



SO ORDERED.

SIGNED this 21st day of June, 2019.

Benjamin A. Kahn
BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

| | | |
|---------------------------|---|-------------------|
| In re: |) | |
| |) | |
| Jason Charles Coleman and |) | Case No. 19-10093 |
| Courtney Nicole Coleman, |) | |
| |) | |
| Debtors. |) | Chapter 12 |

**ORDER DENYING SECOND MOTION TO CONTINUE CONFIRMATION HEARING AND
TO EXTEND THE TIME FOR PARTIES-IN-INTEREST TO RESPOND
OR OBJECT TO A MODIFIED PLAN**

THIS CASE is before the Court on the Second Motion to Continue Confirmation Hearing and to Extend the Time for Parties-in-Interest to Respond or Object to a Modified Plan (the "Second Motion to Continue"), ECF No. 55, filed by Jason Charles Coleman and Courtney Nicole Coleman ("Debtors"). The Court has considered the Second Motion to Continue and the record in this case, and will deny the Second Motion to Continue for the reasons set forth below.

Jurisdiction

The Court has jurisdiction over the subject matter of this contested matter pursuant to 28 U.S.C. § 1334. Under 28 U.S.C. § 157(a), the United States District Court for the Middle District of North Carolina has referred this case and this proceeding to this Court by its Local Rule 83.11. The Second Motion to Continue has commenced a proceeding that is both constitutionally and statutorily core.

Background

Debtors commenced this case on January 29, 2019 by filing a voluntary petition under chapter 12 of title 11. Debtors filed a proposed chapter 12 plan, ECF No. 41, (the "Original Plan") on April 29, 2019, the ninetieth (90th) day after the petition date. The Court scheduled a hearing on confirmation of the Original Plan for June 4, 2019. ECF No. 43. On May 24, 2019, Kenneth and Cyana Briles (the "Secured Creditors") and the chapter 12 trustee, Anita Jo Kinlaw Troxler (the "Trustee"), filed objections to the Original Plan. ECF Nos. 47, 48. Three days later, the Bankruptcy Administrator (the "BA")¹ also filed an objection to confirmation of the Original Plan. ECF No. 49. Among other objections, the Objecting Parties contended that the Original Plan was infeasible due to the insufficiency of Debtors' income.

¹ The Secured Creditors, the Trustee, and the BA are collectively, the "Objecting Parties."

On May 30, 2019, Debtors filed the Motion to Continue Confirmation Hearing and to Extend the Time for Parties-in-Interest to Respond or Object to a Modified Plan (the "First Motion to Continue"). ECF No. 51. Among other bases, Debtors asserted that there was cause to continue the confirmation hearing and to extend the time under 11 U.S.C. § 1224 because "the Male Debtor [had] recently begun a second job . . . in order to supplement income from the Farm," and Debtors needed additional time to establish historical evidence of this additional income. See Id. at 1-3. The Objecting Parties consented to the requested continuance. Id. at 4. The following day, the Court granted the First Motion to Continue, continued the confirmation hearing until June 25, 2019, and extended the 45-day period for concluding the confirmation hearing under § 1224 to that date. ECF No. 52.

Debtors filed the Second Motion to Continue on June 19, 2019, again seeking a continuance of the confirmation hearing and a further extension of the time under § 1224. ECF No. 55. In the Second Motion to Continue, much like the First Motion to Continue, Debtors make clear that they will not seek confirmation of the Original Plan, but intend to file an amended plan. ECF No. 55 at 4. Debtors request additional time to further establish their income stream for purposes of feasibility and to amend the plan to address the objections filed by the Objecting Parties. ECF No. 55 at 3-4.

Discussion

Chapter 12 was enacted in 1986 in response to the farm crisis of that decade. See Jamey Mavis Lowdermilk, A Fighting Chance? Small Family Farmers and How Little We Know, 86 Tenn. L. Rev. 177, 188-89 (2018). At the time, farmers could not find effective relief under chapter 13 due largely to the debt limitations imposed by 11 U.S.C. § 109(e) and the five-year limit on plan terms. Id. Chapter 11 posed similar insurmountable barriers to farmers, including cost and the absolute priority rule. Id. Any chapter addressing the needs of farmers further needed to be flexible, given the income fluctuations that typically accompany farming operations. Id. at 185. See also 8 Collier on Bankruptcy (“Collier”) ¶ 1200.01[2] (2019). In response, Congress crafted chapter 12—a more expedited (and thus less expensive) but nevertheless flexible process—to address many of the problems farmers faced in seeking bankruptcy relief.

