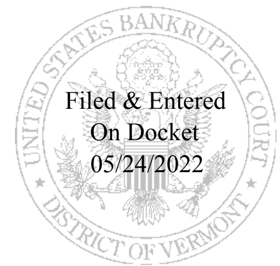

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

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In re:
Allendale Farm, LLC,
Debtor.

Chapter 12
Case # 21-10194
Jointly Administered

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ORDER SETTING INTEREST RATE FOR BOURDEAU BROTHERS, INC.'S CLAIMS UNDER THE PLAN AND DETERMINING DEBTORS' MAY 6, 2022 CHAPTER 12 PLAN FEASIBLE WITH ADJUSTED INTEREST RATE

Allendale Farm, LLC, Claudia Allen, Joseph Allen, and Rebecca Allen, the debtors in this jointly administered Chapter 12 case (collectively, "Allendale" or the "Debtors"), filed their Third Amended Plan on May 6, 2022 (doc. # 118, the "Amended Plan") and presented testimony and documentary evidence in support of this Amended Plan at a hearing held on May 20, 2022. This Amended Plan obligates Allendale to make payments to the Trustee totaling **$3,231,000.00**. This represents a monthly plan payment of $53,850.00 over a 5-year term. Allendale proposes to pay all allowed secured and priority claims in full and approximately $24,958.13 to its unsecured creditors, for a dividend of approximately 1.07%. Allendale has been in active negotiations with most of its creditors during the pendency of the case. Those negotiations have resulted in significant reductions to the Debtors' debt service. By stipulation and with the approval of the Court, it has made pre-confirmation payments to its secured creditors by and through the Trustee (*see* docs. ## 101 and 105).[1] Despite the ongoing negotiations, there remain two outstanding issues. Specifically, secured creditor Bourdeau Brothers, Inc. ("Bourdeau") asserts the Amended Plan fails to pay Bourdeau's claims in full and is not feasible.

Treatment of Bourdeau's claims under the Plan

Section 1225(a) contains a list of confirmation requirements in Chapter 12 cases.[2] The Debtor bears the burden of satisfying every requirement. See Ames v. Sundance State Bank (In re Ames), 973 F.2d 849, 851 (10th Cir. 1992), cert. denied, 113 S.Ct. 1261 (1993). One of the requirements, Section 1225(a)(5), governs the treatment of secured creditors and provides as follows:

> (a) Except as provided in subsection (b), the court shall confirm a plan if ...
>
> (5) with respect to each allowed secured claim provided for by the plan —
>
> (A) the holder of such claim has accepted the plan;

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[1] Based upon the Trustee's Supplement to Preliminary Report (doc. # 132), Allendale has made two Plan payments as of May 18, 2022.
[2] All statutory citations refer to Title 11 of the United States Code (the "Bankruptcy Code"), unless otherwise indicated

> (B) (i) the plan provides that the holder of such claim retain the lien securing such claim; and
>
> (ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or
>
> (C) the debtor surrenders the property securing such claim to such holder ....

Bourdeau has not accepted the Amended Plan and Allendale does not propose to surrender the property securing Bourdeau's claims. Accordingly, the Court must determine whether the Amended Plan complies with §1125(a)(5)(B). As set forth in the Bankruptcy Code, a chapter 12 plan may cram down a secured claim by meeting two elements: (1) providing that the holder of the claim retained the lien securing the claim; and (2) providing that the holder received property having a value, as of the effective date of the plan, not less than the allowed amount of the claim. The Amended Plan states that Bourdeau will retain its lien securing its claims.

When a plan contemplates providing a secured creditor with a replacement lien, the "fair and equitable" test often implicates what the appropriate cramdown rate of interest should be. See Till v. SCS Credit Corp., 541 U.S. 465, 479–80, 124 S.Ct. 1951, 1961-62, 158 L.Ed 2d (2004); Matter of MPM Silicones, L.L.C., 874 F.3d 787, 798 (2d Cir. 2017), cert. denied, 138 S.Ct. 2653. Under the facts and circumstances of this case, the issue for the Court to decide is what the appropriate Chapter 12 cramdown rate of interest should be for Bourdeau's replacement lien. The original Notes call for variable interest rates, calculated by Bourdeau in support of its claims as prime plus 1% (see Claims No. 11-1 and 12-1), but Bourdeau contends that it is entitled to prime plus 2.5%, while also claiming that the "Contract rate of interest set forth in its claim should be honored." (doc. ## 60 and 61). In its Motions to Determine Value of Bourdeau's claims, Allendale submits that a 4% interest rate is proper (doc. ## 37 and 38). However, in the Amended Plan, Allendale provides for a 4.5% interest rate.

