on the Amended Plan, if any, at that time.

The salient issue before the Court is whether the Debtors have demonstrated they will be able to make all payments under the Amended Plan and fully meet their obligations under the Amended Plan, as required by § 1225(a)(6).

The Debtors have provided detailed projections that, although filed late, demonstrate careful consideration of expected crop yields based on expanded acreage, enhanced use of fertilizer, and recent increases in commodity prices. See doc. #131. Robert Simpson testified credibly and confidently that he based his projections on extensive consultation with employees from the University of Vermont ("UVM") Extension, who are well versed in Vermont agricultural practice. Mr. Simpson testified in detail as to the methodology he used in determining expected crop yields and cogently explained the basis for projected increases in both crop yields per acre and anticipated revenues. Mr. Simpson testified further as to the complementary fashion in which the hay production, boarding operation, and beef sales would function, with an increased hay yield supporting both the boarded livestock and an expanding beef herd. Mr. Simpson also fully answered questions regarding the projected increase in yield per acre for rhubarb, explaining that this is because the yield increases as the rhubarb plants grow larger. Similarly, on cross-examination, Mr. Simpson addressed all remaining questions Wells Fargo's attorney raised relating to the Amended Plan, the change in the farm's focus, and the most recently filed projections. In one example, Mr. Simpson explained why his pumpkin revenues could be greater than past performance would indicate, given the change in pumpkin prices and the concomitant need for less acreage. Mr. Simpson's testimony as to the diversified farming operation, in conjunction with the projections, effectively illustrated how the Debtors would generate sufficient income to fund plan payments independent of potential income from the new mealworm business.

Through the record in this case, and the arguments and testimony of the June 19th hearing, the Debtors have also demonstrated the potential profitability of the mealworm operation. Mr. Simpson testified as to the suitability of using the milking barn for both mealworms and livestock boarding. He persuasively described the merit of his well-planned expansion of the mealworm operation and use of modern marketing techniques to reach potential customers. Joshua Pfiel, President of A Drop of Joy, LLC, testified as to his consulting work with the Debtors. Mr. Pfiel testified that he advised the Debtor on developing a mealworm product that could generate strong internet sales in this digital age. He was

credible and testified persuasively as to the potential growth in entomophagy, and underscored its strong support among established restauranteurs in Vermont. He also opined that the Debtors have pursued the venture in an intelligent and deliberate fashion, reaching out to experts in entomophagy, website development, and advertising. Mr. Pfiel's testimony established that, not only is the mealworm business a potential source of revenue for the Amended Plan, but that the Debtors have demonstrated their acumen as savvy farmers by entering into a new agricultural endeavor, only after consulting with knowledgeable experts who can guide them in the production, distribution, and marketing of mealworm products.

For the foregoing reasons, and based upon the Debtors' projections and the testimony of Mr. Simpson and Mr. Pfiel, THE COURT FINDS the Debtors have demonstrated their 4th Amended Plan is viable, and has a reasonable likelihood of success. In particular, the Court finds feasibility is supported by the projected (a) sales of real estate and equipment, (b) re-allocation and expansion of the Debtors' current crops, and the (c) new mealworm venture.

THE COURT FURTHER FINDS the Debtor's 4th Amended Plan meets all of the criteria of confirmation under Chapter 12 of the Bankruptcy Code.

However, that does not conclude analysis of all issues before the Court at this hearing. Notwithstanding the Court's decision to deny Wells Fargo's motion to dismiss this case, and its determination that the Debtors' 4th Amended Plan meets the criteria for confirmation, the Court views the arguments in these proceedings to present a close call.

***iii. Additional Relief Granted* Sua Sponte**

As is evident from the foregoing analysis, the Court recognizes the Debtors have made extraordinary efforts to revise their business plan and farm operational focus, in response to Wells Fargo's Objection, and to maximize the likelihood they will be able to repay all secured and priority creditors in full in order to achieve confirmation of their Amended Plan. Also, this Court has a strong inclination to grant eligible debtors an opportunity to reorganize. On the other hand, these Debtors have already had two opportunities to resolve the Wells Fargo debt on very favorable terms and were not able to perform their end of the bargain either time. In both their prior Chapter 12 case and the subsequent foreclosure mediation, the Debtors were represented by expert legal professionals and had the time and space to formulate what they determined to be the most feasible solution. Since all parties are intimately familiar with these prior debt restructuring efforts (and the Court recited the details of both in its April 23, 2018 memorandum of decision, see doc. # 97), the Court will not recite the facts again here. Suffice it to say the record indicates Wells Fargo acted in good faith in both contexts and both times the Debtors failed to perform the promises they made to Wells Fargo.