The provisions and language used in chapter 12 reflect Congress’s intent that chapter 12 be an expedited process. Unlike chapter 11, chapter 12 requires debtors to promptly file a plan within 90 days of the petition date. Compare 11 U.S.C. § 1221 (“The debtor shall file a plan not later than 90 days after the order for relief under this chapter”), with 11 U.S.C. § 1121(a) (permitting the debtor to file a plan at any time, subject to the exclusivity period in § 1121(b) and (c) and the

requirement for a small business debtor to file a plan within 300 days of the petition date under § 1121(e)(2)). After a chapter 12 plan is filed and “[a]fter expedited notice [and] [e]xcept for cause, the [confirmation] hearing shall be concluded not later than 45 days after the filing of the plan.” 11 U.S.C. § 1224.²

Congress did not define cause for purposes of continuing the hearing on confirmation. Nevertheless, “[t]he legislative history to chapter 12 makes it clear that the primary purpose of creating the exception was the convenience of the court.” Collier at ¶ 1224.01[3] (citing H.R. Rep. No. 958, 99th Cong., 2d Sess. 50 (1986)). Courts have consistently held that “‘cause should be found only in unusual circumstances and extensions of the deadline should not be granted routinely.’” See e.g., In re Pertuset, 492 B.R. 232, 247 (Bankr. S.D. Ohio 2012) (quoting Collier at ¶ 1224.01 (2011)).

In this case, Debtors timely filed the Original Plan on the ninetieth (90th) day after the petition date. In the Second Motion to Continue, however, Debtors have made it clear that they do not intend to seek confirmation of the Original Plan, but instead intend to file an amended plan. This neither constitutes cause to

² The drafters of the Federal Rules of Bankruptcy Procedure followed the Congressional mandate to expedite notice of confirmation in chapter 12 cases. Fed. R. Bankr. P. 2002(a)(8) provides that the clerk shall provide 21 days’ notice of the time fixed for filing objections to confirmation of a chapter 12 plan and the hearing on confirmation thereof. In contrast, the period required under chapters 11 and 12 is 28 days. Fed. R. Bankr. P. 2002(b).

continue the hearing on confirmation of the Original Plan for which Debtors do not intend to seek confirmation, nor cause to extend the time for confirmation of an anticipatorily abandoned plan.

Nevertheless, this does not mean that Debtors are prohibited from seeking confirmation of another plan or a modified plan in this case. Upon the filing of a modified plan, "the plan as modified becomes the plan." 11 U.S.C. § 1223(b). Therefore, since the confirmation hearing must be concluded within 45 days "after the filing of the plan" under § 1224, the deadline for completing the confirmation hearing on any amended plan will be 45 days after such an amended plan is filed.³ If Congress had intended the 45-day period to run from the first filing of a plan under § 1221, it could have so stated. See e.g., 11 U.S.C. § 521(2)(B) (requiring a debtor to perform his intention "within 30 days after the first date set for the meeting of creditors"). Instead, Congress required the confirmation hearing to be completed within 45 days

³ For the reasons set forth herein, this Court respectfully disagrees with the statement in Collier that the court providing additional time to file a modified plan constitutes cause to extend the 45-day period under § 1224. See Collier at ¶ 1224.01[3]. With the exception of the requirement to file a plan within 90 days after the petition date under § 1221, there is no deadline in chapter 12 for a debtor to file another plan or a modified plan. The chapter ensures that the case will move along by requiring the court to act one way or the other on a filed plan within 45 days absent unusual circumstances, and guards against prejudicial delay and abuse as set forth in n. 4, infra. Because the 45-day period runs from the filing of the modified plan, there is no need to extend the time for confirmation of an as yet unfiled plan under § 1224 solely because the court grants additional time and sets a deadline for the debtor to file another plan or a modified plan.

of the filing of the plan, and specifically defined "the plan" as the plan as modified under § 1223(b).⁴

Consistent with the remedial purposes of chapter 12, debtors therefore have an option. If they file an amended plan prior the scheduled confirmation hearing on a pending plan, the confirmation of the originally noticed plan becomes moot, and the amended plan, as "the" plan, will be properly noticed and scheduled for confirmation to comply with the notice and confirmation periods under § 1224 and Bankruptcy Rule 2002. If debtors are unable to amend the plan prior to the confirmation hearing, the court nevertheless should, in keeping with Congressional intent to expedite chapter 12, conduct the confirmation hearing and either confirm the plan or deny confirmation. Even if the court denies confirmation, the Bankruptcy Code makes clear that the court may grant chapter 12 debtors additional time to file another plan or an amended plan. See 11 U.S.C. § 1208(c)(5) (including among cause for dismissal the denial of confirmation of a plan "and [the] denial of a request made for additional time for filing another plan or a modification of a plan"). For these reasons, the Second

⁴ This plain reading of the language in chapter 12 does not invite the abuse of debtors repeatedly filing amended plans in order to delay any hearing on confirmation. The Bankruptcy Code provides ample remedies for such tactics. See e.g., 11 U.S.C. §§ 105 (permitting the court to issue any order necessary or appropriate to prevent an abuse of process or prescribing conditions to ensure the case is handled expeditiously), 362(d) (permitting the court to modify the stay for cause), 1208 (permitting the court, on motion by a party in interest, to dismiss a case for cause, including unreasonable delay that is prejudicial to creditors).

Motion to Continue will be denied without prejudice to Debtors seeking additional time to file another plan or a modified plan.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Second Motion to Continue is denied without prejudice to Debtors seeking additional time to file another plan or a modified plan.

[END OF DOCUMENT]

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