

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
ROSS GOODWIN and) Bankruptcy Case No. 91-40300
BEVERLY GOODWIN,)
)
Debtors.)

OPINION

This matter having come before the Court on a request by the Debtors for a modification of their Chapter 12 Plan post confirmation and on an Objection thereto filed by the Chapter 12 Trustee; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The facts in this matter are not in dispute and are, in pertinent part, as follows:

1. The Debtors filed for relief under Chapter 12 of the Bankruptcy Code on March 5, 1991.
2. The Debtors Chapter 12 Plan of Reorganization as amended on September 20, 1991, was subsequently confirmed in October 1991
3. At the time of their filing for bankruptcy relief, Beverly Goodwin was the owner of a one-third remainder interest in certain real estate located in Clark County, Illinois. However, that real estate interest was not included on the Debtors' original bankruptcy

schedules, nor was the value of that interest included in the proposed payments to Debtors' unsecured creditors.

4. Subsequent to confirmation of the Debtors' Amended Chapter 12 Plan of Reorganization, Beverly Goodwin's one-third remainder interest became a vested present interest as a result of the death of the life tenants on the subject real estate.

5. On November 28, 1994, the Debtors filed an Amended Schedule A of real property which shows the legal description of the subject real estate and indicates that the Debtors' interest was in the nature of a one-third remainder interest at the time of the bankruptcy filing and that said interest has presently vested.

6. On December 19, 1994, the Debtors filed a request to modify their Chapter 12 Plan of Reorganization post confirmation to increase their payment to unsecured creditors by the amount of \$10,000, which amount the Debtors assert is the value of the one-third remainder interest at the time of the bankruptcy filing and the value of some other personal property also inherited post-petition.

7. On December 28, 1994, the Trustee filed his Objection to the requested modification stating as a basis that the value of the Debtors' one-third interest in the subject real estate exceeds the \$10,000 proposed to be paid to unsecured creditors, and, as such, the Plan modification does not meet the requirements for confirmation under 11 U.S.C. §§ 1222 and 1225.

Conclusions of Law

The issue before the Court concerns what value should be placed upon Beverly Goodwin's interest in certain real estate which at the

time of filing for bankruptcy was a remainder interest that has subsequently vested into a present interest after confirmation of the Debtors' Chapter 12 Plan of Reorganization. The Debtors assert that the interest should be valued as a one-third remainder interest in the amount of \$10,000 given that that was what the interest was at the time for filing of bankruptcy and at the time of the original confirmation in October 1991. In opposition to this, the Trustee argues that the interest of Beverly Goodwin should be valued as a present interest with that amount being paid to unsecured creditors. The issue before the Court is a matter of first impression and neither the parties nor the Court have been able to find any cases directly dealing with this subject. However, the Court finds that both Chapter 12 of the Bankruptcy Code, particularly 11 U.S.C. § 1207 and the case of In re Brown-Lee, 93 B.R. 662 (Bankr. S.D. Iowa 1988), give guidance as to the appropriate manner in which to value the subject interest.

Pursuant to 11 U.S.C. § 1207(a)(1):

(a) Property of the estate includes, in addition to the property specified in section 541 of this title -

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 of this title, whichever occurs first;

It has been consistently held that property inherited by a debtor after the filing of a Chapter 12 petition, but prior to the case being closed, dismissed, or converted to a Chapter 7, is property of the bankruptcy estate. See: In re Brown-Lee, supra, at

666; In re Hart, 151 B.R. 84 (Bankr. N.D. Texas 1993); and In re Honey, 167 B.R. 540 (Bankr. W.D. Mo. 1994). In In re Hart, the Court determined, on circumstances similar to the present case, that an inheritance received after the filing of a Chapter 12 bankruptcy petition was, in fact, property of the bankruptcy estate. However, there the Court determined that the value of the inheritance was not available for distribution to unsecured creditors even though it was received prior to the close of the case because the debtor in Hart received the inheritance well after the end of the bankruptcy plan period and the only unfinished matter at that time was payment of the debtor's disposable income for certain past years, the calculation of which had been delayed due to the trustee's office. The facts upon which the ruling in Hart were made are clearly distinguishable from the present case in that in the present case the interest which Mrs. Goodwin has inherited became vested prior to the time when the plan period was set to end. The District Court in In re Honey, on facts more similar to the case at bar, ruled that the debtor's receipt of an inheritance, even though received following the pendency of the debtor's 5 year plan, was disposable income which unsecured creditors were entitled to reach in satisfaction of their claims. See: In re Honey, supra, at 545.

In the case at bar, the Court finds that Debtor, Beverly Goodwin, has received a vested present interest in real estate and some personal property that is clearly property of the bankruptcy estate pursuant to 11 U.S.C. § 1207 and that has been received prior to the expiration of the contemplated plan payments provided for in

Debtors' confirmed plan as subsequently modified on other occasions. Pursuant to 11 U.S.C. § 1225, in order for a modified plan to be confirmed it must also meet the requirements of 11 U.S.C. § 1225(a). Pursuant to 11 U.S.C. § 1225(a), in order for a plan to be confirmed the value as of the effective date of the plan of property to be distributed under the plan on account of each allowed unsecured claim must not be less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7. The Court finds that, if this matter were a Chapter 7 bankruptcy at present, it would include, as part of the estate, the Debtors' present one-third interest in the subject real estate which it is apparent would have a value substantially in excess of the \$10,000 which Debtors seek to pay to their unsecured creditors. Given the undisputed facts in this matter and the clear mandate of the Bankruptcy Code as considered in the cases cited above, the Court must find that the plan modification as proposed by the Debtors does not meet the requirements of 11 U.S.C. § 1229(b)(1), making applicable the requirements of 11 U.S.C. § 1225(a). As such, the Trustee's Objection to Plan Modification must be allowed and the Debtors' request for Post-Confirmation Modification of Plan must be denied.

ENTERED: February 7, 1995.

/s/ GERALD D. FINES
United States Bankruptcy Judge