While the Bankruptcy Code provides for cramdown, it does not disclose a formula by which to calculate the interest rate that the debtor should pay the secured creditor on its replacement lien. In Till, the Supreme Court issued a plurality opinion in which Justice Stevens held that the "formula approach" was the appropriate method by which to calculate the cramdown interest rate in a Chapter 13 case. 541 U.S. at 479–80, 124 S.Ct. at 1961-62. Although Till emanated from a Chapter 13 proceeding, the Supreme Court suggested that the same analysis also should be used in Chapter 12. Id. at 474, 124 S.Ct. 1951 (listing series of similar bankruptcy provisions, including Section 1225(a)(5)(B)(ii), and observing that "Congress intended bankruptcy judges ... to follow essentially the same approach when choosing an appropriate interest rate under any of these provisions."); First Nat'l Bank of Durango v. Woods (In re Woods), 465 B.R. 196, 206 (10th Cir. BAP 2012), vacated on other

grounds, 743 F.3d 689 (10th Cir. 2014) (applying Till approach to Chapter 12 case); In re Graves Farms, 2019 WL 1422891 (Bankr. D. Kan. Mar. 28, 2019) (same). Under Till, the cram down interest rate is based upon a formulaic approach starting with the "national prime rate" and then adjusted upward based upon factors such as "the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." Id. at 479, 124 S.Ct. at 1961. The Court added that the risk adjustment should be "high enough to compensate the creditor for its risk but not so high as to doom the plan." Till, 541 U.S. at 480–81, 124 S.Ct. at 1962. Till, therefore, sets the stage for determining the interest rate required to ensure the mortgagee receives the value of its allowed claim as of the effective date of the plan.

As this Court recognized in LiLo Properties, LLC, 2011 WL 5509401 at *2 (Bankr. Vt. 2011), choosing a risk factor that ranges from 1% to 3% requires the Court to project into the future based upon current and past performance and to speculate as to future performance of the Debtor and the market; it is not an exact science. In addition, the Court is mindful to not create a windfall for either Allendale or Bourdeau given the long-term payment schedule contained in the Amended Plan and market forces. The risk adjustment should be "high enough to compensate the creditor for its risk but not so high as to doom the plan." Till, 541 U.S. at 480–81, 124 S.Ct. at 1962.

While Allendale initially proposed 4.0% as the applicable interest rate under its original Plan, the Amended Plan before the Court calls for a 4.5% interest rate, which is higher than the interest rate set forth in Bourdeau's filed proofs of claim which are based upon prime plus 1% at the time of filing. The Debtors' proposed interest rate is based upon the prime rate of interest plus 1% as of March 7, 2022, the date of the Debtors' first amended plan that increased the interest rate on Bourdeau's claim from 4% to 4.5%. Bourdeau has the burden of proof that demonstrating more than a 1% risk factor is appropriate. See, Till, at 484. Bourdeau asserts that it is entitled to nearly the highest risk factor without providing evidence of the risk it alleges.

Given the circumstances of this estate and specifically, (1) the nature of Bourdeau's security, which is comprised of both real estate and personal property, including cows, equipment, and crops; (2) the diversification of labor of Allendale (unlike LiLo Properties); (3) Allendale's increasing revenues; and (4) the payments being made by Milk Check Assignment, the Court finds that the appropriate risk factor is 1% to the prime rate of 4%. Based upon the plain language of §1225(a)(5)(B)(ii), "as of the effective date of the plan," and that a plan cannot have an effective date until confirmed, the applicable prime rate is the prime rate as of the confirmation of the plan not the date the plan was proposed. See e.g., In re Smith, 594 B.R. 376, 380 (Bankr. W.D. La. 2018). The parties do not dispute that the prime rate as of May 20, 2022, is 4%. Thus, the Court finds that the appropriate rate of interest for Bourdeau's secured claims is 5%, based upon the prime rate plus a 1% risk factor.

Feasibility

Under §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" to confirm it. This is most referred to as the "feasibility" requirement. Bourdeau challenges Allendale's ability to satisfy this statutory obligation arguing that the Amended Plan relies upon overly optimistic milk production projections and unreasonable projected milk prices.

