

**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: **12-07876-hb**

**ORDER SUSTAINING TRUSTEE'S OBJECTION TO POST-CONFIRMATION  
MODIFICATION OF PLAN**

The relief set forth on the following pages, for a total of 7 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT  
07/28/2015**



Entered: 07/28/2015

A handwritten signature in cursive script, appearing to read "Adam L. Curcio".

US Bankruptcy Judge  
District of South Carolina

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

IN RE:

Ronald Edwin Rupp and Sandra Fishack  
Rupp,

Debtor(s).

C/A No. 12-07876-HB

Chapter 13

**ORDER SUSTAINING TRUSTEE'S  
OBJECTION TO POST-  
CONFIRMATION MODIFICATION  
OF PLAN**

**THIS MATTER** is before the Court for consideration of the Post-Confirmation Modification of Plan proposed by Debtors Ronald Edwin Rupp and Sandra Fishack Rupp on June 3, 2015.<sup>1</sup> The Modification seeks to reduce plan payments from \$1,900.00 to \$650.00 per month for the remainder of the plan due to loss of income. Chapter 13 Trustee, William K. Stephenson, Jr., objected on grounds that Mr. and Mrs. Rupp have not experienced a change in circumstances that would justify the significant reduction in plan payments as proposed.<sup>2</sup> A hearing was held on July 23, 2015, and Debtor Ronald Edwin Rupp, represented by F. Lee O'Steen, testified in support of the Modification.

Based on a review of the pleadings filed by the parties and the case docket, the testimony presented at the hearing, and after careful consideration of the law and arguments of counsel, the Court finds as follows pursuant to Fed. R. Bankr. P. 7052.

**FACTS AND PROCEDURAL HISTORY**

1. Mr. and Mrs. Rupp filed a voluntary petition for Chapter 13 relief on December 22, 2012.

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<sup>1</sup> ECF No. 38.

<sup>2</sup> ECF No. 41, filed Jun. 16, 2015.

2. The Rupp's first Amended Schedules I and J (the "2013 Schedules I and J") stated their combined average monthly income (line 16) was \$10,065.97 and their average monthly expenses (line 18) were \$8,077.59, leaving a net monthly income (line 20(c)) of \$1,988.38.<sup>3</sup> Those schedules indicated that \$4,031.80 of the Rupp's gross income was from Social Security.

3. The Rupp's original plan proposed payments of \$1,300 per month to the Trustee, with at least \$1,059 of that payment directed to creditors with claims secured by two vehicles.<sup>4</sup>

4. The Rups amended their plan pre-confirmation to pay the Trustee \$1,300 per month for 3 months, then \$1,900 per month for the remaining 57 months of the plan.<sup>5</sup> That plan was confirmed on April 17, 2013.<sup>6</sup> At the July 23, 2015 hearing, the Trustee advised the Court that the confirmed plan and the increase in the amount of the monthly plan payment was a result of a compromise between the Trustee and the Rups, which required payment of an increased amount to unsecured creditors in exchange for the Trustee's support of the plan and in settlement of his concerns about the Rupp's ability to show good faith under 11 U.S.C. § 1325(a)(3).<sup>7</sup>

5. Recently, Mr. and Mrs. Rupp experienced a decrease in income and they are no longer able to afford their monthly plan payments.

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<sup>3</sup> ECF No. 22, filed Mar. 21, 2013. The original schedules were amended to more accurately reflect Mr. and Mrs. Rupp's expenses.

<sup>4</sup> ECF No. 2, filed Dec. 22, 2012.

<sup>5</sup> ECF No. 24, filed Apr. 4, 2013.

<sup>6</sup> ECF No. 28.

<sup>7</sup> Further reference to the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, will be by section number only.

6. On June 3, 2015, the Rupp filed the Modification, requesting the monthly plan payments to the Trustee be reduced from \$1,900 to \$650 for the remaining 31 months of the plan.

7. At the hearing, Mr. Rupp testified that his wife is not currently employed, is unable to continue the extensive travel that was required for her job, and a change in the law has affected the marketability of her skills. Mr. and Mrs. Rupp are both 71 years old and Mr. Rupp is a postal worker. Mr. Rupp testified that he believes he will be able to continue with his job through the remainder of the plan term.

8. The Rupp filed their second Amended Schedules I and J (the “2015 Schedules I and J”), supporting Modification. These schedules indicate a combined average monthly income (line 12) of \$6,956.02 and average monthly expenses (line 22) of \$6,027.59.<sup>8</sup> Mrs. Rupp’s employment previously provided a net monthly take home pay (2013: line 6, spouse; 2015: line 7, spouse) of \$3,109.95 that is no longer included. Like the 2013 Schedules, the 2015 Schedules also indicate that \$4,031.80 of the Rupp’s gross income is from Social Security.

9. Mr. Rupp testified that post-confirmation he and his wife have developed several health problems, including Mr. Rupp being diagnosed with prostate cancer in September 2014. Although the parties have insurance, Mr. Rupp testified that their out-of-pocket medical expenses are somewhat uncertain. During his testimony, Mr. Rupp was unable to fully support an average expense of \$650 per month included in the 2015 Schedule J (this expense was previously \$800 in the 2013 Schedule J), but stated it is difficult to predict an accurate figure due to age and recent health conditions.

