

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

James Edwin Ollis,

Debtor(s).

C/A No. 18-04549-HB

Chapter 12

ORDER

THIS MATTER came before the Court for a hearing on March 1, 2019, to consider confirmation of Debtor James Edwin Ollis' Chapter 12 plan.¹ Several creditors objected to confirmation but reported to the Court that their objections were resolved.² Unresolved objections of creditors Rabo Agrifinance LLC,³ Tim Kalliainen,⁴ and Amber McCutcheon⁵ remain. Chapter 12 Trustee, J. Kershaw Spong, filed a Status Report⁶ and was present at the hearing. The Court heard testimony from Ollis, Clark Roach, and Dustin Dyal and received numerous exhibits. After careful consideration of the testimony, documents, arguments of the parties, and applicable law, the Court finds as follows.

FACTS

1. Ollis filed a petition for Chapter 12 relief on September 4, 2018. Spong was appointed Trustee and the employment of Alecia T. Compton as counsel for Ollis was approved by the Court.

2. Ollis is the sole member of J. Ollis Farms, LLC (the "LLC"). The LLC has not filed a petition for bankruptcy relief. Pre-petition farming operations included buying and raising cattle and fattening them to be sold as well as growing hay to feed the cattle.

¹ ECF No. 201, filed Jan. 31, 2019.

² The objections filed by Wells Fargo Vendor Financial Services, LLC and United Community Bank were settled and Ollis is to submit an amendment to the plan incorporating the terms of those agreements.

³ ECF No. 204, filed Feb. 4, 2019.

⁴ ECF No. 221, filed Feb. 20, 2019.

⁵ ECF No. 222, filed Feb. 20, 2019.

⁶ ECF No. 233, filed Feb. 28, 2019.

3. Ollis' Amended Schedule A/B lists ownership interests in 10 parcels of real property, some of which the Trustee has sold or reported that he intends to sell.⁷ Ollis intends to retain ownership of two residences: one in Ware Shoals, South Carolina; and one in Simpsonville, South Carolina. Ollis lives, his family resides part time, and he operates his farm at the Ware Shoals property. Ollis' family resides at the Simpsonville property during the school year. Ollis testified that he maintains the Simpsonville home for his children to attend school within Greenville County.⁸

4. Ollis' Amended Schedule D lists secured debt in the total amount of \$1,639,947.06 and Schedule E/F lists unsecured debts of only \$258,204.00, for a total of \$1,898,151.06. This total does not include amounts for numerous creditors because Ollis scheduled some debt amounts at \$0.00.⁹ Creditor Anthony B. Thompson's debt is also not included in this sum because it is scheduled as an "unknown" amount. Objecting creditors McCutcheon and Kalliainen were not listed on Ollis' Schedules.

5. The claims bar date passed on November 13, 2018. The total of filed claims is \$3,956,403.65 – far more than the scheduled amount.¹⁰ At the hearing, Ollis acknowledged he owes the debts asserted in these proofs of claim.

6. The total claims include a claim filed by Rabo in the amount of \$1,606,622.61, evidenced by a note signed by Ollis individually and on behalf of the LLC, with a security agreement executed by Ollis and the LLC, listing collateral including, but

⁷ See ECF Nos. 206, 208, and 214.

⁸ See ECF No. 157, entered Jan. 8, 2019.

⁹ These creditors are: John Deere Farm Plan, PNC Equipment Finance (listed 3 times), Rabo, Wells Fargo Bank NA, and Wells Fargo Vendor Financial Services. Ollis noted these are debts of the LLC and he is the guarantor.

¹⁰ On February 28, 2019, the Court entered an order disallowing the \$65,137.42 unsecured claim of Travelers Casualty and Surety Company of America solely because it was filed after the claims bar date. As this debt was owed at the time of filing, it is included in this total.

not limited to, all accounts, inventory, equipment, farm products (including crops grown, growing or to be grown), and general intangibles. Ollis testified that the amount of this debt is correct.

