

2020 Mont. B.R. 61

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

HUNTER ANTON OLSON,

Debtor.

Case No. **19-60465-BPH**

O R D E R

At Butte in said District this 4th day of March, 2020.

In this Chapter 12¹ bankruptcy Ford Motor Credit Company (“Creditor”) filed on February 3, 2020, its Motion to Modify Stay (“Motion”) at ECF No. 175. Creditor requests stay relief under §§ 362(d)(1) and (2). Debtor opposed the Motion on February 18, 2020 (ECF No. 183), arguing the issues presented in the Motion were res judicata as a result of plan confirmation on February 4, 2020.² A hearing was held on March 3, 2020. Appearances were noted on the record. Prior to the hearing, Debtor and Creditor filed a stipulation that set forth agreed facts at ECF No. 187, including:

A. Parties’ Agreed Facts

1. Debtor identified Creditor on his bankruptcy schedules filed on June 4, 2019. ECF No. 17.
2. Creditor filed a Proof of Claim on July 24, 2019. Proof of Claim 10 (“Claim 10”). Debtor purchased a 2017 Ford F-350 SRW, VIN IFT8W3BT3HEB35739 on February 11, 2019.

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and all “Civil Rule” references are to the Federal Rules of Civil Procedure.

² Debtor’s opposition and hearing notice were consistent with the Court’s applicable local rules.

2020 Mont. B.R. 62

Id. Debtor made one monthly payment of \$1,118.35 in March of 2019 and made no subsequent payments.

3. Debtor's Third Amended Plan was filed on October 28, 2019. ECF No. 118. Debtor proposed to pay Creditor the value of its secured claim, (shown on Claim 10) over 7 years at 6.25% interest. ECF No. 118. The annual payment to Creditor is \$8,881.50, and the first payment is due on November 5, 2020. *Id.*

4. By Order dated January 7, 2020, a hearing on confirmation was scheduled for February 4, 2020.³ ECF No. 162.

5. Creditor filed its Motion on February 3, 2020. ECF No. 175. The Motion alleges that the Debtor is in default for failure to make regular scheduled monthly payments beginning April 19, 2019. *Id.* The Motion also states that the Creditor seeks the return of its collateral so it may pursue foreclosure and liquidation. *Id.*

6. Creditor did not file an objection to Debtor's Third Amended Plan. ECF No. 187, ¶ 7.

7. Debtor's Third Amended Plan was confirmed on February 4, 2020. ECF No. 178.

8. Debtor objected to Stay Relief on February 18, 2020. ECF No. 183.

10. Debtor is not in default under the terms of the Third Amended Plan with respect to Creditor. ECF No. 187, ¶ 10.

B. Applicable Law

Citing *In re Evans*, 30 B.R. 530 (9th Cir. BAP 1983), and *In re Wellman*, 322 B.R. 298 (6th Cir. BAP 2004), Debtor argues that Creditor is bound by Debtor's confirmed Third

³ This fact was not included in the parties' stipulation. However, this Court considers it relevant to its analysis and not subject to dispute.

2020 Mont. B.R. 63

Amended Chapter 12 Plan (“Plan”) filed at ECF No. 118. Confirmation of a chapter 12 plan, like that of a chapter 13 plan, binds the debtor, creditors, and equity security holders. 11 U.S.C. § 1227(a) and 1327(a) (“the provisions of a confirmed plan bind”); *In re Dillon*, 16 Mont. B.R. 1, 4-5 (Bankr. D. Mont. 1997), *aff’d*, (D. Mont. 1998). In discussing a confirmed chapter 13 plan and § 1327(a), the BAP in *Evans* explained:

Section 1327 precludes a creditor from asserting, after confirmation, any other interest than that provided for it in the confirmed plan. The issues of adequate protection, lack of equity, and necessity for a successful rehabilitation of the Chapter 13 debtor were all *res judicata* as of the confirmation of the plan.

Similarly, this Court explained in *Dillon*, a chapter 12 case:

Once a plan is confirmed, the preconfirmation debt is ‘replaced’ with a new indebtedness as provided in the confirmed plan. The new indebtedness is in essence a new and binding contract between the Debtor and the creditors. Upon confirmation the Debtor is free to conduct business and, as a consequence, is similarly liable for post-confirmation obligations and conduct.

Coleman v. Farm Credit Bank of Spokane (In re Coleman), 7 Mont. B.R. 404, 416-17, 104 B.R. 338, 343-344 (Bankr. Mont. 1989). From the foregoing, the Court concluded: “It is clear, therefore, each party to [a Chapter 12] Plan is bound by its provisions.” *Id.* Thus, once a court has confirmed a Chapter 12 plan, the parties may not unilaterally depart from its terms to cure missteps they might have made prior to confirmation.

Dillon, 16 Mont. B.R. at 5.

The Motion alleges cause exists under § 362(d)(1) for stay relief because Debtor has failed to make the payments required by the pre-petition contract. Alternatively, the Motion seeks relief based on § 362(d)(2), allegedly because there is no equity in the collateral and the property is not necessary for an effective reorganization. As *Evans* explained and concluded, these issues are *res judicata* post-confirmation. Although *Evans* is a chapter 13 case, its reasoning is applicable in this chapter 12 case. The Court appreciates that Creditor is not scheduled to receive a payment under Debtor’s Plan until November of 2020. However, if the

2020 Mont. B.R. 64

proposed treatment of Claim 10 in the Plan was not acceptable to Creditor, Creditor had the opportunity to, and should have objected to confirmation of Debtor's Plan. The Plan was filed October 28, 2019. The hearing was set for February 4, 2020. The Motion filed February 3, 2020 was no substitute for a plan objection.

Allowing a creditor to obtain stay relief post-confirmation based on a pre-petition contractual default in payments, after the pre-petition obligation has been replaced with new payment terms provided in the confirmed plan, finds no support in the law. In this case, the pre-petition contract does not provide the terms of the credit relationship post-confirmation. Instead, the Plan provides new payment terms between Debtor and Creditor that are controlling. The Creditor is bound by the terms of Debtor's confirmed Plan. The confirmed Plan's terms of payment are binding on Creditor. Debtor is not in default under the terms of the confirmed Plan. Accordingly,

IT IS ORDERED that Creditor's Motion filed at ECF No. 175 is denied.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana