UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In Re:	)	
	)	
J.HOWARD HARRISON	)	Bankr. Case No. 87-50250
Social Security No. [redacted]-3191	)	
	)	Chapter 12
and	)	
	)	MEMORANDUM OF DECISION RE:
DARLENE F. HARRISON,	)	DEBTORS' MOTION TO OVERRULE
	)	FmHA'S OBJECTION TO DEBTORS'
Social Security No. [redacted]-3191	)	DISCHARGE IN CHAPTER TWELVE.
	)	
Debtors.	)	

The matter before the Court is Debtors' Motion to Overrule FmHA's Objection to Debtors' Discharge in Chapter Twelve and Farmers Home Administration's response thereto. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum and accompanying Order shall constitute findings and conclusions as required by F.R.Bankr.P. 7052.

I.

Debtors J. Howard and Darlene F. Harrison filed a Chapter 12 petition on August 31, 1987. Debtors scheduled Farmers Home Administration (FmHA) as a creditor for $1,110,250.00 with $1,037,150.00 of that amount unsecured. Debtors' schedule of real property stated FmHA had an assignment of their rights under a real property contract for deed behind a first mortgage. They also stated FmHA had a first mortgage on 1,280 acres and that this land was worth $89,600.00.

FmHA filed a proof of claim on October 16, 1987. The claim stated Debtors owed $874,650.41 in principal and $295,501.18 in interest for a total claim of $1,170,151.59.

Debtors filed a Chapter 12 plan on October 26, 1987. The plan

stated:

> The FmHA claim of $1,110,250.00 is partially secured by an amount of $63,590.00 on a first mortgage on 1,280 acres and a second mortgage on 1,512 acres and is partially unsecured by an amount of $1,046,660.00. Such claim of $63,590.00 will be reamortized at 5% interest over 30 years. The first annual payment of $4,137.17 will be paid on August 15, 1989 and a like payment paid each year.

For payment of FmHA's unsecured claim of $1,037,150.00[1], the plan stated:

> All of the Debtors' disposable income, if any, received in the three year period (January 1, 1989, to December 31, 1991,) will be applied to make payments under the Plan. After December 15, 1990, these claims are void and deemed satisfied. 11 U.S.C. § 1225(b)(1)(B). For purposes of this subsection, "disposable income" means income which is received by the Debtors and which is not reasonably necessary to be expended for maintenance and support of the Debtors or for the payment of expenditures necessary for the continuation, preservation, and operation of the Debtors' farming and ranching business. 11 U.S.C. § 1225(b)(2)(A) and (B).

By mail on October 26, 1987, notice was given to all creditors and other parties in interest that the confirmation hearing was scheduled for November 24, 1987. The last date for objections was set as November 10, 1987.

FmHA filed an objection to the plan on November 5, 1987 on the grounds that Debtors had: understated the total amount of FmHA's claim by $59,901.59; undervalued FmHA's secured claim by $152,310.00; and failed to recognize that real estate taxes of $47,348.75 should be paid directly to FmHA because FmHA had already paid the taxes owed to Dewey County. Two other creditors and the United States Trustee also objected to the plan.

FmHA filed a valuation motion on November 5, 1987. A valuation hearing was set with the confirmation hearing on November

---

[1] The plan does not explain why part 2(b)(ii) states FmHA's unsecured claim is $1,046,660.00 and part 4(a) states FmHA' s unsecured claim is $1,037,150.00.

24, 1987.

The confirmation hearing was held November 24, 1987.[2] Appearances included James P. Hurley for Debtors, Assistant U.S. Attorney Raymond P. Murley for FmHA, and Chapter 12 Trustee Dennis C. Whetzal. The Trustee stated:

> There has been a Chapter 12 plan of summary prepared, which I would present to the Court at this time. I have just now presented it to counsel for Farmers Home Administration and for the debtors. And as the Court can see from that summary, we have two loans that are being paid to the Farmer's Home Administration. The Lease of Norwest Incorporated loan, as I understand it, has been resolved in accordance with those figures set forth , also in the summary. To the best of my knowledge, Your Honor, that does take care of the outstanding objections. Any further objections on the part of the United States Trustee would be withdrawn. With that in mind, we would recommend that the plan be confirmed as set forth in that summary, if it is acceptable to everyone here. Perhaps, Mr. Murley might have something to add.

