



FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re) Case No. 01-22358-A-13J
JAMES M. KINCAID and ESTRELLA) Docket Control No. JPJ-2
A. KINCAID,) Date: October 5, 2004
) Time: 9:00 a.m.
Debtors.)
_____)

Debtors James M. Kincaid and Estrella A. Kincaid, Sacramento, California.

Jan P. Johnson, Chapter 13 Trustee, Sacramento, California.

R. Craig Iseley, Esq., Sacramento, California, for Red Shield Servicing, Inc.

Julia P. Gibbs, Esq., El Dorado Hills, California, for Ronald R. Bieber, et al.

Fred W. Kaiser, Esq., Sacramento, California, for Chess Family Trust, et al.

MEMORANDUM DECISION

The chapter 13 trustee moves to dismiss the debtors' chapter 13 petition on the ground that the debtors have not paid in full the secured claims of Red Shield Servicing, Inc., even though the 42-month plan term has expired.

The debtors failed to appear at the hearing on the trustee's motion and they filed no written opposition to the motion.

1 Consequently, their defaults will be entered.

2 Because the debtors' plan required that Red Shield's secured
3 claims be paid in full, and because they have neither been paid
4 nor disallowed, the trustee's motion will be granted.

5 I

6 Red Shield Servicing, Inc., services two loans made to the
7 debtors. These loans are memorialized by two promissory notes
8 executed by the debtors. A timely proof of claim was filed for
9 each loan. While Red Shield services these loans, the beneficial
10 interest in them has been fractionalized and is held by many
11 individual investors.

12 The first promissory note is dated November 13, 1997, and is
13 in the original sum of \$105,000. It bears interest at 14% per
14 annum. This note is secured by a first deed of trust against the
15 debtors' real property at 805 F Street, Sacramento. The debtors
16 reside in a portion of this property and they rent out the other
17 portions of it. This note matured on January 1, 2001. According
18 to the proof of claim filed for this loan, the loan balance on
19 the date of the petition was \$135,762.12.

20 The second note, dated January 13, 1999, is in the original
21 sum of \$30,000. It bears interest at the rate of 15% per annum.
22 This note is secured by a second deed of trust against the
23 debtors' real property and it matured on February 20, 2001.
24 According to the proof of claim filed for this loan, the loan
25 balance on the date of the petition was \$39,415.51.

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1 The debtors' chapter 13 plan provides that Red Shield's
2 secured claims will be paid in full over 36 months.¹ This term
3 could be extended up to six months if necessary to pay the
4 dividends promised by the plan.²

5 Red Shield's secured claims, aggregating approximately
6 \$175,177.63 according to Red Shield's two proofs of claim, are
7 classified in Class 2. The plan provides that if these two
8 claims are filed and allowed, they must be paid in full through
9 the plan.³

11 ¹ The plan actually identifies only one secured claim
12 held by Red Shield. However, according to the plan, this claim
13 is in the amount of \$177,562. This is approximately the amount
14 owed on both loans on the date the petition was filed. According
15 to the two proofs of claim filed by Red Shield on March 29, 2001,
16 the amount secured by the first deed of trust totaled \$135,762.12
17 (pre-petition arrears of \$30,762.12 plus \$105,000 in principal),
18 and the amount secured by the second deed of trust totaled
19 \$39,415.51 (pre-petition arrears of \$9,415.51 plus \$30,000).
20 Both proofs of claim total \$175,177.63. According to the plan,
21 "The proof of claim filed by or on behalf of a creditor, not the
22 plan or the schedules, will determine the amount . . . of the
23 creditor's claim."

24 ² The debtors' plan contains the following language
25 regarding its length: "In order to complete this plan, the future
26 income of Debtor will be submitted to the supervision and control
27 of the Chapter 13 Trustee ("Trustee"). Debtor shall pay to the
28 Trustee the sum of \$300 each month for 36 months. . . . Unless
all allowed unsecured claims are paid in full, the plan shall not
terminate earlier than the stated term or 36 months, whichever is
longer. If necessary to complete this plan, the term will be
extended up to 6 months, but in no event will the plan exceed 60
months in length." [Underlining added for emphasis.]

³ As to Class 2 secured claims, the plan provides: "**Class
2. Secured claims that are modified by this plan or that will
not extend beyond its length.** This class includes any secured
claim that has matured or will mature prior to the completion of
the plan. It also includes any secured claim, regardless of its
maturity date, that is modified as permitted by 11 U.S.C. § 1322
(b)(2) or (c)(2). Each secured claim will continue to be secured
by its existing lien or security interest and will be paid its

1 The plan, however, required that the debtors pay only \$300 a
2 month to the trustee. Even though it is a mathematical certainty
3 that these monthly payments, whether made for 36 or 42 months,
4 could not possibly yield enough to pay \$175,177.62 to Red
5 Shield,⁴ neither Red Shield nor the trustee objected to
6 confirmation of the plan. Consequently, the plan was confirmed
7 on May 31, 2001.

