

Individual Chapter 11 Plans Also Are Just About Written in Stone

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In an article last year, we informed you about a ruling from the United States Bankruptcy Court for the Eastern District of North Carolina, in *In re Royal*, holding that debtors seeking modification of a confirmed Chapter 13 plan must demonstrate a “substantial” and “unanticipated” post-confirmation change in their financial condition. Otherwise, they are bound by the plan. Recently, the United States Bankruptcy Court for the Eastern District of North Carolina reached the same conclusion when an individual Chapter 11 debtor sought to modify her confirmed plan. In *In re*

Redding, the court held that, like in Chapter 13, an individual debtor must show a “substantial and unanticipated change in circumstance” to justify a modification.

Although Chapter 11 is primarily used for business reorganization, an individual may use its provisions as an alternative to Chapter 13. Like *Royal*, *Redding* provides lenders with protection from (and leverage over) borrowers who file bankruptcy, confirm a plan, and then try to change the plan mid-stream. Now, lenders who negotiate or litigate the terms of an individual Chapter 11 plan can proceed with the confidence that, absent limited circumstances, the plan will be the final expression of their borrower’s obligations going forward.

The Facts

Wells Fargo Bank was Alice Redding’s largest creditor when she filed Chapter 11. The bank’s claim was secured by a deed of trust on real property in Elizabeth City. The confirmed plan required Redding to sell the property by public auction within six months, maintain insurance coverage, and make \$1,000.00 monthly payments to Wells Fargo’s servicer. Redding did not try to sell the property and made only two monthly payments.

When Wells Fargo’s servicer notified the court of Redding’s default and its intent to exercise its rights and remedies under the loan documents, Redding moved to modify her plan. Redding sought to relieve herself of the obligations in the confirmed plan by providing Wells Fargo with a deed of trust on additional real property in Elizabeth City she contended had increased in value post-confirmation.

Redding argued that the alleged increase in value was a substantial and unanticipated change warranting modification. Redding also argued that the “substantial and unanticipated change” standard only applied to Chapter 13 cases, not her Chapter 11 plan.

In considering Redding’s motion, the court first determined that the alleged increase in value of the real property was based on a newspaper article, not actual sales. This was too speculative to constitute a “substantial” change sufficient to allow modification.

The court then held that the Chapter 13 standard of substantial and unanticipated financial change also applied to individual Chapter 11 cases. Section 1127(e) of the United States Bankruptcy Code allows a debtor to modify a confirmed Chapter 11 plan in limited circumstances. Although it does not mention the “substantial and unanticipated” standard, the court held that this provision was meant to be harmonized with the similar provisions for Chapter 13 debtors. Thus, an individual Chapter 11 debtor is held to the same standard as a Chapter 13 debtor for post-confirmation modifications.

Conclusion

Redding is a good decision for lenders who would prefer not to re-litigate Chapter 11 plan terms repeatedly. By promoting the finality of Chapter 11 plans, the decision gives lenders ammunition against debtors seeking to improve their plan mid-stream. Using the reasoning in this decision, lenders can force debtors to prove the existence of a substantial and unanticipated financial change if they try to modify their plans. Otherwise, debtors will be stuck with their original plan.

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