Neither Mr. Hurley nor Mr. Murley voiced an objection to the plan summary after Trustee Whetzal gave it to them. Mr. Murley stated the Trustee's recitation reflected the agreement struck with counsel for Debtors and that FmHA had no further objection. From the bench the Court ordered, "The Court will adopt the report and plan treatment of summary of the trustee's and the trustee's recommendation regarding confirmation, as to its findings, an order of confirmation. The confirmation order by Mr. Hurley." At the Court's inquiry, Mr. Murley stated the valuation issue was moot.

Trustee Whetzal's Chapter 12 Plan Summary consisted of handwritten notes on a pre-printed form. The form had four parts and two exhibits: Part I was for priority creditors; Part II was for Secured Creditors with the treatment for each detailed on Exhibit A; Part III was for unsecured creditors; and Part IV was a recommendation for confirmation based on pre-printed statements on

---

[2] The Hon. Peder K. Ecker, presiding.

Exhibit B. Part II, Exhibit A stated FmHA had two secured claims. The first secured claim for $85,561.00 would be paid over thirty years at 5% interest. The second for $31,739.00 would be paid over fifteen years at 8% interest. Part III(A) of the Summary stated there was one undersecured creditor for $1,053,650.00. Part III(B) said "-0-" was amount to be paid on the unsecured claim. Part III(C) said Debtors offered net disposable income for three years. Attachment B stated inter alia that:

> The unsecured creditors will have the potential to receive more in this Chapter 12 bankruptcy that they would if this case were a Chapter 7 because the Debtor(s) have offered to pay all of their net disposable income over the life to the Plan, pursuant to 11 U.S.C. s1225 (b) (1) (B).

There were no handwritten notes on Attachment B to indicate whether all the pre-printed statements on the Attachment applied in this case. Two of the pre-printed statements on Attachment B conflicted with Debtor's original plan. First, the plan was for three years, not five as Attachment B indicated. Second, while the Attachment said disposable income had been committed "over the life of the plan," Debtors' original plan stated disposable income payments would be extended to unsecured claims only until December 15, 1990 when "these claims are void and deemed satisfied." The original plan, however, also stated that disposable income would be applied to plan payments from January 1, 1989 through December 31, 1991. The plan summary was dated, signed by Trustee Whetzal, and filed on November 24, 1987.

After the November 24, 1987 confirmation hearing, Debtors entered into agreement with General Motors Acceptance Corporation (GMAC) and the agreement was approved by the Court on January 8, 1988 without notice to other parties. Debtors entered into an

agreement with Lease Northwest and served it on selected parties on February 1, 1988. The Court entered an Order approving this agreement on February 2, 1988 without a hearing or opportunity to object.

On December 22, 1987, Debtors filed a First Amended Chapter Twelve Plan of Reorganization that incorporated the agreements with GMAC and Lease Northwest. The first amended plan stated FmHA's claim of $1,170,151.59 [the amount stated on FmHA's proof of claim] was secured for $117,300.00. The repayment terms for the secured claim were as stated on Trustee's Whetzal plan summary. The first amended plan also stated, "FmHA has terminated and written off all undersecured amounts." The amended plan committed Debtors' future earnings to the plan as required by 11 U.S.C. § 1222(a)(1) but it did not mention disposable income. Debtors did not file a certificate of service indicating this plan had been served on anyone. A confirmation hearing on the amended plan was not held. An unsigned confirmation order on the first amended plan was filed December 22, 1987.[3]

Debtors filed a Second Amended Chapter Twelve Plan of Reorganization on February 16, 1988. It provided the same treatment for FmHA's secured claim as stated in the first amended plan and again stated, "FmHA has terminated and written off all undersecured amounts." Debtors did not file a certificate of service indicating this plan had been served on anyone. A confirmation hearing on the second amended plan was not held.

