In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

KEVIN L. MOFFATT
Debtor.

Bankruptcy No. X87-01134S
Chapter 12

ORDER RE: MOTION TO REOPEN

The matter before the court is Kevin L. Moffatt's motion to reopen his case. Telephonic hearing on the matter was held June 14, 1996. John Harmelink appeared for Moffatt. Donna K. Webb appeared for objecting creditor Farm Service Agency. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O).

Moffatt filed a Chapter 12 bankruptcy petition on May 11, 1987. His second amended plan of reorganization was confirmed June 23, 1988. The first payment to the Chapter 12 Trustee was to be made on the first anniversary of that date. On April 22, 1993, the Trustee filed a final report and account. The Trustee reported that Moffatt had completed his plan and had made a total of $18,556.89 in payments to her. On May 17, 1993, Moffatt obtained his discharge. The case was closed June 23, 1993. The motion to reopen was filed May 14, 1996.

Moffatt's plan treated the claims of the Farmers Home Administration, now known as Farm Service Agency (FSA). FSA had a claim in the amount of $69,504.00 secured by farmland and an unsecured claim for $357,991.00. The unsecured claim, to the extent not paid under the plan, has been discharged. The plan provided for annual payments of $4,931.41 on FSA's secured claim for 25 years, with the first payment due in 1989. Interest on the secured claim accrued at the rate of five percent (5%). Moffatt is delinquent on the three payments due for the years 1993, 1994 and 1995; a fourth payment was due sometime in June, 1996. FSA has paid $11,659.33 in delinquent real estate taxes on behalf of Moffatt. In January, 1996, FSA filed a foreclosure action in the United States District Court for the Northern District of Iowa.

Moffatt moves to reopen his case in order to modify his plan. Post-confirmation modification is permitted under 11 U.S.C. § 1229(a) "[a]t any time after confirmation of the plan but before the completion of payments under such plan." Moffatt argues that his payments owing to FSA qualify as "payments under the plan" within the meaning of § 1229(a). FSA resists the motion to reopen. It argues that Moffatt is no longer operating under a plan, and that his payments to FSA are payments under the modified note with FSA.

The court may reopen a case "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). Ordinarily, motions to reopen a bankruptcy case should be liberally granted. However, the decision to reopen is in the discretion of the court, and the court may deny a debtor's

motion if it appears that reopening would afford no relief to the debtor. Primmer v. United States Bank (In re Primmer), No.

L90-0036C, slip op. at 2 (Bankr. N.D. Iowa Nov. 2, 1994); see also 2 Collier on Bankruptcy 350.03 (15th ed. 1996). Because the court concludes that a debtor may not modify his plan after receiving a discharge, Moffatt's motion will be denied.

The provisions of a confirmed plan bind the debtor and all creditors. 11 U.S.C. § 1227(a). Confirmation of a Chapter 12 plan provides a res judicata effect unless the plan is modified pursuant to 11 U.S.C. § 1229. In re Martin, 130 B.R. 951, 956 (Bankr. N.D. Iowa 1991). The preclusive effect of a confirmed plan satisfies the need for finality in establishing the respective rights and obligations of the parties to the plan. In re Wruck, 183 B.R. 862, 865 (Bankr. D. N.D. 1995). However, the Bankruptcy Code recognizes the need for flexibility in some circumstances and permits modification of a confirmed plan to a limited extent. Id.; 11 U.S.C. § 1229. Section 1229 prescribes the exclusive procedure for post-confirmation modification of a plan. Rowley v. Yarnall, 22 F.3d 190, 194 (8th Cir. 1994). That section provides:

> **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, on 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;
>
> 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.
>
> b.
>
> 1. Sections 1222(a), 1222(b), and 1223(c) of this title and the requirements of section 1225(a) of this title apply to any modification under subsection (a) of this section.
>
> 2. The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.
>
> c. A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

