

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at ___ 0'clock & ___ min ___ M
OCT 19 2007

United States Bankruptcy Court
Columbia, South Carolina (7)

IN RE:

Jeffrey Patrick Stone and Stacey Leigh
Stone,

Debtors.

C/A No. 07-03400-JW

Chapter 13

JUDGMENT

ENTERED

OCT 19 2007

S. R. P.

Based upon the Findings of Fact and Conclusions of Law set forth in the attached Order of the Court, Debtors shall submit an amended plan consistent with the terms of the Order within ten (10) days of the entry of the Order.

Columbia, South Carolina
October 19, 2007


UNITED STATES BANKRUPTCY JUDGE

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Chapter 13

ORDER

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This matter comes before the Court for confirmation of Debtors' chapter 13 plan. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (L), and (O). Pursuant to Fed. R. Bankr. P. 7052, the Court makes the following Findings of Fact and Conclusions of Law.¹

FINDINGS OF FACT

1. Jeffrey Patrick Stone and Stacey Leigh Stone ("Debtors") filed a petition for relief under chapter 13 of the Bankruptcy Code on June 26, 2007.

2. On September 26, 2007, Debtors filed an amended chapter 13 plan ("Plan"). The Plan is modeled after the form chapter 13 plan utilized in this District but contains nearly two pages of language not included in the form chapter 13 plan in paragraph 10 of the Plan.

3. Debtors' chapter 13 trustee opposed confirmation of Debtors' Plan based upon this additional language contained in paragraph 10 and several other grounds that were resolved prior to the confirmation hearing.

4. At the confirmation hearing, Debtor and the chapter 13 trustee agreed to resolve the remaining issue of Debtors' additional plan language by Debtors substituting the language contained in paragraph 10 with the following language:

¹ To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

Confirmation of the plan shall impose a duty on the holders and/or servicers of claims secured by liens on real property to apply the payments received from the trustee on the prepetition arrearages, if any, only to such arrearages; to deem the prepetition arrearages as contractually cured by confirmation; to apply the direct mortgage payments, if any, paid by the trustee or by the debtor(s) to the month in which they were made under the plan or directly by the debtor(s), whether such payments are immediately applied to the loan or placed into some type of suspense account; to notify the trustee, the debtor(s) and the attorney for the debtor(s) of any changes in the interest rate for an adjustable rate mortgage and the effective date of the adjustment; to notify the trustee, the debtor(s) and attorney for the debtor(s) of any change in the taxes and insurance that would either increase or reduce the escrow portion of the monthly mortgage payment; and to otherwise comply with 11 U.S.C. § 524(i).

5. The foregoing language is modeled after plan language used in the Western District of North Carolina and, pursuant to the consent of the chapter 13 trustee, has previously been allowed in the case of In re Ballard, C/A No. 07-03203-W (Bankr. D.S.C. Sept. 13, 2007).

6. Debtor and Trustee agreed it would not be necessary to serve affected creditors with this amendment because the substance of the amended language was encompassed by Debtors' original paragraph 10.

CONCLUSIONS OF LAW

Based upon the parties' stipulation in this case, Debtors shall substitute the stipulated language for the language contained in paragraph 10 of Debtors' Plan within ten (10) days of the entry of this Order. Debtors are not required to notice this amendment to secured creditors since the amendment provided for herein does not otherwise alter such creditors' rights. See In re Dangerfield, C/A No. 04-13686-W, slip op. at 3 (Bankr. D.S.C. Aug. 23, 2005) (finding that debtors were not required to notice an amended chapter 13 plan to a secured creditor since the amendment did not negatively alter the treatment of that creditor compared to the original chapter 13 plan).

Though it has been asserted by Debtors' counsel that this additional plan language is necessary to invoke the protections of 11 U.S.C. § 524(i), this Court does not necessarily agree. See In re Collins, C/A No. 07-30454, slip op., 2007 WL 2116416, at *4 (Bankr. E.D. Tenn. Jul. 19, 2007) (finding that 11 U.S.C. § 524(i) does not provide a basis for incorporating similar language in a plan). Much of the stipulated language appears to be unnecessary or not applicable to Debtors' case. See id. at **14-15; In re Padilla, C/A No. 04-42708, slip op., 2007 WL 2264714 (Bankr. S.D. Tex. Aug. 3, 2007). The addition of language to the form plan should not be approved in future cases absent evidence that such language is not contrary to the Bankruptcy Code, applicable, and necessary.²

AND IT IS SO ORDERED.

Columbia, South Carolina
October 19, 2007


UNITED STATES BANKRUPTCY JUDGE

² The undersigned believes that this issue is best resolved by formal amendments to the chapter 13 form plan if such amendments are recommended by the Court's Advisory Committee and approved of by all of the bankruptcy judges in this District.