The day after receiving the second amended plan but some three

---

[3] The First Amended Chapter Twelve Plan of Reorganization and unsigned confirmation order were filed December 22, 1987 but were not docketed until after the Second Amended Plan was filed and confirmed. There is no explanation in the file for this circumstance.

months after the confirmation hearing on November 24, 1987, the Court entered an Order Confirming Second Amended Chapter Twelve Plan.[4] The Order referred to the November 24, 1987 confirmation hearing and acknowledged that a modified plan had been filed but said the "modifications do not affect the rights of any other creditors, and therefore, no further notice is required." The Order also said any interested party could obtain a copy of the Second Amended Chapter Twelve Plan upon written request to the Court or Debtors' attorney. The confirmation order was served on all creditors and other parties in interest on February 17, 1988.

Debtors filed their Final Report and Final Account and gave notice of that filing on August 19, 1992. FmHA filed an objection to discharge on September 15, 1992 on the grounds that all disposable income payments had not been made. A hearing on the objection was set for November 10, 1992.[5] Upon FmHA's motion, the hearing was rescheduled to December 1, 1992.

A hearing was held December 1, 1992.[6] Appearances included James P. Hurley for Debtors and Assistant U.S. Attorney Thomas A. Lloyd for FmHA. After hearing a report from Mr. Lloyd on the status of discovery, the Court set trial dates of February 1-3, 1993 so the disposable income question could be litigated. Discovery was ordered to be completed by January 25, 1993.

During the latter months of 1992 both parties conducted discovery on disposable income issues. Upon the agreement of the

---

[4] The Hon. Peder K. Ecker, presiding.

[5] By Order entered November 3, 1992, Debtors' application to employ Raymond E. Melligan as an appraiser and financial analyst to assist them with "disposable income issues" was approved. At the hearing held December 1, 1992, counsel for FmHA stated FmHA had also hired an accounting expert for assistance.

[6] The Hon. Irvin N. Hoyt, presiding.

parties, the trial was later rescheduled to February 9-11, 1993.

On January 29, 1993, Debtors filed a Motion to Overrule FmHA's Objection to Debtors' Discharge in Chapter Twelve on the grounds that FmHA had "waived and voided its unsecured claim during the confirmation process which concluded when the Debtors' Second Amended Chapter Twelve Plan of Reorganization was approved and confirmed by Order of this Court entered February 17, 1988." The Court set that Motion for hearing on February 9, 1993 and limited the hearing to the issue of whether FmHA had "waived" or "voided" its unsecured claim prior to or at the confirmation of Debtors' plan.

FmHA filed a written response to Debtors' Motion on February 3, 1993. FmHA stated it did not have an opportunity to object to either the first or second amended plans before the second amended plan was confirmed. FmHA further argued that the confirmation hearing on November 24, 1987 was based on the original plan that provided for disposable income payments.

Trustee Whetzal filed an affidavit on February 8, 1993. Therein he stated he had no notes on nor could he recall whether disposable income was discussed before the confirmation hearing on November 24, 1987. He further stated,

> That your affiant indicated in his Chapter 12 Plan Summary filed in this case that Debtors were to offer net disposable income for a period of three years during the life of the Plan. While your affiant assumes that he would not have checked this provision
>
> if he had been aware of a waiver of disposable income, he has no independent recollections of such a waiver.

The hearing on Debtors' Motion to Overrule FmHA's Objection to Debtors' Discharge in Chapter Twelve was held February 9, 1993. Appearances included James P. Hurley for Debtors and Assistant U.S.

Attorney Thomas A. Lloyd for FmHA.

A letter from Mr. Hurley to Assistant U.S. Attorney Raymond P. Murley dated December 8, 1987 was introduced into evidence. In the letter, Mr. Hurley recites the parties' agreement concerning FmHA's secured claim on two notes and the agreed plan treatment. The letter did not mention FmHA's undersecured claim. Mr. Hurley stated that the First Amended Plan was served on Trustee Whetzal, Assistant U.S. Attorney Murley, and the Bankruptcy Clerk on December 21, 1987, as shown by a cover letter to the Bankruptcy Clerk dated that day and copied to the others. Mr Hurley said that after the first amended plan was mailed to interested parties on December 22, 1987, Trustee Whetzal relayed an objection to the first amended plan to Mr. Hurley. Trustee Whetzal did not file an objection with the Court. In response to Trustee Whetzal's objection, Mr. Hurley said Debtors cured the Trustee's objection in a second amended plan and then submitted the second amended plan and a proposed confirmation order to the Court for entry. There was no evidence produced that indicated when FmHA was served with the second amended plan.

