

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

In the Matter of: : Chapter 13
: :
SCHNEIDER YVETTE GREEN, :
: :
Debtor : Case No. 00-50470 RFH
: :

BEFORE

ROBERT F. HERSHNER, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Debtor: Mr. Jason M. Orenstein
Post Office Box 4086
Macon, Georgia 31208

For Jeffrey A. Martin d/b/a
Martin Financial: Mr. Douglas R. Ballard, Jr.
40 Macon Street
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McDonough, Georgia 30253

For Chapter 13 Trustee: Mr. Tony Coy
Post Office Box 954
Macon, Georgia 31202

MEMORANDUM OPINION

Schneider Yvette Green, Debtor, filed on January 27, 2004, her Motion to Modify Chapter 13 Plan After Confirmation. On February 13, 2004, Jeffrey A. Martin d/b/a Martin Financial (hereafter “Objector”), filed an objection to Debtor’s motion to modify. A hearing on Debtor’s motion to modify and the objection was held on March 29, 2004. The Court, having considered the evidence presented and the arguments of counsel, now publishes this memorandum opinion.

Debtor signed a promissory note and a deed to secure debt in favor of Georgia Land & Lumber Mortgage Corporation. Georgia Land & Lumber assigned Debtor’s obligation to Litchfield Financial Corporation.

Debtor filed for Chapter 13 relief on February 7, 2000. Debtor’s Schedule D listed Litchfield Financial as a secured creditor. Debtor’s Chapter 13 plan was confirmed by the Court on June 27, 2000. The confirmed plan provided that Litchfield Financial would be paid \$75.00 per month over the five year term of Debtor’s plan. Litchfield Financial did not file a proof of claim and was paid nothing through Debtor’s Chapter 13 plan.

Litchfield Financial assigned Debtor’s obligation to Objector on July 19, 2001.¹ From the evidence presented, the Court is persuaded that Objector had no knowledge of Debtor’s Chapter 13 case while it was pending.

Debtor successfully completed her Chapter 13 plan. The Chapter 13 Trustee

¹ Objector had a contractual obligation to purchase Debtor’s obligation from Litchfield Financial.

filed on April 30, 2003, her Final Report and Account. The final report shows that all allowed claims were paid in full and that unsecured creditors received a 100 percent dividend. The final report shows that Debtor received a refund of \$177.84.

On May 8, 2003, the Court entered an Order Discharging Debtor After Completion of Chapter 13 Plan. On June 4, 2003, the Court entered a Final Decree discharging the Chapter 13 Trustee and closing the case. The Final Decree provides in part “The debtor(s) has complied with the provisions of the confirmed plan and has completed all payments to be made thereunder.”

On December 4, 2003, Debtor filed her Motion to Reopen Chapter [13] Case. A hearing on the motion to reopen was held on January 21, 2004. The Court entered an order on January 22, 2004, reopening Debtor’s Chapter 13 case.

Debtor now seeks to modify her Chapter 13 plan to make certain monthly payments to Objector. Objector objects to the treatment proposed by Debtor’s modification and urges the Court to dismiss Debtor’s reopened Chapter 13 case.

Section 1329(a) of the Bankruptcy Code² provides in part that a Chapter 13 plan

² 11 U.S.C.A. § 1329(a) (West 1993).

§ 1329. Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

- (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

may be modified “At any time after confirmation of the plan but before the completion of payments under such plan. . . .”

Black’s Law Dictionary defines the term “modify” as follows: “To alter; to change in incidental or subordinate features; enlarge, extend; amend; limit; reduce. Such alteration or change may be characterized, in quantitative sense, as either an increase or decrease.” Black’s Law Dictionary 1004 (6th ed. 1990).

The record shows that Debtor has completed all payments under her Chapter 13 plan. This was judicially recorded by the Court in its Final Decree dated June 4, 2003. Therefore, the Court must conclude that even though Debtor’s Chapter 13 case has been reopened, there is no pending Chapter 13 plan to modify.

The Court also notes that there is no Chapter 13 trustee in Debtor’s reopened Chapter 13 case. Federal Rule of Bankruptcy Procedure 5010 provides that a trustee shall not be appointed in a reopened Chapter 13 case unless the court determines that a trustee is needed to protect the interests of the creditors and the debtor or to insure efficient administration of the case. The Court is not persuaded that a trustee is necessary in Debtor’s reopened Chapter 13 case.

The Court is persuaded that Objector’s objection must be sustained. The Court

(2) extend or reduce the time for such payments; or

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

is persuaded that Debtor's motion to modify must be denied and that Debtor's reopened Chapter 13 case must be dismissed.

An order in accordance with this memorandum opinion will be entered this date.

DATED this 7th day of April, 2004.

ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court