7. McCutcheon and Kalliainen were not listed on Ollis' Schedules but filed claims. The claims attach checks written by claimants to "Jim Ollis Farms" and documents titled "Cattle Contract J. Ollis Farms LLC" signed by Ollis. McCutcheon filed a claim in the amount of \$101,000.00, and Kalliainen filed three claims totaling \$201,000.00. Documents indicate that the money was for an "investment" to purchase cattle and the cattle would be collateral for the funds. However, there were no cattle to serve as collateral for these creditors at the time Ollis filed for bankruptcy. Ollis admitted that he owed these debts and has not objected to these claims.

8. Court records indicate an adversary proceeding was filed by Anthony Thompson challenging the dischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(2). The complaint attached a copy of a promissory note executed in favor of Thompson by Ollis individually and on behalf of the LLC for a loan of \$1,100,000.00.¹¹ At the confirmation hearing, Ollis admitted he owed this debt.

9. Court records also include an adversary proceeding filed by Pedro Arguedas pursuant to 11 U.S.C. § 523(a)(2). This complaint attached a copy of a contract with the LLC, which provided that \$200,000.000 would be used to purchase cattle. Arguedas' complaint also attached a copy of a Letter of Agreement between him and the LLC for an

¹¹ See *Thompson v. Ollis*, Adv. Pro. No. 18-80094-hb (Bankr. D.S.C. Dec. 14, 2018). This debt was listed on Ollis' Schedules, but as an "unknown" amount.

“investment amount” of \$200,000.00.¹² At the confirmation hearing, Ollis admitted he owed this debt.

10. Testimony also indicated a number of debts owed either by Ollis and/or the LLC that were loans for the purchase of cattle, but were not listed on his bankruptcy Schedules and for which no claim was filed, as follows: Chapman in the amount of \$100,000.00; Lee Thompson in the amount of \$270,000.00; and Jeff in the amount of \$100,000.00.

11. A consent order between Rabo and Ollis entered on December 14, 2018, required Ollis to turn over to Rabo all cattle owned by Ollis or the LLC within 14 days from entry of the order and any proceeds from any cattle Ollis may have sold between the original hearing date and the date of entry of the order. Ollis and/or the LLC no longer own the cattle, but no proceeds have been paid to Rabo.

12. Rabo also claims a security interest in hay on the farm and seeks relief from the automatic stay as to this interest, which Ollis contests.¹³ Ollis sold and/or removed from the farm some of the hay while Rabo’s Motion for Relief from Stay was pending. Rabo also claims a security interest in any of Ollis and/or the LLC’s unencumbered equipment.¹⁴ Ollis listed the value of these items at \$25,575.00 in the liquidation analysis filed in support of his plan, but disputes they secure Rabo’s claim.¹⁵

¹² See *Arguedas v. Ollis*, Adv. Pro. No. 18-80096-hb (Bankr. D.S.C. Dec. 18, 2018). This debt was listed on Ollis’ Schedules and was not marked as disputed.

¹³ ECF No. 100, filed Dec. 13, 2018.

¹⁴ The Motion for Relief from Stay lists the following equipment as not subject to a purchase money security interest and covered by Rabo’s security interest: 1992 NH Haybine; 4 Hay Rakes; 2007 John Deere Square Baler; 1995 Stoll flat 30’ hay trailer; 1995 Fleetneck 30’ 20 ton trailer; 1998 Martin 24’ dual tandem; 1995 Stoll 28’ cattle trailer; and 1994 30’ Barrett aluminum cattle trailer. See *id.*

¹⁵ ECF No. 215, filed Feb. 14, 2019.

13. Ollis' plan proposes monthly payments of \$11,886.00 for 50 months beginning January 25, 2019, and \$11,330.00 for 10 months beginning March 25, 2023, as well as quarterly payments of \$1,765.00 beginning March 25, 2019.

14. Under the plan, Ollis seeks to value Rabo's secured claim at \$11,099.37, and the remaining \$1,595,523.24 is to be treated as unsecured. The secured claim represents only the value of the cattle Ollis sold post-petition without Rabo's consent. Rabo would receive a monthly distribution of \$214.58 for 60 months, which includes 6% interest, until its valued secured claim is paid in full.