Mr. Murley, now retired from the United States Attorney's office, testified on behalf of FmHA. He did not specifically recall his negotiations with Mr. Hurley. He stated that as a matter of policy the United States Attorney did not waive unsecured claims without the consent of the client [agency] because disposable income provisions were an important protection for creditors. He could not recall any instance, including this case, in which an unsecured claim had been waived. Mr. Murley also stated that the negotiated increase in the value of FmHA's secured claim was likely due to a higher valuation based on an appraisal

obtained by FmHA. He stated his case file did not contain any notes or other documents that indicated FmHA's unsecured claim had been waived. He acknowledged he had received and read Attorney Hurley's letter dated December 8, 1993 and he stated his office file contained the first and second amended plans. Mr. Murley testified that the United States Attorney's office forwarded any plan it received to the applicable FmHA office for review and any objections. The dates that FmHA received the first and second amended plan were not established at the hearing.

Because the United States Attorney had received both amended plans and the confirmation order, Mr. Hurley argued that FmHA had the opportunity to object to either amended plan or to the confirmation order. He further argued that any evidence but the confirmed plan and confirmation order on this "waiver" issue is irrelevant because 11 U.S.C. § 1227(a) provides that the confirmed plan binds all parties and also because the time for modifying the plan under § 1229 had expired.[7]

Assistant U.S. Attorney Lloyd argued FmHA was never given an opportunity to object to either amended plan because neither was noticed for hearing or objections. He said that FmHA and the U.S. Attorney's office were entitled to rely on the oral confirmation order and the Trustee's plan summary, which the Court's oral confirmation order incorporated. He further pointed out that no other document in the court file or presented at the hearing,

---

[7] Debtors' counsel also argued that § 1225(b)(2) requires only "projected" -- not "net"-- disposable income to be paid and that Debtors had projected none would be paid. That issue was not raised in Debtors' Motion to Overrule FmHA's Objection to Debtors' Discharge in Chapter Twelve and was not at issue at the hearing held February 9, 1993. See Order Setting Hearing on Debtors' Motion to Overrule FmHA's Objection to Discharge entered February 1, 1993.

except the first and second amended plans, indicated FmHA ever waived its unsecured claim.

Assistant U.S. Attorney Lloyd agreed with Debtors' counsel that no triggering objection under § 1225(b)(2) had been filed but Mr. Lloyd pointed out that no triggering objection was necessary because Debtors' original plan provided for the payment of disposable income.

Mr. Hurley's letter to Assistant U.S. Attorney Murley dated December 8, 1987, Mr. Hurley's cover letter to the Bankruptcy Clerk dated December 21, 1987, and Trustee Whetzal's affidavit dated February 8, 1993 were received as exhibits. The Court ordered briefs to be filed on whether the oral confirmation order, which incorporates the Chapter 12 Trustee's plan summary, takes precedence over any subsequent modified plan that was not noticed to creditors or supersedes the written confirmation order. Upon receipt of briefs and replies, the matter was taken under advisement on March 24, 1993.

II.

The provisions of a confirmed Chapter 12 plan bind the debtor and each creditor, whether or not such creditor objected to or accepted the plan. 11 U.S.C. § 1227(a). There are, however, several procedures established by the Code and Federal Rules of Bankruptcy Procedure by which an interested party may seek a change in the plan or the confirmation order.

The confirmation order may be appealed. The notice of appeal generally must be filed within ten days after entry of the order. F.R.Bankr.P. 8002. The time to appeal a confirmation order may be extended twenty days only if the extension is sought before the deadline passes. F.R.Bankr.P. 8002(c). If a party first files a

motion under Rule 7052(b) to amend or make additional findings of fact, a motion under Rule 9023 to alter or amend the judgment, or a motion under Rule 9023 for a new trial, the ten-day appeal time runs from the order granting or denying the motion. F.R.Bankr.P. 8002(b).

