

ENTERED

JAN 21 '00

U.S. Bankruptcy Court  
Greensboro, NC  
SD

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

IN RE: )  
 )  
Jesse Lee Hinson, Jr. and ) Case No. 96-11490C-13G  
Melanie Lynn Singleton )  
Hinson, )  
 )  
Debtors. )  
 )

ORDER

This case came before the court on January 18, 2000, for hearing upon Debtors' motion for an order approving, nunc pro tunc, the Debtors' refinancing of their home and authorizing the Debtors to pay the balance owed under their Chapter 13 plan from the proceeds of the refinancing. Appearing for the hearing were Anita Jo Kinlaw Troxler, the Chapter 13 Trustee, and John H. Boddie, attorney for the Debtors. Having considered the motion, the evidence offered at the hearing, the matters of record in this case and the arguments of counsel, the court finds and concludes as follows:

1. This Chapter 13 case was filed by the Debtors on April 29, 1996.

2. On June 28, 1996, an order was entered confirming Debtors' plan of reorganization. The plan provides for Debtors to

retain their 1993 Horton mobile home and for monthly payments to be disbursed to Green Tree Financial Corporation by the Trustee during the 42-month plan, with the balance of the Green Tree indebtedness being treated as continuing long term indebtedness.

3. On or about June 9, 1999, in response to a request from the Debtors, the Chapter 13 Trustee sent a letter to the Debtors informing them as to the procedure required if they wished to refinance the indebtedness owed on their mobile home and pay out their plan. The Trustee's letter advised that the amount required to pay off Debtors' plan was \$6,800.00 and that the Debtors would have to obtain a court order from the bankruptcy court authorizing the refinancing before obtaining a new loan and paying off their plan. A copy of the letter was sent to John H. Boddie, attorney for the Debtors.

4. Subsequent to June 9, 1999, the Debtors obtained a commitment from Monarch Financial Services, Inc. for a loan of \$43,500.00 under which it was anticipated that the Debtors would obtain title to the real estate upon which their mobile home is located, payoff the existing indebtedness on the mobile home and grant the lender a first lien on the realty and mobile home.

5. Although no order authorizing the loan was obtained, a closing on the \$43,500.00 loan from Monarch Financial Services, Inc. was held on August 11, 1999, at the office of J. Randall Fowler, the attorney employed by the Debtors to handle the loan closing. Following the closing on August 11, 1999, loan proceeds from Monarch Financial Services, Inc., in the amount of \$43,500.00 were disbursed from which \$3,266.50 was paid for service fees and closing costs, \$609.46 was paid for property taxes, \$20,865.75 was paid to Green Tree Financial, \$6,800.00 was set aside for payment to the Chapter 13 Trustee, and the Debtors were paid the balance of the loan proceeds in the amount of \$11,958.29.

6. In connection with the closing of the loan, the real estate where Debtors' mobile home is located was transferred to the Debtors by the male Debtor's mother. At the closing, the Debtors executed a promissory note to Monarch Financial Services, Inc. in the principal sum of \$43,500.00, together with documents purporting to grant a lien on Debtors' real estate and mobile home as security for the promissory note.

7. Following the loan closing, the parties realized that they had failed to comply with the requirement that the refinancing and lump sum payout of Debtors' plan be court approved, and the

motion now before the court was filed on behalf of the Debtors. In the meantime, the \$6,800.00 which was allocated for the payout of Debtors' plan is being held by counsel for Debtors.

8. The confirmation order in this case specifically provides that the Debtors "shall not incur any indebtedness without the approval of the Trustee." The parties did not comply with this provision and the loan transaction violated the confirmation order and was unauthorized. However, it appears that the failure to obtain proper authorization was the result of oversight rather than involving a knowing and deliberate disregard of the provisions of the confirmation order by the Debtors. Moreover, at this point, it appears that it would be in the best interests of creditors, as well as the Debtors, to authorize the Debtors to make a lump sum payout of their obligations under the plan. Accordingly, the court is willing to authorize the Debtors to ratify the loan and payout their Chapter 13 plan with a lump sum payment.

9. However, the court is not willing to enter a nunc pro tunc order in this case. Nunc pro tunc orders are orders which are given effect as of a date in the past. The term is derived from Latin and literally translates as "now for then." See Weil v. Markowitz, 829 F.2d 166 (D.C. Cir. 1987). The underlying purpose

for the entry of a nunc pro tunc order is to clarify court records to adequately reflect action taken by the court at a previous time which, through some oversight or inadvertence, was never entered on the records for the court, was delayed in being entered or was incorrectly entered. See King v. Ionization Intl. Inc., 825 F.2d 1180 (7<sup>th</sup> Cir. 1987). Nunc pro tunc orders should not be used to alter substantive rights, nor is it the purpose of nunc pro tunc orders to have an untimely order treated as if it had been entered timely. See In re Doud, 30 B.R. 731, 735 (Bankr. W.D. Wash. 1983); In re Ravenna Indus., Inc., 20 B.R. 886, 890 (Bankr. N.D. Ohio 1982). Although the granting of nunc pro tunc relief depends upon the facts and circumstances of the particular case, simple neglect by one or more parties is not sufficient for such relief. In re Arkansas Co., 798 F.2d 645, 649-50 (3d Cir. 1986).

10. In the present case, both the lender and the Debtors were aware before the closing that a court order was required before the Debtors were authorized to proceed with a refinancing and payout of their Chapter 13 plan. The failure to obtain such authorization was the result of neglect on the part of the parties, which is not a sufficient basis for entering a nunc pro tunc order.

11. Although there are some instances in which nunc pro tunc approval of the employment of professionals in bankruptcy cases is permitted, such relief is appropriate only under extraordinary circumstances. See In re Keren Ltd. Partnership, 189 F.3d 86, 87 (2d Cir. 1999); In re Jarvis, 53 F.3d 416, 420 (1<sup>st</sup> Cir. 1995); In re Land, 943 F.2d 1265, 1267-68 (10<sup>th</sup> Cir. 1991); In re Johnson, 72 B.R. 115, 118 (Bankr. E.D.N.C. 1987). The present case does not involve the employment of professionals, nor has there been a showing of any extraordinary circumstances which would warrant nunc pro tunc relief in the context of the employment of professionals or otherwise. It is true that some confusion was generated as a result of the circulation of an altered copy of the Trustee's letter at some point. However, the fact remains that prior to the closing the lender already was aware of the authorization which was required, and the Debtors had received the full version of the letter which clearly stated that court authorization was required. Under these circumstances, the failure to obtain court authorization prior to closing was the result of neglect, and not any extraordinary circumstances which would justify the entry of a nunc pro tunc order.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED as follows:

1. If requested to do so by the lender, the Debtors are authorized to ratify the above-described loan by executing a new promissory note evidencing their obligation to repay the loan obtained on or about August 11, 1999, together with any deed of trust, security agreement, financing statements and other documents required in order to grant a lien against Debtors' real property and mobile home as security for the promissory, which documents may be recorded by the lender;

2. Any attorney fees, recording fees or other expenses in obtaining and recording the above-described documents shall be borne by the lender; and

3. Upon execution and delivery of the above-described loan documents, the Debtors are authorized to utilize the remaining loans proceeds to payout in full their remaining obligations under the plan.

This 21<sup>st</sup> day of January, 2000.

**William L. Stocks**

---

WILLIAM L. STOCKS  
United States Bankruptcy Judge