15. The plan proposes a 1% distribution to allowed general unsecured claims. The liquidation analysis filed in support of the plan indicates unsecured creditors would receive a distribution of 1.26% in Chapter 7. Ollis' liquidation analysis lists the amount of his unsecured debts in the plan as \$2,520,012.30. It is unclear how this figure was derived but appears to be based on the unsecured portion of the claims valued in the plan and other general unsecured claims filed.

16. Ollis' monthly reports through January 2019 do not indicate sufficient historical income to fund anticipated expenses plus payments due to the Chapter 12 Trustee. Further, from his testimony it appears that Ollis has not properly and accurately completed all reports.

17. Ollis provided tax returns for 2016 and 2017 but was unable to testify regarding any details for his income for 2018.

18. Ollis presented a lease agreement with Kenneth Satterfield for consigning cattle, which he testified should produce income to fund a portion of his plan going forward. The agreement was executed in favor of the LLC, not Ollis.

19. Ollis proposes that he will fund the plan from a combination of his wife's income as a pharmacist and from farming operations that differ from those performed pre-petition. Because Ollis no longer owns any cattle, he seeks to consign cattle that he will feed and keep on his property, raise and sell quail to be used for hunting purposes, and bale and sell hay. Ollis will combine land and equipment owned by him, the LLC, and his mother to do so. He anticipates that March 2019 will be the first month he will be fully operating.

20. The evidence did not support a finding that Ollis will have sufficient income to fund the plan.

21. Prior to the confirmation hearing, the Chapter 12 Trustee assisted with the sale of several properties. The Court approved the sale of: 130 acres of Ollis' real property for \$360,000.00, of which \$1,000.00 was carved out of the proceeds for distribution to unsecured creditors and the remainder paid to satisfy liens; and 2133 Mt. Bethel Road for \$42,500.00, which will cover the Trustee's commission and expenses and the balance will be paid to the secured creditor. An additional request to sell 50.7 acres located on Ranch Road for \$71,000.00 or more is pending. The proceeds from this sale will pay the Trustee's commission and expenses, be applied toward the balance of one secured creditor's claim, and \$3,500.00 will be carved out to be paid toward Ollis' bankruptcy attorney's fees. A judgment lien attached to the property would not be paid. The Trustee has also recovered a \$5,000.00 preference payment to be disbursed to unsecured creditors.

22. The plan includes the following provision: "In the event of default by the Debtor in making the payments required by the Plan, the Chapter 12 Trustee may, in his

discretion, and after further notice and approval by the court, sell real property and farm equipment under § 1206 in order to pay the claims of this estate in full.”

DISCUSSION AND CONCLUSIONS OF LAW

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L) and this Court may enter a final order. Rabo objects to confirmation of the plan on grounds that the plan was not proposed in good faith as required by § 1225(a)(3), does not meet the Chapter 7 liquidation test under § 1225(a)(4), violates § 1225(a)(5)(B) because treatment of Rabo’s secured claim does not account for all of the collateral securing its claim (e.g., the hay and unencumbered equipment), and is not feasible as required by § 1225(a)(6). Tim Kalliainen and Amber McCutcheon also objected, arguing that Ollis exceeds the debt limit of § 101(18) and the plan was not proposed in good faith, is not feasible, and creditors will receive less than the value they would receive upon a liquidation.

I. ELIGIBILITY

Congress enacted Chapter 12 to allow family farmers with regular annual income to adjust their debts. *Hall v. United States*, 132 S. Ct. 1882, 1885 (2012). “The purpose of chapter 12 is to provide farmers with the chance to save their farms, restructure their debt, and continue farming.” *In re Sandifer*, 448 B.R. 382, 386 (Bankr. D.S.C. 2011). “Only a family farmer . . . with regular annual income may be a debtor under chapter 12.” 11 U.S.C. § 109(f). In pertinent part, the Bankruptcy Code defines a “family farmer” as an “individual . . . engaged in a farming operation whose aggregate debts do not exceed \$4,153,150 . . .” 11 U.S.C. § 101(18). A debtor who files a Chapter 12 petition bears the

ultimate burden of proving eligibility for relief under that chapter. *In re Tim Wargo & Sons, Inc.*, 869 F.2d 1128, 1130 (8th Cir. 1989).