The confirmation order may be revoked. 11 U.S.C. § 1230(a). The only ground for revocation is if the confirmation order was procured by fraud. Id. The complaint to revoke confirmation must be brought within 180 days after the confirmation order is entered. Id.; F.R.Bankr.P. 7001(5). The 180-day period may not be circumvented by a motion for relief from judgment. F.R.Bankr.P. 9024 [F.R.Civ.P 60].

A Chapter 12 plan may be modified after confirmation. 11 U.S.C. § 1229(a). The motion to modify must be sought before completion of plan payments. Id. Twenty-days' notice and an opportunity for hearing on the proposed modification are required. 11 U.S.C. §§ 102(1) and 1229(b)(2) and F.R.Bankr.P. 2002(a)(6).

The case may be dismissed for cause. 11 U.S.C. § 1208(c). Cause for dismissal that may arise post-confirmation includes, but is not limited to, unreasonable delay or gross mismanagement by the debtor that is prejudicial to creditors; failure to timely commence payments required by a confirmed plan; material default on a term of a confirmed plan; revocation of the order of confirmation or the denial of a post-confirmation motion to modify; termination of a plan based on a "drop dead" clause in the plan; or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation. Id.

A party may seek equitable relief under F.Rs.Bankr.P. 9023 or

9024. Federal Rule of Civil Procedure 59 applies in bankruptcy cases. F.R.Bankr.P. 9023. Rule 59 allows a party to seek a new trial or an alteration or amendment of a judgment. A party has ten days after entry of the judgment to file either type of motion under Rule 59. F.R.Civ.P. 59(b) or (e). The court also may order a new trial on its own initiative within ten days of the judgment. F.R.Civ.P. 59(d).

Federal Rule of Civil Procedure 60(a) applies in bankruptcy cases. F.R.Bankr.P. 9024. Rule 60(a) allows a court to correct a clerical error at any time on its own initiative or upon the motion of a party . Corrective orders may be entered to recognize "only what was intended, what was agreed, and what the court itself had accepted as the resolution of the litigation then pending." Pattiz v. Schwartz, 386 F.2d 300, 303 (8th Cir. 1968); United States v. Mansion House Center North Development, 855 F.2d 524, 526 (8th Cir. 1988). Mistakes by the court, the clerk, or a party may be addressed under Rule 60(a). Pattiz, 386 F.2d at 303.

Federal Rule of Civil Procedure 60(b) applies in bankruptcy cases with some exceptions. Rule 60(b) allows a court to relieve a party of a judge for equitable reasons including:

> (1) mistake, inadvertence, surprise, or excusable neglect; . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; . . .; or (6) any other reason justifying relief from the operation of the judgment.

F.R.Civ.P. 60(b)(in pertinent part).[8] Any motion under Rule 60(b)

---

[8] FmHA has not argued that other grounds for relief under Rule 60(b), such as fraud or other misconduct by the opposing party, are applicable. Moreover, FmHA has not argued that the confirmation order was a void judgment under Rule 60(b)(4). The Court renders no opinion on that question. See, e.g., In re Emergency Beacon Corp., 48 B.R. 356 (S.D.N.Y. 1985).

must be brought within a reasonable time and for reasons (1) or (3) the motion must be brought not more than one year after the judgment. In bankruptcy cases, a motion under Rule 60 may not extend the one-year deadline for filing a complaint to revoke a Chapter 12 confirmation order. F.R.Bankr.P. 9024.

III.

The error-plagued procedural history of this case dictates that the written confirmation order be equitably reformed by the Court sua sponte[9] under Rule 60(a) to comport with the Court's oral order entered at the confirmation hearing. Debtors' original plan, as modified by the Trustee's plan summary, was confirmed at the hearing on November 24, 1987. Debtors' subsequent "amended" plans were, at best, attempted post-confirmation modifications that were not properly noticed under 11 U.S.C. §§ 102(1) and 1229(b)(2) and F.R.Bankr.P. 2002(a)(6).[10] FmHA was not timely given notice that

---

[9] FmHA's ability to attack the confirmation order at this time is severely limited. Procedurally, FmHA has not filed a motion for relief under Rule 60(b) and the Court will not by-pass that formality. Further, FmHA may no longer file an appeal of the confirmation order, seek revocation of the confirmation order, or pursue equitable relief under Rule 60(b)(1) or (3) because all such relief is time barred.

