

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE: ) Chapter 13 Case  
) Number 92-11601  
THOMAS HOWARD )  
SS# 260-25-5965 )  
TERESA HOWARD ) FILED  
SS# 255-27-4952 ) at 10 O'clock & 55 min. A.M.  
664 Bennock Mill Road, Lot A ) Date: 6-24-94  
Augusta, Georgia 30906 )  
)  
Debtors )  
\_\_\_\_\_)

**ORDER**

Before the court is the Chapter 13 trustee's objection to debtors' proposed modification of their confirmed plan. This matter was taken under advisement to review apparent contradictory statements made by debtor Teresa Howard and debtors' counsel concerning the source of monies paid to Trust Company Bank in connection with a purchase of land. After having reviewed the case file and a transcript of hearing on the proposed modification, I enter the following order.

Debtors filed their bankruptcy petition on September 4, 1992. Debtors' schedules list Steve Scott Bishop as a creditor holding a claim in the amount of \$6,000.00 and having a lien on a house and lot with a market value of \$5,000.00. Debtors were

apparently purchasing the property on a rent to own basis with Bishop retaining title. Debtors' plan proposed to value certain filed claims of secured creditors - including Bishop's claim at \$4,500.00. Neither Bishop nor debtors filed a proof of claim on his behalf.

Both debtors are employed and receive a total combined monthly income of \$2,214.34. This income amount has not changed during the case. Debtors' originally filed schedule J, Current Expenditures of Individual Debtors, shows a total projected monthly expenses in the amount of \$1,844.00 and excess income of \$370.34. Debtor's plan proposed to pay \$370.00 per month for sixty months. At confirmation on February 1, 1993 debtors voluntarily increased payments to \$400.00 per month. This change resulted in an increased dividend to unsecured creditors from zero to approximately twenty-three percent.

During the pendency of this case, debtors have filed amended budgets three different times in conjunction with various attempts to deal with the property debt. Sometime subsequent to debtors' petition filing, Bishop also filed chapter 7 bankruptcy and surrendered the property to the mortgage holder Trust Company Bank ("the Bank"). In response, on December 1, 1993 debtors filed a Motion To Allow Debtors To Obtain Additional Credit seeking to

consummate a deal with the Bank whereby the Bank would sell the property to debtors for \$4,500.00 and finance \$3,500.00 of the sale. At hearing on January 10, 1994 debtors stated they wished to pay the Bank \$2,500.00 in January and the remaining \$1,500.00 by March.<sup>1</sup> Because debtors did not propose to incur any debt, I had nothing upon which to rule and debtors' motion was withdrawn. Also withdrawn at that time was a proposed modification filed December 30, but not noticed for hearing. That modification proposed to reduce the payment under the plan to \$240.00 per month and provided for direct monthly payments to the Bank. An amended budget filed with this withdrawn modification shows an increase in expenses of \$130.00 per month corresponding to a "land payment" not included in the original budget. The \$130.00 increase in expenses reduced debtors' excess income of \$370.34 to \$240.34.

Subsequently, four days after the hearing, on January 14, 1994 debtors filed another modification with an amended budget. This modification also reduced payment to \$240.00 per month, but the amended budget shows an increase in different expenses than the earlier amended budget. In this second amended budget, the land

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<sup>1</sup>The payments noted do not total \$4,500.00. This discrepancy is unexplained.

payment is reduced to \$60.00.<sup>2</sup> However, expenses for electricity and fuel are increased \$35.00, food expenses are increased \$10.00, medical and dental expenses are increased \$5.00, and recreation expenses are increased by \$20.00.

Debtor's proposed modification was heard on March 7, 1994. The debtor Teresa Howard was placed under oath and testified concerning the decrease in plan payments in response to questions from the Chapter 13 trustee and this court. Ms. Howard testified that the \$4,500.00 debt to the Bank had been paid by a \$2,600.00 payment in January and a \$1,900.00 payment in February. Ms. Howard's testimony as to where debtors obtained the money used to make those payments was contradictory. Debtor initially stated that her father-in-law Mr. Elbert Howard<sup>3</sup> lent them half of the amount, approximately \$2,250.00 and that the other half was from extra work they had performed. Debtor stated that the decrease in payment was to pay back her father-in-law \$60.00 per month and was based on what

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<sup>2</sup>This conclusion is inferred. The debtors actually list the \$60.00 expense on a line under taxes in which debtors specify by typing "land". It is not listed under rent or home mortgage payment. However, immediately under the line on which debtors placed the expense is a space for installment payments. I conclude that the debtors intended the payment to refer to that line. This conclusion is bolstered by Ms. Howard's testimony at hearing on the modification.

