

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

IN RE:

Thomas, James Lawrence and
Thomas, Paula Marie

Debtors.

C/A No. 10-03395-jw

Chapter 13

**ORDER DENYING CONFIRMATION
OF AMENDED PLAN FILED
SEPTEMBER 12, 2013**

This matter comes before the Court upon the post-confirmation Amended Plan filed by the debtors, Paula Marie Thomas (the “Surviving Debtor”) and James Lawrence Thomas (the “Deceased Debtor”) through his probate representative, Paula Marie Thomas. This Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157(a) and 1334(b). Pursuant to Fed. R. Civ. P. 52, which is made applicable to contested matters by Fed. R. Bankr. P. 7052¹ and 9014(c), and after hearing and review of the Schedules, Statements, Plans and other documents as filed by the Debtors in the above case, the Court makes the following findings of fact and conclusions of law:²

FINDINGS OF FACT

1. Paula Marie Thomas and James Lawrence Thomas (the “Debtors”) filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on May 11, 2010.
2. The Debtors filed their Schedules, Statements, and Plan on May 25, 2010, and subsequently amended the plan on July 6, 2010. The July 6, 2010 plan was confirmed on July 19, 2010.
3. The Debtors amended their plan again on November 3, 2011 to make slight changes in treatment on two secured claims, but the payments to the Trustee and other parties under the plan

¹ Further references to the Federal Bankruptcy Rules will be by number only.

² 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 so adopted.

remained the same. The November 3, 2011 plan (as amended, “Confirmed Plan”) was confirmed by order entered December 5, 2011.

4. The Debtors were performing under the terms of the Confirmed Plan through August, 2013. On August 17, 2013, the Deceased Debtor died testate, with his Will providing for the appointment of the Surviving Debtor as his sole heir and representative.

5. A Notice of Death of Debtor, Motion to Continue Administration of the Chapter 13 Case, and Motion to Waive Financial Management Course were filed as one document on August 29, 2013.³ Based on the Trustee’s consent, orders granting both Motions were later entered by the Court.

6. On September 12, 2013, an Amended Plan (“Amended Plan”) was filed by the Surviving Debtor, as both a debtor and the probate representative of the Deceased Debtor. Pursuant to the terms of the Amended Plan, the Surviving Debtor proposed to reduce the Trustee payment from \$1700.00 per month, beginning in the fortieth month of the plan, to \$400.00 per month for the remaining 18 months of the confirmed plan.

CONCLUSIONS OF LAW

Pursuant to Rule 1016, when a Chapter 13 debtor dies, the “case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” A bankruptcy court may only authorize continued administration of a deceased debtor’s Chapter 13 case under Rule 1016 if such administration is possible and in the best interest of the parties. As this Court previously noted in In re Gariepy, “any determination of whether further administration of a deceased debtor’s Chapter 13 case is possible and in the best interest of the parties under Rule 1016 is fact specific.” C/A No. 11-00827-jw, slip op. at 4 (Bankr. D.S.C. Jan. 3, 2014). Furthermore, any determination regarding continued administration “must be made on a case-by-case basis, regardless of whether there is a creditor objection or the Chapter 13 Trustee consents

³ The Motion to Waive Financial Management Course was later filed as a separate document on September 18, 2013, to enable separate Orders for the two Motions.

to the relief requested.” Id. “The burden rests on the party requesting further administration of the Chapter 13 case following the death of the debtor to create a record that supports such an exceptional finding.” Id.

The Court recently addressed the issue of continued administration as it relates to joint debtors in In re Swarthout, C/A No. 09-06263-JW, slip op (Bankr. D.S.C. Jan. 14, 2014). In Swarthout, the Court authorized continued administration for the purpose of allowing a surviving joint debtor with sufficient income or assets to complete the case in accordance with the terms of the previously confirmed plan, without amendment, which included “signing documents and directing debtor’s counsel regarding the completion and conclusion of a case pending at the time of death.” Id. at 6. The Court noted that continued administration would also include “making plan payments pursuant to the previously confirmed plan.” Id. at 5-6.

The issue before the Court in this matter is whether the surviving joint debtor or personal representative of a deceased debtor may amend and seek confirmation of a plan on behalf of a deceased debtor under Rule 1016.