FmHA also cannot obtain relief under Rule 60(b)(6). To do so, FmHA must show "extraordinary circumstances" suggesting that it was faultless in the causing the delay in seeking relief. Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 113 S.Ct. 1489, 1497 (1993). Further, the several provisions of Rule 60(b) are mutually exclusive so FmHA also must show that it could not timely seek relief under another subsection of Rule 60(b) before it sought relief under subsection (6). Id. FmHA cannot meet either burden under 60(b)(6) because it had several earlier remedies available, including an appeal, a motion to reconsider or alter the confirmation order under Rule 59, or a motion for relief from judgment for mistake, inadvertence, surprise, or excusable neglect under Rule 60(b)(1).

[10] No party has attacked the written confirmation order regarding the treatment of GMAC and Lease Northwest, the two secured creditors who made deals with Debtors after the confirmation hearing. Therefore, only FmHA's unsecured claim is

Debtors had modified the confirmed plan. FmHA was not given an opportunity to object to either amended plan because the Court rejected the accompanying proposed confirmation order the same day the first amended plan was filed and it signed the accompanying proposed confirmation order the day after the second amended plan was received. Further, there was no evidence presented that FmHA was served with the second amended plan before it was confirmed.

While these procedural errors could have been raised by FmHA through an appeal or post-judgment motion, the Court cannot ignore its contribution to the errors and its ability now to remedy the errors. The heavy Chapter 12 case load in the District of South Dakota does not excuse these procedural errors. However, the fact that this District had the highest number of Chapter 12 cases filed per capita in 1987 and 1988 must be recognized.[11] The Court, active creditors like FmHA, Chapter 12 trustees, and the debtors' counsel did not have the luxury of reflecting on cases that had already went through the new Chapter 12 confirmation process; everyone had to move forward to the next case.

Equitable reformation of the written confirmation order to conform to the oral confirmation order is also justified because of the lack of evidence that FmHA waived its unsecured claim. First and most notably, the Court adopted Trustee Whetzal's plan summary. The plan summary acknowledged that an unsecured debt of

---

affected by this reformation of the confirmation order.

[11] The District of South Dakota, with a population of approximately 696,005, had 528 Chapter 12 cases filed in 1987 and 1988 (one case per 1,318 people). The only state with more Chapter 12 cases filed in those years was Nebraska. With a population of 1,578,385, Nebraska had 876 Chapter 12 cases filed in 1987 and 1988 (one case per 1,802 people). No other state had Chapter 12 filings that totaled over 300 for those two years.

$1,053,650.00 existed and that Debtors offered to pay disposable income for three years. The Trustee's plan summary is consistent with the original plan's treatment of FmHA's unsecured claim and is also consistent with the agreed treatment of FmHA's secured claim that the parties recited at the confirmation hearing. Although the plan summary said that Debtors would make "-0-" payments on the unsecured claim, that provision was consistent with Debtors' liquidation analysis under the best interests of creditors test under 11 U.S.C. § 1225(a)(4) or with Debtors' projection that they would not have any disposable income. The zero payment provision in the plan summary did not, therefore, conflict with the original plan nor with Part III(C) of the plan summary which recognized that Debtors committed disposable income for three years. Moreover, the plan summary was presented to both sides' attorney at the hearing and neither questioned its accuracy.

Second and equally as important, neither FmHA nor Debtors' counsel made a record at the confirmation hearing that FmHA had waived an unsecured claim of over a million dollars. It is difficult to believe that counsel would fail to clearly recite a waiver of such consequence on the record so that no misunderstanding existed when the agreement was reduced to writing.