While the Debtors may have a credible explanation for why they were unable to reorganize under Chapter 12 in 2012, or to fulfill the settlement terms they negotiated with Wells Fargo in 2016, in both instances Wells Fargo incurred significant legal fees and was compelled to continue in a debt relationship with the Debtors for an ever-lengthening period of time. Additionally, to ensure that Wells Fargo would not need to engage in any further litigation, or incur any additional legal fees, to enforce their rights after the foreclosure action was dismissed, the Debtors waived their right to oppose any relief from stay Wells Fargo filed thereafter, and nevertheless did so in this Chapter 12 case.

In order to comply with the policy behind, and statutory terms of, Chapter 12, the Court can confirm a Chapter 12 plan only if two criteria are established: (1) the Debtors have demonstrated a right to relief and (2) the Plan treats creditors fairly. As this Court has ruled in prior Chapter 12 cases, bringing these two often competing goals into balance is crucial both to the success of each individual Chapter 12 debtor, and to the viability of Chapter 12 generally, as a means of retaining a vibrant farm economy in Vermont.

Particularly in light of the extensive history of litigation and agreement defaults between the parties here, THE COURT FINDS that granting the Debtors another opportunity to reorganize under Chapter 12 without protecting Wells Fargo from the consequences of another default by the Debtors, and the corresponding possibility of more expensive and time-consuming litigation, fails to satisfy this crucial balancing test. Hence, the Court is exercising its equitable powers to sua sponte grant Wells Fargo relief so that the outcome in this case is consistent with the policy underlying Chapter 12, the statutory obligations imposed by Chapter 12, and the facts, circumstances, and equities of this particular case.

Therefore, THE COURT FINDS there is cause to grant Wells Fargo conditional dismissal relief and impose a one-year filing bar on the Debtors in the event of a substantial default by the Debtors on the following terms:

(1) If the Debtors fail to make any plan payment, or fail to make any direct payment due to Wells Fargo, pursuant to the Amended Plan, that shall constitute an "initial default;" and

(2) the Debtors may cure that initial default either by (a) making the necessary payment, or (b) filing a motion to modify their plan which is ultimately granted by the Court, within 30 days written notice of the initial default, from Wells Fargo.

(3) If the Debtors default again in their obligation to make a plan payment or to make any other payment due to Wells Fargo, pursuant to the Amended Plan, within the same calendar year as the initial default, then this shall constitute a "substantial default" and, unless the Debtors can effectively rebut the factual underpinnings of Wells Fargo's affidavit alleging the substantial default, this case will be dismissed, without an opportunity to cure; and

(4) the Court may, in its discretion, enter an order of dismissal without further notice or hearing.

(5) If this case is dismissed (a) either under this conditional relief provision in favor of Wells Fargo, or for any other reason, (b) after there has been more than one missed payment in any calendar year that this case is pending,

(6) then, a filing bar shall go into effect, which shall preclude the Debtors from filing another case under Title 11 for one year.

The Court believes this to be a just balancing of the Debtors' right to attempt reorganization of their farming operations under Chapter 12 and Wells Fargo's right not to be subjected to further litigation and collection expense, after all of the litigation it has already endured with the Debtors.

Accordingly, THE COURT HEREBY DIRECTS

1. the Trustee to file a proposed confirmation order,
2. the Debtors to file a proposed order denying Wells Fargo's motion to dismiss, and
3. Wells Fargo to file a proposed conditional dismissal order,

all of which are to be consistent with the terms of the foregoing bench ruling, put on the record today.

This constitutes the Court's findings of fact and conclusions of law.

SO ORDERED.

June 22, 2018
Burlington, Vermont

Colleen A. Brown
United States Bankruptcy Judge

[i] The Court entered a bench ruling, rather than a written memorandum of decision, at the conclusion of the June 22, 2018 hearing in order to give the parties a prompt ruling. In retrospect, and based on similar issues arising in subsequently filed chapter 12 cases, the Court has determined it might be useful to have the text of this ruling available to the bar. Accordingly, it now (nearly one year later) makes this ruling available through the case docket and Court's website. This is, in sum and substance, the text of the Court's ruling (as can be confirmed by listening to the audio record of that hearing, at docket entry # 136). The only substantive changes the Court has made in issuing this written version of the ruling are (a) to insert full citations to all cases included in the ruling and (b) to clarify the terms of the conditional dismissal relief granted to Wells Fargo (based on the confusion that provision subsequently generated, see ## 199, 200, 203, 204, 205, 206, 208, 209).