

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE:

BILLIE E. TURNER and
CAROLINE S. TURNER,

BK #87-11346-WHB
Chapter 12

Debtors.

**SUPPLEMENTAL FINDINGS OF FACTS AND CONCLUSIONS OF LAW
ON MODIFICATION OF CONFIRMED PLAN**

The Court conducted a hearing on May 8, 1991, on the debtors' motion, as amended, to extend the time for making the debtors' 1991 payment under the confirmed Chapter 12 plan, which motion the Court treated as a motion to modify under §1229 of the Bankruptcy Code. At the conclusion of the proof and statements of counsel, the Court made certain oral findings of fact and conclusions of law and ordered that the debtors' motion to extend the time for making the 1991 payment would be granted, with the debtors tendering in Court to the Chapter 12 Trustee a cashier's check for a sufficient amount to make the required January, 1991, payment. The Court further ordered that the secured creditors be made whole for the delay in payment by receiving interest at the rate accruing under the plan for each secured creditor. A written order has not yet been submitted for entry.

The Court wishes to make supplemental findings of fact and conclusions of law, which supplemental findings and conclusions do not alter the Court's oral findings and conclusions nor alter the Court's ultimate oral rulings.

Section 1229(b) requires the Court, in examining a postconfirmation modification, to satisfy itself that other specific sections of the Bankruptcy Code governing Chapter 12 are met, including the requirements of §1225(a), which section governs confirmation of a plan. It was the contention of the objecting creditor, Sovran Bank of Union City, Tennessee ("Sovran"), that the requirements of §1229(b) require the Court to

revalue the entire property of the debtor in order to determine whether the confirmation requirements under §1225(a) were met at the time of the modification, and the Court concluded in its oral ruling that such an interpretation was incorrect. Section 1225(a)(4) and (5) address the value of property to be distributed under the plan as being established "as of the effective date of the plan." The United States District Court for the Western District of Kentucky has interpreted "the effective date of the plan" as being a date no earlier than the entry of the confirmation order, "since the plan cannot be effective until it is approved." Gribbons v. Federal Land Bank of Louisville, 106 B.R. 113, 115 (W.D. Ky. 1989), citing In re Milleson, 83 B.R. 696 (Bankr. D. Neb. 1988). The Milleson Court "reasoned that while 'effective date' is not defined in Section 1225, Section 1227 provides that the 'effect' of confirmation is to bind the various parties." Gribbons, 106 B.R. at 115; see also Milleson, 83 B.R. at 699. This interpretation is consistent with that taken by COLLIER ON BANKRUPTCY at ¶1225.02, p. 1225-9. An underlying concept behind Chapter 12 is that values are fixed on property as of the date of confirmation and that undersecured creditors do not have a right, similar to that enjoyed in Chapter 11 under §1111(b), to retain their liens against the property except for the amount of the value as of the effective date of the plan. The valuation date would of necessity be one date rather than a fluctuating date. When a confirmed plan is later modified, the requirement under §1229(b) that the Court reexamine whether that modified plan would be confirmable under the standards of §1225(a) does not require the Court to revalue the debtor's property. If that occurred, the underlying concept in Chapter 12 of a present value fixed on assets would be undermined.

The position taken by Sovran is similar to that taken by a creditor in Hollytex Carpet Mills v. Tedford, 691 F. 2d 392 (8th Cir. 1982), a Chapter 13 case involving an issue of exemptions. There the debtors had obtained a confirmed Chapter 13 plan and later modified that plan, and a creditor espoused that the language in §1325(a)(4) referring to the effective date of the plan required the Court to look to the date of modification. The Circuit Court concluded that the modification does not alter the effective date of the plan. This Court agrees and concludes that under Chapter 12 there can be only one effective date of valuation, that being the effective date of the plan. These debtors had filed a third amendment to their plan, which was

confirmed by this Court, after the Court had conducted an extensive valuation hearing. The values fixed in the confirmed plan remain the effective values, notwithstanding the debtors' postconfirmation modification.

It is true that the Court is required, as the Court did in its oral findings and conclusions, to reexamine §1225(a), and the Court specifically found that §1225(a) was satisfied, including the requirements that the modification of the plan had been proposed in good faith and not by any means forbidden by law. 11 U.S.C. §1225(a)(3). Further, the "best interest of creditors' test" of §1225(a)(4) is still satisfied because the Court had found at the time of confirmation that unsecured creditors would receive under the plan as of the effective date of the confirmation, not less than the amount they would have received in a Chapter 7 liquidation. There had been objections to the original confirmation of the plan by unsecured creditors, thus triggering §1225(b), which requires a dedication of disposable income to the payment of unsecured creditors for three years "beginning on the date that the first payment is due under the plan." 11 U.S.C. §1225(b)(1)(B). This Court has not yet been required to determine the amount of disposable income and will not be required to do so until the time of the debtors' request for a discharge or until the question is earlier presented to the Court by a proper motion for a determination of whether specific property or proceeds are disposable income.

The Court further found at the original confirmation that under §1225(a)(5) the secured creditors received under the confirmed plan a retention of their liens and the value of their secured property, as of the effective date of the plan. The debtors' modification, by delaying the payment of the third and last plan payment through the Chapter 12 Trustee, does not alter the fact that the secured creditors are receiving under the plan a distribution of the value of their collateral, as of the effective date of the plan, which is equal to the allowed amount of the secured claims, and the Court has protected the secured creditors in this modification by giving them interest for the deferred payment.

The Court further found that feasibility had been met for the modification under §1225(a)(6) in that the Court found, based upon the proof offered, that the debtors' projections of income for 1991 indicated that the debtors would be able to make their plan payments in 1992. There was no convincing proof offered to indicate that the debtors would not be able to meet their ongoing plan payments. It must be noted that the

debtors have now made their last plan payment which will be administered by the Chapter 12 Trustee. Under the debtors' confirmed plan, some secured creditors have now been paid in full. It was announced that an agreement had been reached with one secured creditor to surrender collateral in satisfaction of debt and eliminate a payment of approximately \$10,000.00 per year. The Court further approved, on May 8, the debtors' sale of certain real property, which will satisfy another secured creditor in full, thus eliminating another plan payment. Further, under the confirmed plan, some secured debt will be satisfied in full in January, 1992. While the debtors demonstrated a change in circumstances justifying a delay in the third plan payment until May 8, 1991, the history of these debtors has been that the debtors have succeeded in making three years of plan payments, despite some adverse times and conditions. Mr. Turner has been in farming for approximately forty years and has demonstrated to this Court an ability to continue to meet plan obligations. Under all the facts and circumstances presented to the Court, the Court finds it reasonable to conclude that the debtors will be able to make future plan payments and to otherwise comply with the plan.

These findings and conclusions are intended to supplement the oral findings and conclusions, which are incorporated by reference herein.

Dated this 3rd day of June, 1991.

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE

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