

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 02-50320-BKC-RBR

Chapter 13

In re:

Rose G. Grant,

Debtor.

_____ /

MEMORANDUM OPINION DENYING DEBTOR'S MOTION TO MODIFY

THIS MATTER came before the Court on March 8, 2005, upon Motion by Debtor Rose G. Grant for Approval of Chapter 13 Second Modified Chapter 13 Plan (C.P. 31). The Court having reviewed the files, heard arguments of counsel, and being otherwise duly advised in the premises, makes the following finding of facts and conclusion of law.

FINDING OF FACTS

The debtor filed this case on April 15, 2002. The First Amended Chapter 13 Plan was confirmed on April 13, 2003. The confirmation order granted stay relief to all secured creditors not paid by the Chapter 13 Trustee in the confirmed plan. Between November 2, 2004 and April 20, 2005, the debtor has filed four modified plans (C.P. 30, C.P. 32, C.P. 39, and C.P. 50). Each modified plan includes post petition tax certificate holders not listed in the original Chapter 13 Plan. The post petition creditors have not filed a proof of claim in the case or otherwise consented to be included in the modified plan. At the modification hearing the Trustee objected. The post petition creditors did not appear at the hearing.

CONCLUSION OF LAW

The law is clear, post petition creditors must file a proof

of claim to be included in a modified plan. "Neither the Bankruptcy Code nor the Bankruptcy Rules allows a debtor to force a post-petition creditor into an existing chapter 13 plan. If a post-petition creditor desires to participate in the existing plan, and meets other criteria, a post-petition claim may be filed with, and depending on the facts, allowed or disallowed by the Court." In re Haith 193 B.R. 341, 342 (Bankr. N.D. Ala. 1995).

Section 1329(a) permits the modification of the plan to "increase or reduce the amount of payments on claims of a particular class *provided for* by the plan" or to "alter the amount of the distribution to a creditor whose claim is *provided for* by the plan." Section 1329(a) does not permit the inclusion of a creditor whose claim is not provided for by the plan. In re Tretham, 145 B.R. 564, 567 (Bankr. E.D. Tenn. 1992)

Additionally, creditors must agree to the reimposition of the automatic stay to be included in a modified plan. As the confirmation order granted stay relief to all secured creditors not receiving payments through the confirmed plan, the addition of the creditors is an attempt to reimpose the automatic stay. "There is nothing in the Code authorizing a bankruptcy court to reimpose the stay once it has been lifted as to a certain creditor." In re Hale, 128 B.R. 310, 312 (Bankr. N.D. Fla. 1991).

A stay in bankruptcy is essentially an injunction. See Mueller v. Nugent, 184 U.S. 1, 15 (1902). The automatic stay is only imposed by the filing of a petition pursuant to section 362(a). Even the conversion of a case to a new chapter does not invoke a new automatic stay. 11 U.S.C. 348(a). Nor does the conversion of a case reimpose the automatic stay on a creditor granted stay relief. See In re Gilpin, 209 B.R. 490, 491-492 (Bankr. W.D. Mo. 1997). To obtain a new injunction, the debtor

must file an adversary under Fed.R.Bankr.P. 7001. Request to "reinstate" automatic stay is, in fact, request for injunction and should meet standards under Fed.R.Bankr.P. 7065. Sunbelt Sav. Ass'n of Texas v. Truman, 95 B.R. 55. (N.D. Tex. 1988). Therefore a creditor's failure to appear at a modification hearing does not reimpose the automatic stay.

Conclusion

A post petition creditor needs to file a proof of claim or the debtor needs to obtain written consent from the creditor to the addition of the creditor's claim into a modified plan. The written consent or filed proof of claim is necessary as it is among other things the creditor's consent to the reimposition of the automatic stay.

Accordingly, it is

ORDERED AND ADJUDGED that Debtor's Motion to Modify Chapter 13 Plan is **DENIED**.

DONE AND ORDERED in the Southern District of Florida on

April 25, 2005.

RAYMOND B. RAY, JUDGE
UNITED STATES BANKRUPTCY COURT

Copies:

Rose G. Grant
Nancy N Herkert
Jordan E Bublick, Esq