

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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February 15, 2000

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Subject: *In re Arden L. and Arlene E. Stern,*
Chapter 12; Bankr. No. 91-40509

Dear Counsel:

The matter before the Court is the Motion to Reopen Case filed by Cleo Kapsch and Debtors' response. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that Kapsch's Motion must be denied.

SUMMARY. Arden and Arlene Stern ("Debtors") filed a Chapter 12 petition on July 19, 1991. Their plan was confirmed on March 4, 1993. It provided that Ronald and Cleo Kapsch had a claim secured by realty valued at \$13,933.97 that would be paid over ten years at 8.25% interest with an annual payment of \$2,087.99 each May 1 beginning May 1, 1993.

Debtors proposed a modification to their confirmed plan on April 17, 1996.¹ Therein, they asked that their final plan payment due on January 1, 1996 be moved to July 1, 1996. The motion was granted on June 3, 1996.

On July 2, 1996, Debtors again sought a modification of their confirmed plan. Regarding the Kapschs' claim, Debtors stated the Kapschs' secured claim is now \$14,688.78 and that they will pay it over ten years at 8.25% interest with an annual payment of \$2,313.81 beginning January 1, 1997. The Kapschs did not object and Debtors' motion was granted August 14, 1996. The modification extended the last plan payment to December 1, 1996.

¹ Debtors' earlier motions to modify were unsuccessful.

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Debtors filed their final report and account on August 8, 1997. No party sought dismissal of the case because Debtors had not completed all plan payments. See Local Bankr. R. 3072-1(b). A discharge was entered October 1, 1997. The case was closed March 13, 1998 after the case trustee filed his final report and account.

On January 10, 2000, Cleo Kapsch filed a motion to reopen the case. She stated Debtors have failed to make the agreed payments as provided in the August 1996 modification. She states that upon reopening, she will move to dismiss the case for Debtors' failure to make plan payments. She theorizes that her financial position will be improved by the dismissal but that Debtors' discharge would not be affected.

Debtors responded on January 28, 2000. They argued that Kapsch has not established cause for reopening the case and that their discharge would be harmed if it were.

On January 28, 2000, Kapsch filed a brief in support of her motion and argued that reopening is within the Court's discretion but she did not specifically state the cause for reopening nor discuss how reopening the case and then getting it dismissed would benefit her.

DISCUSSION. The Court is unable to find any relief that it may afford Kapsch. First, the confirmation order is binding; the time for appealing the order has passed and the order is not subject to collateral attack. *Impac Funding Corp. v. Simpson (In re Simpson)*, 240 B.R. 559, 561-62 (B.A.P. 8th Cir. 1999); see *In re Siemers*, 205 B.R. 583, 586 (Bankr. D. Minn. 1997) (a creditor who does not like the treatment of its claim should object at confirmation, not try to attack it later). Second, as the holder now of only a secured claim², Kapsch does not have statutory authority to seek modification of Debtors' confirmed plan. 11 U.S.C. § 1229(a). Third, the time for seeking modification has passed. 11 U.S.C. §§ 1229(a) and (c). Fourth, the discharge order regarding Kapsch's unsecured claim is final and may no longer be revoked. 11 U.S.C.

² The unsecured portion of Kapsch's claim was discharged on October 1, 1997; the secured portion of her claim has not been discharged. 11 U.S.C. §§ 1228(a)(1) and 1222(b)(5) and (b)(9). *In re Arden L. and Arlene E. Stern*, Bankr. No. 91-40509, slip op. at 4 (Jan. 27, 1998). See generally *United States v. Harmon (In re Harmon)*, 101 F.3d 574, 583 (8th Cir. 1996) (creditor retains its lien to protect secured portion of claim).

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Total notices mailed: 9

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