Ollis asserts in the plan that his aggregate debt is \$3,890,866.23, which is the total of allowed proofs of claim filed in his case.¹⁶ The Fourth Circuit has not addressed how to compute the aggregate debt limit under Chapter 12. Courts in the Seventh Circuit have found that the court should calculate the claims filed against the debtor in addition to scheduled claims. *See In re Clark*, 550 B.R. 429, 433 (Bankr. N.D. Ind. 2016). Courts in the Sixth Circuit have found that Chapter 12 eligibility should be analyzed like Chapter 13 under § 109(e) and the court should look to the debtor's schedules, checking only to see if the schedules were made in good faith. *See In re Perkins*, 581 B.R. 822, 834 (B.A.P. 6th Cir. 2018). Under this approach there are:

two routes by which a debtor whose scheduled debts are below the debt limit, nonetheless, may be found ineligible. First, if from the face of the schedules it is apparent to a legal certainty that the debtor is beyond the debt limit, and second, if evidence shows that the amounts were inaccurately scheduled in bad faith for the purpose of making the debtor eligible for Chapter [12].

Id. (citing *In re Pearson*, 773 F.2d 751, 757 (6th Cir. 1985) (analyzing Chapter 13 eligibility)). In the Chapter 13 context, this Court previously found that it “should neither place total reliance upon a debtor’s characterization of a debt nor rely unquestionably on a creditor’s proof of claim, for to do so would place eligibility in control of either the debtor or the creditor.” *In re Jones*, C/A No. 12-04833-hb, slip op. at 6 (Bankr. D.S.C. May 29, 2013) (quoting *In re Barcal*, 213 B.R. 1008, 1014 (B.A.P. 8th Cir. 1997)).

¹⁶ The total filed claims of \$3,956,403.65, less the \$65,137.42 disallowed claim of Travelers Casualty and Surety Company of America.

Regardless of the approach, given the creditors' objections, the Court must look beyond Ollis' Schedules to determine the aggregate debt amount because the evidence demonstrates that certain amounts on his Schedules were grossly inaccurate and numerous debts were omitted. Ollis scheduled \$1,898,151.06 in debt; however, this sum fails to include any amounts owed to Rabo (\$1,606,622.61 according to its proof of claim) or Anthony Thompson (\$1,100,000.00 according to the adversary proceeding). When these debts are added to the amount of scheduled debt, the total is \$4,604,773.67 – well over the debt limit. If making the calculation by looking to the total claims filed of \$3,956,403.65, the Court must also consider the debt owed to Anthony Thompson of \$1,100,000.00. Adding this amount indicates that Ollis is well over the debt limit even before considering any amounts that may be owed to others that did not file claims.

The Court cannot ignore the testimony and record that demonstrate Ollis' aggregate debts far exceed the statutory maximum of \$4,153,150.00 under § 101(18). Had Ollis been candid and accurate when his Schedules were filed, it would have been obvious that he did not qualify for relief under Chapter 12. Ollis only continued to this point by listing large claims as \$0.00 or "unknown" and failing to list other creditors.

II. CONFIRMATION

Section 1225(a) provides, in relevant part, that the Court shall confirm a plan if:

- (3) the plan has been proposed in good faith and not by any means forbidden by law;
- (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;
- (5) with respect to each allowed secured claim provided for by the plan—
 - (A) the holder of such claim has accepted the plan;

(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;

(6) the debtor will be able to make all payments under the plan and to comply with the plan[.]

11 U.S.C. § 1225(a). The debtor has the burden of proof by a preponderance of the evidence to show that the plan should be confirmed. *In re Pressley*, 502 B.R. 196, 202 (Bankr. D.S.C. 2013).