<sup>3</sup>At a later hearing debtor's father-in-law is referred to as Mr. Morris Howard.

they could afford under their budget. Debtor indicated that she had made no payments to Mr. Bishop since their filing, believing payments were to be made under the plan. On questioning from the court, debtor stated she had been able to accumulate a savings of \$2,250.00 since filing. Subsequently, after the trustee renewed his objection to the modification, debtor's attorney stated that the debtors had reported to her that Ms. Howard's father-in-law was part owner of the property and that while he paid the entire \$4,500.00 to the Bank, debtor's were only repaying him half of that amount. Upon questioning from her attorney, Ms. Howard then stated that only one acre (of the two acre property) was the debtors, that they were going to pay her father-in-law half of the amount he financed and that they had not had \$2,200.00 in savings. Debtor's attorney attempted to explain the discrepancy in testimony by stating that her client was nervous and did not understand the questions clearly. Based on this contradictory testimony, I continued the matter until both Mr. Howards could be heard.

On April 18, 1994 the matter was taken up again. Debtors filed in court another amended budget showing an increase in expenses in the amount of \$177.00 over that originally filed and an increase of \$47.00 over the previously amended budgets filed. The

budget shows a monthly excess income of \$193.34.<sup>4</sup> This amended budget differs from the previously filed amended budget in that it shows a land payment expense of \$50.00 instead of \$60.00 and increased expenses for water/sewer of \$7.00, garbage/security/cable of \$2.00, home maintenance of \$3.00, food of \$25.00, clothing of \$5.00, laundry/dry cleaning of \$20.00 and a decrease of medical/dental of \$5.00.

Debtor's father-in-law did attend the hearing but did not testify. Debtors' attorney<sup>5</sup> attempted to clarify the situation. She stated that originally Ms. Howard's father-in-law was buying one tract of land and debtors another and that both properties were surrendered in Bishop's bankruptcy. Because debtors did not have the money to buy back the property, the father-in-law purchased the property and debtors intended to pay him back at the rate of \$50.00 per month. At that point, I became concerned over Ms. Howard's prior statement that she had saved \$2,250.00 and took the matter under advisement in order to review the transcript of the prior hearing.

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<sup>4</sup>Debtors did not file any additional modification to their plan.

<sup>5</sup>Although a different attorney represented debtors at this hearing. Both attorneys which appeared on behalf of debtors are from the same firm.

The issue before me is whether the debtors are proceeding in good faith as required under the Bankruptcy Code. See 11 U.S.C. § 1325(a)(3); In re Johnson, 708 F.2d 865 (1983). Clearly, the debtors are not. I accept that in most instances a debtor's appearance at a Chapter 13 confirmation hearing may be the first instance in their lives that they are required to appear in a court of law, be placed under oath, and required to testify. A debtor's nervousness and to some extent confusion under these circumstances is understandable. What is not understandable and not acceptable under any circumstance is a debtor deliberately deceiving the court, as in this case. No amount of nervousness or confusion can explain Teresa Howard's conflicting testimony. At the initial hearing on the debtors' proposed modification of their confirmed plan held March 7, 1994 Ms. Howard testified first that her father-in-law Mr. Elbert Howard lent them half of the amount necessary to purchase the property in question and that the other half was earned by the debtors from extra work performed post petition. During the hearing, debtors' attorney contradicted this testimony stating that the father-in-law was in fact a part owner of the property, had purchased the entire property from the bank and that debtors were only repaying him for half of the purchase price. At the continued hearing on April 18, 1994 debtors' attorney again took the position

taken by counsel at the previous hearing. The testimony of the debtor that she had saved the one-half purchase price from extra work performed post-petition and that the debtors had borrowed the balance of the purchase price from her father-in-law was false and designed, for reasons known only to the debtors and the father-in-law, to disguise the true nature of the transaction and the father-in-law's ownership interest in the property.

The protection afforded a debtor under Title 11 of the United States Code, the Bankruptcy Code is available to the honest and sincere debtor seeking financial rehabilitation and an economic fresh start. In re LeMaire, 898 F.2d 1346, 1352 (8th Cir. 1990). The sincerity in seeking this financial rehabilitation is demonstrated at the very least by the debtor's honesty and candor in testifying before this court. "The cornerstone of the bankruptcy courts has always been the doing of equity. The protection and forgiveness inherent in the bankruptcy laws surely requires conduct consistent with the concepts of basic honesty." In re Waldron, 785 F.2d, 936, 941 (11th Cir. 1986). These debtors have demonstrated that they lack this element of basic honesty vital to continued protection of the bankruptcy laws. When a debtor files or proceeds in a chapter 13 case in bad faith, dismissal of that case is appropriate. See, 11 U.S.C. § 105.

It is therefore ORDERED that this Chapter 13 case is dismissed with prejudice barring the refiling of a petition for relief under Title 11 United States Code for a period of 180 days from the filing date of this order.

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JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 24th day of June, 1994.