11 U.S.C. § 1229.

The first payment to the Chapter 12 Trustee under Moffatt's plan was due sometime in 1989. Because more than five years have passed since that date, any plan payments in a proposed modified plan would violate the limit in § 1229(c). The view of a leading treatise is that the limitation in § 1229(c)

does not apply to long-term secured debt. 5 Collier on Bankruptcy 1229 at 1229-3 n.7 (15th ed. 1996); see also 5 Norton Bankruptcy Law & Practice 2d § 111:6 at 111-10 (1994) (citing In re Hart, 90 B.R. 150 (Bankr. E.D. N.C. 1988)); contra Matter of Schnakenberg, 195 B.R. 435, 439 (Bankr. D. Neb. 1996). Arguably, then, the Code permits modification after the five-year period to treat only such a claim.

However, § 1229(a) imposes an additional time limit: a debtor must file his motion to modify a confirmed plan "before the completion of payments under such plan." In some sections of the Bankruptcy Code, the term "payments under the plan" means the payments made during the three- to five-year term of the plan. For example, § 1222(b)(5) describes long-term debt as claims on which payments are due "after the date on which the final payment under the plan is due." The same phrase in other sections is not so limited. See § 1225(a)(5)(B)(ii). Moffatt argues that in

§ 1229(a), the phrase "payments under the plan" is not limited to payments to the trustee and includes long-term payments provided for in the plan. The court disagrees with that interpretation of the phrase as it is contained in § 1229(a). A plan could provide for long-term payments for 25 or 30 years. There must be some point of finality in determining the debtor-creditor relationship within a Chapter 12 case. The court concludes that the time of discharge of the debtor is the point beyond which a debtor may not modify a confirmed plan. After completing payments during the term of the plan, the debtor is entitled to his discharge. 11 U.S.C. § 1228(a). The court concludes that "payments under the plan" within the meaning of § 1229(a) refers to payments during the term of the plan and does not include long-term payments remaining after discharge. Cf. Schnakenberg, 195 B.R. at 438 ("payments under the plan" in § 1229(a) not limited to payments due prior to discharge; post-confirmation modification prohibited under different rationale).

Moreover, shortly after a Chapter 12 debtor receives a discharge, the case is closed. See 11 U.S.C. §§ 1228(e), 350(a). After a case is closed, the debtor's property is no longer property of the estate, and the automatic stay terminates. 11 U.S.C. §§ 1207(a), 362(c); see also Security Bank of Marshalltown v. Neiman, 1 F.3d 687, 691 (8th Cir. 1993) (closing the case is an event that terminates estate, rather than Chapter 13 plan confirmation, quoting Aneiro, 72 B.R. 424 (Bankr. S.D. Cal. 1987)). Moffatt's case has been closed for three years. Any property he acquired during that time would not have become property of the estate. 11 U.S.C. § 1207(a). Property that was once property of the estate is now property of the debtor. 11 U.S.C. § 1227(b). There is no mechanism in the Bankruptcy Code to recreate an estate if Moffatt's case were reopened. See In re Pauling Auto Supply, Inc., 158 B.R. 789, 795 (Bankr. N.D. Iowa 1993) (Chapter 11 estate terminates at confirmation; estate is not reconstituted at post-confirmation conversion to Chapter 7).

After discharge and closing a case, the usual reference points for measuring confirmation standards are gone. For example, § 1229(b) makes the mandatory plan provisions of

§ 1222(a) applicable to a modified plan. Section 1222(a)(1) requires the debtor to submit future income to the supervision and control of the trustee as necessary for the execution of the plan. This provision conflicts with § 1207(a) which prevents future income from becoming property of the estate. For the foregoing reasons, the court concludes that the term "payments under the plan" in § 1229(a) means payments due during the plan term prior to discharge. Moffatt's motion to reopen his case in order to modify his confirmed plan must be denied as untimely.

ORDER

IT IS ORDERED that Kevin L. Moffatt's motion to reopen his case is denied. Judgment shall enter accordingly.

SO ORDERED THIS 11th DAY OF JULY 1996.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U.S. mail to: John Harmelink, U.S. Attorney, Carol Dunbar and U.S. Trustee.