Third, a waiver by FmHA of an unsecured claim of over a million dollars in exchange for a $53,710.00 increase in its secured claim is a deal of such magnitude and so atypical of other plans confirmed in this District that it is difficult to perceive any inducement for FmHA to agree to that treatment. Former Assistant U.S. Attorney Murley could not recall any Chapter 12 case where an unsecured claim was waived by FmHA. The fact that FmHA obtained a higher appraisal of the property adequately explains why

the value of the secured claim was increased.

Finally, the waiver provision in the second amended plan caught FmHA and Debtors unaware of its existence until the discharge process was well under way. Debtors hired a professional in November, 1992 to assist them with disposable income issues and they did not raise the waiver issue until three months after FmHA objected to discharge. There was no evidence that during the course of the plan FmHA acknowledged and accepted a waiver of its unsecured claim as stated in the second amended plan. There also was no evidence that during the course of the plan Debtors or any other party relied to their detriment on the unsecured claim waiver provision in the second amended plan.

The facts of this case are distinguishable from those in In re Pearson, 96 B.R. 990 (Bankr. D.S.D. 1989). In Pearson the Court denied a Chapter 12 trustee's motion to modify a confirmed plan to raise the value of some estate property because that issue could have been raised before confirmation and there was no evidence of changed circumstances justifying the post-confirmation relief. Id. at 992-93. Here, the Court is reforming the written confirmation order to reflect what the Court ordered at the confirmation hearing. New, substantive rights are not being created.

In light of the procedural errors that occurred prior to the entry of the written confirmation order and in the absence of any evidence other than the first and second amended plans that FmHA waived its unsecured claim and accepted that provision in Debtors' second amended plan, this Court cannot equitably bind FmHA to the terms of the second amended plan regarding the treatment of its unsecured claim. To hold otherwise would render the confirmation

hearing meaningless and ignore the Court's oral confirmation order. Since Rule 60(a) allows a court to correct at any time a written order that does not comport with its oral findings and conclusions, an order will be entered that amends the confirmation order to provide that the treatment of FmHA's unsecured claim shall be as stated in the Court's oral order at the confirmation hearing and the Chapter 12 Trustee's plan summary.

Dated this ____ day of May, 1993.

BY THE COURT:

_____
Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy

(SEAL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In Re:	)	
	)	
J.HOWARD HARRISON	)	Bankr. Case No. 87-50250
Social Security No. [redacted]-3191	)	
	)	Chapter 12
and	)	
	)	ORDER DENYING MOTION TO
DARLENE F. HARRISON,	)	OVERRULE FmHA'S OBJECTION
	)	TO DEBTORS' DISCHARGE IN
Social Security No. [redacted]-3191	)	CHAPTER TWELVE AND
	)	REQUIRING REFORMATION OF
Debtors.	)	THE CONFIRMATION ORDER

Upon consideration of the Memorandum of Decision Re: Debtors' Motion to Overrule FmHA's Objection to Debtors' Discharge in Chapter Twelve entered this day,

IT IS HEREBY ORDERED that Debtors' Motion to Overrule FmHA's Objection to Debtors' Discharge in Chapter Twelve is DENIED; and

IT IS FURTHER ORDERED that the Order Confirming Second Amended Chapter Twelve Plan entered February 17, 1988 shall be reformed sua sponte under F.R.Bankr. 9024 and F.R.Civ.P. 60(a) to conform with the Court's oral findings and conclusions entered on the record at the confirmation hearing held November 24, 1987 and the Chapter 12 Trustee's plan summary filed November 24, 1987 regarding the treatment of unsecured claims. Chapter 12 Trustee Dennis C. Whetzal and counsel for Debtors and FmHA shall confer within thirty days to determine the language of the Order Confirming Second Amended Chapter Twelve Plan that needs to be reformed to comply with this Order and shall submit to the Court an agreed-upon proposed order that delineates those changes. If the parties

cannot reach a consensus within thirty days, the Trustee shall report that fact to the Court and the Court will schedule a hearing thereon. Upon entry of an order reforming the Order Confirming Second Amended Chapter Twelve Plan in compliance with this Order, the Court will schedule a continued hearing on Debtors' discharge and the objections thereto.

So ordered this _____ day of May, 1993.

BY THE COURT:

_____
Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy

(SEAL)