

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
01 MAR 21 PM 1:33  
DISTRICT OF SOUTH CAROLINA

IN RE:

Leroy B. Dennis, IV,  
Marion M. Dennis,

**ENTERED**

**MAR 22 2001**

**D.G.**

Debtors.

C/A No. 98-04378-W

**JUDGMENT**

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Trustee's Objection to Modified Plan filed on February 28, 2001 is sustained and Debtors' Motion to Modify Plan is denied.

Columbia, South Carolina,  
March 21, 2001.

  
UNITED STATES BANKRUPTCY JUDGE

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**ORDER**

Chapter 13

THIS MATTER comes before the Court upon the Motion to Modify Plan filed by Leroy B. Dennis, IV and Marion M. Dennis (collectively "Debtors") on December 7, 2000 and the Trustee's Objection to Modified Plan filed on February 28, 2001. Debtors filed for relief under Chapter 13 of the Bankruptcy Code on May 21, 1998. On July 15, 1998, Debtors filed a Notice, Chapter 13 Plan and Related Motions<sup>1</sup> which provided for 57 monthly payments in the sum of \$200.00 and for the payment of at least 3% of general unsecured claims on a pro-rata basis. An Order Confirming Plan and Resolving Motions was then entered by the Court on August 10, 1998. As a condition of confirmation, the Confirmation Order provided in pertinent part:

If the plan calls for payment of less than 100 percent of the outstanding unsecured debt, the plan shall continue for the **greater** of the number of months called for in the plan or the period of time necessary to pay the percentage of unsecured debt directed to be paid under the plan.

(Emphasis added).

Subsequently, on December 7, 2000, Debtors filed the present Motion to Modify Plan along with a Notice of Plan Modification After Confirmation, whereby Debtors moved to modify

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<sup>1</sup> Said Chapter 13 Plan was actually an amended Plan given the fact that Debtors first filed a proposed Chapter 13 Plan with their petition on May 21, 1998.

their Chapter 13 Plan in order to shorten the term of their Plan from 57 months to 37 months. Debtors argued the Plan's amendment would not adversely affect any creditor in that they would still pay all creditors who filed claims, and who were therefore entitled to payment, an amount equivalent to or greater than provided in their original confirmed Plan. On February 28, 2001, the Trustee objected to the Modified Plan and based his objection on the precedent in this District as set forth in Judge Bishop's opinion in In re Bouton, C/A No. 98-09296-B (Bankr. D.S.C. 11/13/2000).

The case of In re Bouton addressed the issue presently before the Court. In In re Bouton the debtor's modified plan proposed to reduce the length of the plan from 60 months to 38 months; however, it did not propose to alter the amount of the monthly payments. In support of their motion to modify the plan after confirmation, the debtors submitted that the modified plan satisfied the requirements of 11 U.S.C. §1329. However, the court sustained the trustee's objection on the ground that "the binding provisions of §1327(a) and legal precedent require some showing of a change in circumstances after confirmation of a plan in order to modify that plan" and concluded that the debtors in the case "have not proved to the satisfaction of this court an unanticipated or unforeseen substantial change in circumstances so as to shorten the length of their plan." In re Bouton, C/A No. 98-09296-B (Bankr. D.S.C. 11/13/2000). Furthermore, the court noted that granting the relief sought by the debtors would be tantamount to converting the "pot plan", whereby the debtors paid a base amount and the money was available to creditors even if it exceeded the percentage listed in the plan, to a percentage plan.

In order to maintain consistency in the bankruptcy procedures in this District, this Court is inclined to follow precedent and find that, due to the lack of unanticipated and substantial change in circumstances in this case, the Trustee's Objection is hereby sustained and Debtor's

Motion to Modify is denied. It is therefore,

**ORDERED** that the Trustee's Objection to Modified Plan filed on February 28, 2001 is sustained and Debtors' Motion to Modify Plan is denied.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
March 21, 2001.

  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States  
Bankruptcy court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

**MAR 22 2006**

*BUR to serve:*  
**DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE**

**DEBI GREEN**

**Deputy Clerk**