



SO ORDERED,

Jason D. Woodard
Judge Jason D. Woodard
United States Bankruptcy Judge

The Order of the Court is set forth below. The case docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

In re:)	
)	
ROBERT E. JACKSON, JR. and)	Case No.: 17-13753-JDW
PATRICIA A. JACKSON,)	
)	
Debtors.)	Chapter 13

ORDER DENYING MOTION TO MODIFY PLAN (Dkt. # 37)

This matter came before the Court for hearing on November 12, 2019, on the debtors' *Motion and Notice to Modify Confirmed Plan* (Dkt. # 37) and the trustee's response (Dkt. # 38). The trustee has received \$4,075.92 in unencumbered, non-exempt insurance proceeds that the parties agree must be paid to creditors. The debtors wish to use the money to cure plan payment delinquencies, while the trustee argues the money should instead be paid to unsecured creditors. The Court agrees with the trustee that the funds should

be distributed to unsecured creditors, and accordingly, the motion is due to be denied.

In a chapter 13 case, unsecured creditors must be paid at least what they would receive in a chapter 7 liquidation.¹ All non-exempt property of the estate must be considered in the liquidation analysis and the value paid to creditors; otherwise the plan cannot be confirmed.² Here, the confirmed plan provides for payment of 100% of all creditor claims. That said, the lion's share of every plan payment goes to secured creditors who are also protected by their collateral.

This Court recently resolved a similar issue in *In re Larry Paul Osborne, II*.³ There, the debtor claimed that he was entitled to spend \$4,000 of non-exempt cash because he was paying unsecured creditors in full through the plan.⁴ The trustee objected, contending that creditors were entitled to the immediate payment of \$4,000.⁵ This Court agreed with the trustee, holding, "if the money is paid into the debtor's plan now, it will be immediately distributed to creditors and the debtor's plan payment will be reduced accordingly, benefitting the unsecured creditors and the debtor."⁶ If the money

¹ 11 U.S.C. § 1325(a)(4).

² *In re Garcia*, 499 B.R. 506, 514 (Bankr. N.D. Tex. 2013).

³ Case No. 19-10879-JDW.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

had been held in escrow, it would have been useless to both the debtor and his creditors throughout the life of the case.⁷ Had the money been dispensed to the debtor, he would have spent it, leaving unsecured creditors unprotected in the event of a default.⁸

Here, the debtors are delinquent in their bankruptcy plan payments and seek to use the insurance proceeds to partially cure the arrearage. The trustee argues the money should be paid to unsecured creditors now, as they bear the risk of non-payment should the plan fail. Although both outcomes would result in distributions to creditors, paying unsecured creditors now would protect their interest without altering secured creditors' existing lien interests. If the money is instead used to cure plan delinquencies, the secured creditors will receive the majority of the money and the unsecured creditors very little. As the debtors are already substantially in default, and will remain in default even if the proceeds are applied to plan payments, there is a substantial likelihood that this chapter 13 plan will fail and the case will be converted to chapter 7 or dismissed. If that happens, secured creditors can still look to their collateral for repayment, while unsecured creditors will receive nothing. Unsecured creditors bear substantial risk under the debtors' proposal, while no creditors bear any risk under the trustee's proposal. Further, the debtors

⁷ *Id.*

⁸ *Id.*

pointed to no authority showing why they are entitled to direct how the trustee, who is charged with collecting and distributing unencumbered assets, distributes the funds. Accordingly, it is

ORDERED, ADJUDGED, and DECREED that the Motion to Modify (Dkt. # 37) is **DENIED** and the trustee is shall immediately distribute the \$4,075.92 to unsecured creditors. The plan payment and wage order shall be modified accordingly.

##END OF ORDER##