Under the circumstances of this case, the Court finds that continued administration is not possible. In the case of an individual deceased debtor, the Court has held that the post-confirmation amendment of a previously confirmed Chapter 13 plan, either by a state court appointed personal representative or a deceased debtor’s heirs, is not possible because such parties do not have the necessary standing to modify a plan post-confirmation under 11 U.S.C. § 1329. Gariepy, C/A 11-00827-jw, slip op at 8; see also In re Brown, C/A No. 12-07082-jw, slip op. at 7-8 (Bankr. D.S.C. Mar. 25, 2013) (finding that a deceased debtor’s personal representative could not amend the Chapter 13 plan of a deceased debtor prior to confirmation). Although the party seeking to modify the Confirmed Plan, the Surviving Debtor, is also a joint debtor in this case, the result is similar to the one reached by the Court in Gariepy because the Surviving Debtor is not seeking authority to continue case administration for the sole purpose of concluding and closing the joint case. See

Swarthout, C/A No. 09-06263-JW, slip op at 5-6 (“[T]he wording of Rule 1016 limits further administration of a deceased debtor’s case to completing a case as it existed at the time of the debtor’s death. Thus, actions within the scope of further administration would include those administrative or ministerial acts necessary to finish and close the case.”) Instead, the Surviving Debtor in this case seeks to modify the previously confirmed plan and obtain confirmation of the same on behalf of the Deceased Debtor, which is beyond the scope of continued administration under Rule 1016 because the power to modify a plan post-confirmation under 11 U.S.C. § 1329 is a right that can only be exercised by a debtor as a person and not by a third party, whether that third party is a surviving joint debtor, a personal representative, or an heir.⁴

In addition, the Court finds that continued administration of this case through plan modification is not in the best interests of the parties. Although the Surviving Debtor will benefit from the amended plan through reduced payments and a possible discharge, the express terms of the Amended Plan provide for a reduced payment to the Chapter 13 Trustee, and thus, a reduced payment to creditors. Even if continued administration under Rule 1016 permitted post-confirmation plan modification, the Surviving Debtor has failed to demonstrate why a proposed modification resulting in a reduced dividend to creditors is in the best interests of the parties.

Although continued administration of the Deceased Debtor’s case in the form of amending the previously confirmed plan is prohibited, the Surviving Debtor is not precluded from continuing her case under Chapter 13. If the Surviving Debtor seeks to remain in Chapter 13, modify the previously confirmed plan as it relates to her, or convert her case to Chapter 7, the surviving joint debtor must file a motion to divide the bankruptcy cases. See In re Gardner, C/A 11-05561-JW, slip op. at 7 (Bankr. D.S.C. Dec. 31, 2013) (concluding that a surviving joint debtor may seek to convert

⁴ The Court recognizes that it has previously granted a similar request in In re Tisdale, C/A No. 09-05830-JW (Bankr. D.S.C. Apr. 5, 2013). However, in Tisdale, the Court only allowed the proposed amendment upon receiving the consent of both the surviving joint debtor and the Chapter 13 Trustee. Since the entry of the order in Tisdale, the Chapter 13 Trustee in that case, who is also the Chapter 13 Trustee in this case, has indicated to the Court that he will no longer consent to the request of a surviving joint debtor to amend a previously confirmed plan if such amendment seeks a reduction in payments to the Chapter 13 Trustee.

his or her Chapter 13 case to a case under Chapter 7). Once the cases are divided, the Surviving Debtor may proceed with the modification of the previously confirmed Chapter 13 plan and the Deceased Debtor's case would subsequently be dismissed.

CONCLUSION

Based on the record before the Court, it is therefore,

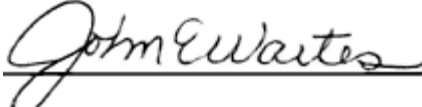
ORDERED that confirmation of the Amended Plan filed September 12, 2013 is hereby denied. Nothing in this Order shall be construed as a prohibition on the Surviving Debtor, if the case is no longer jointly administered, filing an amended plan.

AND IT IS SO ORDERED.

FILED BY THE COURT
01/23/2014



Entered: 01/23/2014


US Bankruptcy Judge
District of South Carolina