

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
HONORABLE A. BRUCE CAMPBELL

In re:)
DANNY ABEYTA) Case No. 11-35720 ABC
BEVERLY ABEYTA) Chapter 13
Debtor.)

ORDER DENYING MOTION TO MODIFY CONFIRMED PLAN

On May 7, 2014, Debtors filed their Modified Plan (“Modified Plan”) at Docket # 44, and on May 8, 2014, Debtors filed their Motion to Modify (“Motion”) at Docket # 45. Debtors represent in their Motion that Debtors need to modify their confirmed plan due to a decrease in their household income. A review of the Modified Plan and Debtors’ confirmed plan reveals that Debtors also seek to bifurcate the claim of a secured creditor not previously provided for in their confirmed plan.¹

Section 1329 of the Code governs postconfirmation modifications of confirmed chapter 13 plans. Section 1329(a) provides in pertinent part:

At any time after confirmation of the plan but before completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to-

- (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
- (2) extend or reduce the time for such payments;
- (3) alter the amount of distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or
- (4)

Section 1329 limits the extent to which a debtor, the trustee or an unsecured creditor may modify a confirmed plan. The threshold requirement for modification is that the claim upon which the payment amount is to be changed be of “*a particular class provided for by the plan;*” or that the change of distribution be with respect to a creditor “*whose claim is provided for by the plan.*”

The claim Debtors now propose to provide for and bifurcate is the secured claim of HSBC/Best Buy (“HSBC”). Debtors did not make any provision for HSBC in their confirmed plan.² Thus, Debtors cannot now, post confirmation, seek to bring that creditor within the reach of their

¹Local Bankruptcy Rule 3015-1(j)(1) requires that Debtors file a motion to modify “which must state with particularity the date the plan was originally confirmed, the reason for the modification and the effect upon distribution to each creditor class should the modification be approved.” Debtors’ failure to disclose their proposal to bifurcate the claim of HSBC violates the Court’s local rule.

²HSBC had filed its proof of claim on March 19, 2012, days before the bar date for filing proofs of claim. On April 9, 2014, approximately three weeks later, Debtors filed their Verification of Confirmable Plan seeking an order confirming their plan which did not provide for HSBC.

confirmed plan. See 11 U.S.C. §§ 1327, 1328(a) and 1329. See also, *In re Kurtz*, 502 B.R. 238 (Bankr. D.Colo. 2013); *In re Knapp*, Case No. 08-24134 ABC, Docket #51 (July 5, 2013); *In re Rentie*, Case No. 10-18997 ABC, Docket #66 (August 8, 2013), and *In re Rutt*, 07-13448 ABC, Docket #76 (September 10, 2010). Accordingly, it is

ORDERED that Debtors' Motion is DENIED without prejudice to propose a modification to address the decrease in household income but which is consistent with this order and section 1329 of the Code.

DATED: July 29, 2014

BY THE COURT:



A. Bruce Campbell
United States Bankruptcy Judge