Because the term “good faith” is not defined by the Bankruptcy Code, the Court must examine the totality of the circumstances surrounding the plan and the bankruptcy filing to determine whether it meets the requirement of § 1225(a)(3). *See In re Barger*, 233 B.R. 80, 83 (B.A.P. 8th Cir. 1999) (citations omitted).

The court must focus on factors such as whether the debtor has stated debts and expenses accurately; whether the debtor has made any fraudulent misrepresentation to mislead the bankruptcy court; or whether the debtor has unfairly manipulated the Bankruptcy Code. Pre-filing conduct is not determinative of the good faith issue, but it is nonetheless relevant. In essence, the good faith inquiry looks at the debtor’s fairness in dealing with creditors.

Id. at 83-84 (internal citations omitted).

Section 1225(a)(6) requires the plan to be feasible. “The court should not confirm a plan unless it appears under the totality of circumstances that the plan has a reasonable likelihood of success.” *Pressley*, 502 B.R. at 202 (quoting *In re Harrison*, 203 B.R. 253, 256 (Bankr. E.D. Va. 1996)). “The feasibility test of chapter 12, similar to that of both chapters 11 and 13, requires the court to ascertain the ability of the debtor to make the

payments called for by the plan and to otherwise comply with the plan. This determination is made in light of projections of income and expenses, just as with the sister chapters.” *In re Wise*, C/A No. 12-07535-dd, 2013 WL 2421984, at *3 (Bankr. D.S.C. May 31, 2013). Although “success of a debtor’s plan does not have to be guaranteed . . . the plan must ‘present a workable scheme of organization and operation from which there may be a reasonable expectation of success.’” *Pressley*, 502 B.R. at 202-03 (quoting *In re Om Shivai, Inc.*, 447 B.R.459, 462 (Bankr. D.S.C. 2011)); *see also In re Jubilee Farms*, 595 B.R. 546, 550 (Bankr. E.D. Ky. 2018) (“A chapter 12 plan is considered feasible if the court finds a ‘reasonable assurance of success,’ which is established when the plan offers a ‘realistic and workable framework for reorganization.” (quoting *Perkins*, 581 B.R. at 839)).

Ollis has failed to show that the plan is feasible. The monthly reports and testimony do not support Ollis’ projected income as he has failed to show sufficient sources of income to make the required plan payments. Looking to the totality of the circumstances of this case, Ollis has also failed to show his plan was filed in good faith. Ollis did not schedule his debts to be addressed by the plan completely and accurately, resulting in a misrepresentation of his eligibility for the relief available in Chapter 12. The evidence indicates that when necessary, Ollis uses the separate nature of the LLC to his advantage but disregards it to the detriment of his creditors and creditors of the LLC when that approach would further his cause. His monthly reports supporting feasibility include material inaccuracies, he intends to retain two residences while unsecured creditors only receive 1% of their allowed claim amounts, he sold Rabo’s alleged collateral while its Motion for Relief from Stay asserting an interest in that collateral was pending, he failed

to turnover proceeds from the sale of cattle under lien to Rabo, and proposes a minimal payment to that creditor compared to the size of the claim.

For the reasons set forth above, confirmation of the plan is denied.¹⁷

IT IS, THEREFORE, ORDERED THAT:

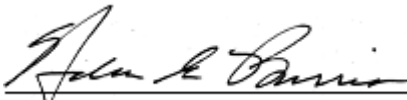
1. confirmation of the plan filed on January 31, 2019, is denied as it fails to meet the requirements of 11 U.S.C. § 1225(a)(3) and (6);
2. Ollis does not qualify for Chapter 12 relief pursuant to 11 U.S.C. § 101(18); and
3. any party in interest that seeks further bankruptcy relief shall have fourteen (14) days from entry of this Order to seek conversion of this case to an appropriate chapter of the Bankruptcy Code, or may request dismissal.

AND IT IS SO ORDERED.

**FILED BY THE COURT
03/13/2019**



Entered: 03/13/2019


US Bankruptcy Judge
District of South Carolina

¹⁷ Because the Court concludes the plan does not meet the requirements of § 1225(a)(3) and (6), it need not address the objections to confirmation under § 1225(a)(4) and (5).