

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

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225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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March 6, 2006

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Emilie Garrett
KSK Antiques
138 South Chicago Street
Hot Springs, South Dakota 57747

Subject: *In re Monty R. and Susan M. Montgomery,*
Chapter 13, Bankr. No. 03-50416

Dear Mr. Mairose and Ms. Garrett:

The matter before the Court is the Motion to Modify Chapter 13 Plan filed by Debtors and the letter objection to the Motion filed by Emilie Garrett for KSK Antiques. 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 Fed.R.Bankr.P. 7052 and 9014(c). As set forth below, the motion will be granted.

Summary. Monty R. and Susan M. Montgomery ("Debtors") filed a Chapter 13 petition in bankruptcy on August 15, 2003. Debtors added KSK Antiques as a creditor to the case on September 29, 2003. Thereafter, KSK Antiques was mailed a notice of the case that told them the deadline to file a proof of claim was December 30, 2003. KSK Antiques was also mailed a proof of claim form with the notice. Unfortunately, September 29, 2003, was also the last date to file an objection to Debtors' proposed repayment plan. Consequently, KSK Antiques did not participate in the confirmation process. KSK Antiques also did not timely file a proof of claim, though it had sufficient time to do so before the December 30, 2003, deadline.

Debtors' repayment plan was confirmed March 9, 2004. The plan provided creditors who held mortgages on Debtors' home would be paid directly outside the plan. The plan also provided unsecured

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creditors who timely filed a proof of claim would be paid in full over 41 months. KSK Antiques' claim was not governed by this provision since KSK Antiques had not timely filed a proof of claim. The plan also did not specifically address KSK Antiques' claim in any other manner.

On January 30, 2006, Debtors' filed a motion to modify their confirmed plan. They stated they had moved to Texas and needed to surrender their South Dakota home to the mortgagees without further deficiency or personal liability. Debtors did not propose to change any other provision of their plan.

The only objection to the motion was filed by KSK Antiques through Emilie Garret. KSK Antiques stated it wanted its \$575.00 claim included in Debtors' motion to modify.

Discussion. Section 1329 of the Bankruptcy Code governs the modification of a confirmed Chapter 13 plan. Allowable modifications include changing the amount of a payment of a claim provided in the plan, changing the time for such a payment, or altering the distribution to a creditor whose claim is provided for in the plan but who has been paid from another source. 11 U.S.C. § 1329(a)(1-3). A modification of a confirmed plan must meet the same requirements for approval as did the plan when it was first confirmed. 11 U.S.C. § 1329(b).

The only change that Debtors have proposed at this time to their confirmed plan deals with their home mortgage creditors. Those creditors and the case trustee have not objected to the proposed change, and the proposed change will not adversely affect other creditors. Accordingly, Debtors' January 30, 2006, motion to modify their confirmed plan will be granted.

Section 1329(a) permits either Debtors or KSK Antiques to file a motion to modify Debtors' confirmed plan to address KSK Antiques' claim. Options under the Bankruptcy Code at this point, however, are limited since KSK Antiques did not timely file a proof of claim and its claim is not provided for by the present plan. See 11 U.S.C. § 1329(a)(3).

Since KSK Antiques' claim is not provided for by Debtors' repayment plan, it will not be discharged. 11 U.S.C. § 1328(a). KSK Antiques may pursue its claim against Debtors using non bankruptcy law remedies. Unless KSK Antiques obtains relief from the

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automatic stay from this Court, however, those efforts must wait until Debtors' bankruptcy case is closed.

An appropriate order will be entered.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve parties in interest)

On the above date, a copy of this document was mailed or faxed to the parties shown on the Notice of Electronic Filing as not having received electronic notice and Debtor(s), if Debtor(s) did not receive electronic notice.

Charles L. Nail, Jr.
Clerk, U.S. Bankruptcy Court
District of South Dakota

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered on the date shown above.

Charles L. Nail, Jr.
Clerk, U.S. Bankruptcy Court
District of South Dakota