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<sup>8</sup> ECF No. 39, filed Jun. 3, 2015. The average monthly income listed on the 2015 Schedule I is equal to the 2013 Schedule I amount less \$3,109.95.

10. The Rupp's counsel represented to the Court that the expense listed for food on the 2015 Schedule J is too low.

11. The Trustee questioned the Rupp's \$268.64 monthly expenditure for "telecommunications." Mr. Rupp testified this was the monthly expense for cable, internet, and phone service that he and his wife had for several years. This is also the same amount listed in the 2013 Schedule J.

12. In summary, the 2015 Schedules I and J indicate the Rupp's average monthly income decreased by \$3,109.95, and they lowered their expenses by \$1,850. However, these schedules show a surplus of net monthly income of \$928.43 (line 23(c)), indicating that Mr. and Mrs. Rupp can afford to make a plan payment in excess of \$650.

13. The Trustee concedes, after examining Mr. Rupp under oath, that the Rupp's have undergone substantial and unanticipated changes and are entitled to a modification of their Chapter 13 plan. The dispute is over the impact of the change and a difference in opinion of \$300 per month.

#### **DISCUSSION AND CONCLUSIONS**

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L), and this Court may enter a final order.

The post-confirmation modification of a Chapter 13 plan is governed by § 1329. Under § 1329, a confirmed plan may be modified at "any time after confirmation of the plan but before the completion of payments" at the request of the debtor, the Chapter 13 trustee, or an allowed unsecured creditor in order to, *inter alia*, "increase or reduce the amount of payments on claims of a particular class provided for by the plan" or to "extend

or reduce the time for such payments.” 11 U.S.C. §§ 1329(a), (a)(1), and (a)(2). Section 1329 also provides that any post-confirmation modification must comply with §§ 1322(a) and (b), § 1323(c), and § 1325(a). 11 U.S.C. § 1329(b)(1).

In the Fourth Circuit, “the doctrine of *res judicata* prevents modification of a confirmed plan pursuant to §§ 1329(a)(1) or (a)(2) unless the party seeking modification demonstrates that the debtor experienced a ‘substantial’ and ‘unanticipated’ post-confirmation change in his financial condition.” *In re Murphy*, 474 F.3d 143, 149 (4th Cir. 2007) (citing *In re Arnold*, 869 F.2d 240, 243 (4th Cir. 1989)). The purpose of this doctrine is to ensure “confirmation orders will be accorded the necessary degree of finality, preventing parties from seeking to modify plans when minor and anticipated changes in a debtor’s financial condition take place.” *Id.* (citations omitted). If this requirement is met, then the Court must determine whether the proposed modification is “limited to the circumstances provided by § 1329(a)” and, if so, “then the bankruptcy court can turn to the question of whether the proposed modification complies with § 1329(b)(1).” *Id.* at 150.

The movant bears the burden of proof as to whether modification is appropriate. *See In re Fiddler*, C/A No. 04-4213, 2007 WL 4510308, at \*2 (Bankr. N.D. W. Va. Dec. 18, 2007); *In re Krapf*, 355 B.R. 545, 548 (Bankr. D.S.C. 2006).

First, the Rupps argue that because \$4,031.80 of their monthly income is from Social Security, that amount cannot be taken into consideration against them in the Trustee’s calculations. At the time their plan was confirmed, the Rupps received \$4,031.80 in Social Security income and the 2015 Schedules I and J indicate they currently receive the same amount. The Trustee represented to the Court, and the Rupps did not contest, that an agreement was reached between the Trustee and the Rupps when their plan was

confirmed requiring a higher payment to unsecured creditors funded all or in part by this income. As a result, the Rupp's have enjoyed the protections of the Bankruptcy Code and the confirmed plan that resulted from the compromise and have shown no cause or grounds to revisit any issues related to the inclusion or exclusion of their Social Security income.

Regarding the \$300 per month dispute, the Trustee contends that some of the Rupp's expenses are overstated and, because the 2015 Schedules I and J indicate they have surplus net income over \$900, they are able to make monthly plan payments of at least \$950. The Rupp's assert their expenses are not overstated and, in actuality, some are understated and they are unable to make monthly plan payments of more than \$650. The Rupp's provided a projection of their income and expenses in writing in the 2015 Schedules I and J. Testimony hinted that some of these expenses may be excessive and some may be too low. Given the uncertainty in the record regarding the accurate figures, the best evidence before the Court is the Rupp's calculations filed under penalty of perjury. According to the scheduled monthly income and expenses, Mr. and Mrs. Rupp project a monthly net income of \$928.43 available to make a plan payment.

Viewing the evidence as a whole, the Rupp's have failed to meet their burden of proof to justify a reduction to \$650 as set forth in the Modification.<sup>9</sup>

**IT IS THEREFORE ORDERED** that the Trustee's Objection to Post-Confirmation Modification of the plan is sustained.

**AND IT IS SO ORDERED.**

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<sup>9</sup> The Court's role is to approve or disapprove the Modification and rule on the Objection based on the evidence. The undersigned will, therefore, decline to order an amount different than that proposed by the Rupp's.