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 WL 90453, *3 (10th Cir. BAP 2003); see also, In re Ames, 973 F.2d at 851 ("Although debtors are not required to guarantee the success of the plan, they must provide reasonable assurance that the plan can be effectuated. A [Chapter 12] plan's income projections must be based on concrete evidence and must not be speculative or conjectural.") (citations and internal quotation marks omitted). 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).

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 Amended Plan has been proposed in good faith, complies with the Bankruptcy Code, and satisfies the "best interests" test. Additionally, the Court acknowledges that all secured creditors, except Bourdeau, have accepted the Amended Plan.

The issue before the Court is whether Allendale has demonstrated that it will be able to make all payments under the Amended Plan and to fully meet their obligations under the Amended Plan, as required by §1125(a)(6).

Allendale has provided detailed projections of milk production based upon evidence of its historical and current production in addition to industry trends. See docs. ## 118, 126 and 127). Its projections were created with the assistance of a professional who provides business and financial consulting services for dairies in the Northeast. The projections are based, in part, upon Allendale's past performance. While milk production amounts per day may fluctuate, Allendale has established, without contravention, that its herd has historically generated and is currently producing the same level of production as projected in the Amended Plan. Rebecca Allen, an owner of Allendale and veterinarian, testified that the number of cows in the herd do not fluctuate by more than 10% per month. Since filing for bankruptcy protection, the milk

production has increased consistently. When milk production ebbs, Allendale has increased its income by increasing the components of the milk which provide a premium to its milk payment.

In support of its position that Allendale's projections for milk production in the Amended Plan are overly optimistic, Bourdeau points to a limited time frame leading up to and after the commencement of this case. See docs. # 120 and 121. Joseph Allen credibly testified the timeframe relied upon by Bourdeau constitutes an "outlier" and not reflective of typical farm operations. Rather, during that time, Allendale was repositioning its operations under an amended business plan. While those changes were driven by creditor constraints, it was based upon consulting advice from Timothy Veazey, who also testified that the data relied upon by Bourdeau does not represent a fair reflection of the average based upon Allendale's history. Mr. Allen candidly testified that while he knows farming, Allendale suffered from a lack of business acumen at that time. Allendale initially sought business and financial consulting services in June 2021, which led to the filing of this case on September 24, 2021. See doc. # 127.

Allendale's projected milk price of $22.50 per hundredweight is supported by the Agri-Mark, Inc. Northeast Milk Price Forecast and is, in fact, lower than the average forecasted by Agri-Mark for the foreseeable future and actually received by Allendale over the last two months. See doc. # 126, Exhibit 2. The projected milk price does not reflect the various components of the milk that could provide a premium to Allendale's milk payment. The increase in milk production and milk prices reflected in the last two operating reports before the Court coupled with the pre-confirmation payments made to the Chapter 12 trustee, demonstrate that Allendale has sufficient income to make its payments under the Amended Plan. The adjustments made by Allendale to its operations at the outset of this case persuades the Court that the Debtors will be able to adjust their proposed business plan accordingly over the life of the Amended Plan, if needed.

Bourdeau alluded to other conditions outside the Debtors' control such as capital expenditures. Mr. Allen testified that the Debtors believe they will not need to acquire new equipment or modify their existing structures during the life of the Amended Plan. They argue that their present line of equipment and structures are adequate for their needs. Moreover, they have included repair costs in the projections. Bourdeau offers no evidence to the contrary.

For the foregoing reasons and based upon the Debtors' projections and the testimony presented, THE COURT FINDS the Debtors have demonstrated their Third Amended Plan dated May 6, 2022, is viable, and has a reasonable likelihood of success, even with the upward adjustment of 0.5% in the interest rate on Bourdeau's claims under the Amended Plan. In particular, the Court finds feasibility is supported by (a) the projected milk production; (b) the projected price of milk per hundredweight; and (c) the Debtors' demonstrated ability to adapt to changing circumstances coupled with the recognition of a need for professional guidance going forward.

THE COURT FURTHER FINDS the Debtors' Third Amended Plan, with the adjusted interest rate for Bourdeau's replacement liens, meets all the criteria of confirmation under Chapter 12 of the Bankruptcy Code and will enter a confirmation order accordingly.

SO ORDERED.

May 23, 2022
Burlington, Vermont

Heather Z. Cooper
United States Bankruptcy Judge