8 Confirmation of the plan despite its inability to accomplish
9 the stated goal of paying Red Shield's secured claims in full
10 does not compel Red Shield to accept the plan dividend as payment
11 in full of its claims. This is so because the plan specifically
12 provided that Red Shield's claims would be paid in full⁵ over a
13 period not to exceed 42 months,⁶ and that its claims would be
14 determined by its proofs of claim, not by the plan.⁷

15 _____
16 full amount or the market value of its collateral, whichever is
17 less if permitted by § 1322(b)(2), together with interest." [Underlining added for emphasis; bold type in original.] The
18 reference to payment of the market value of the creditor's
19 collateral in lieu of the full amount of its claim is not
20 applicable in this case. The debtors did not file a motion to
21 value Red Shield's collateral. See 11 U.S.C. § 506(b) and Fed.
22 R. Bankr. P. 3012. Further, their schedules indicate that the
collateral had a value of \$261,000. See Schedule A filed May 2,
2001. That is, Red Shield's two secured claims totaling
\$175,177.63, were secured by property worth \$261,000.

23 ⁴ Thirty-six installments of \$300 will yield \$10,800.
24 Forty-two installments will yield \$12,600. After deducting
25 trustee compensation, which the court estimates will be 8% over
the life of the plan, there will be approximately \$9,936 to
\$11,592 available to retire Red Shield's claims.

26 ⁵ See footnote 3.

27 ⁶ See footnote 2.

28 ⁷ See footnote 1.

1 The provision in the debtors' plan specifically requiring
2 that Red Shield's claims be paid in full distinguishes it from
3 the plan at issue in In re Pagano, 2001 W.L. 114366 (Bankr. N.D.
4 Cal. 2001), *affirmed by* 2002 W.L. 31159110 (N.D. Cal. 2002).

5 In Pagano the debtor's plan required him to pay \$100 a month
6 for 36 months. From this, the trustee was required to pay
7 "priority creditors in the order prescribed by 11 U.S.C. § 507."
8 After the plan was confirmed without objection, a creditor filed
9 a priority claim exceeding \$150,000. Even though Mr. Pagano
10 completed all plan payments, those payments were insufficient to
11 pay the priority claim in full.

12 Because 11 U.S.C. § 1322(a)(2) requires that priority claims
13 be paid in full, the trustee and the priority creditor objected
14 to the entry of a discharge. They asserted that the plan, while
15 failing to expressly require payment in full of the priority
16 claim, did not provide that the claim would not be paid in full.
17 They believed that construing the plan to not require payment in
18 full of a priority claim would be contrary to section 1322(a)(2).

19 Both the bankruptcy court and the district court directed
20 that Mr. Pagano receive a discharge even though the priority
21 claim had not been paid in full. This interpretation of the plan
22 admittedly conflicted with section 1322(a)(2). However, because
23 no one had objected to the absence of a provision requiring
24 payment in full of the priority claim, the courts in Pagano
25 permitted the plan to contradict the requirements of section
26 1322(a)(2).

27 Other courts have not permitted debtors to escape the
28 command of section 1322(a)(2) so easily. See e.g., In re

1 Escobido, 28 F.3d 34 (7th Cir. 1994); In re Goude, 201 B.R. 275
2 (Bankr. D. Ore. 1996). However, this court need not explore the
3 issue further in the context of 11 U.S.C. § 1325(a)(5)(B)
4 (requiring payment in full of allowed secured claims) because the
5 debtors' plan, unlike Mr. Pagano's plan, expressly provided that
6 Red Shield's secured claims, as demanded in its proofs of claim,
7 had to be paid in full unless they were disallowed.

8 II

9 Rather than pay Red Shield's claims, the debtors were hoping
10 to disallow them. To accomplish this, the debtors filed two
11 adversary proceedings (Adv. Nos. 01-2192 and 03-2260) seeking not
12 only the disallowance of the claims, but an award of damages for
13 what might be referred to as alleged predatory loan practices.

14 The debtors used the court's standard plan applicable in
15 chapter 13 cases filed on March 1, 2001 through June 30, 2003.
16 See General Order 01-02, ¶ 2(a). That plan incorporates by
17 reference General Order 01-02. Together, the plan and the
18 General Order make clear that the plan confirmation process and
19 the claim allowance process are separate and distinct.

20 For example, if a plan omits a claim, this does not mean the
21 claim is disallowed. It means only that the claim is not
22 provided for by the plan.

23 Also, if the plan provides for a secured claim totaling
24 \$1,000 with collateral worth \$750, confirmation of the plan does
25 not prevent the claim holder from asserting that its claim is
26 more than \$1,000 or that its collateral is worth more (or less)
27 than \$750.

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1 In this regard, the plan provides:

2 To be paid, creditors, including secured creditors,
3 must file proofs of claim. The proof of claim filed by
4 or on behalf of a creditor, not the plan or the
5 schedules, will determine the amount and character of
6 the creditor's claim. If a creditor's claim is
7 provided for by this plan and a proof of claim is
8 filed, dividends will be paid based upon the proof of
9 claim unless the granting of a valuation or a lien
10 avoidance motion, or the sustaining of a claim
11 objection, affects the amount or classification of the
12 claim. Secured claims not listed within Classes 1, 2,
13 3, or 4, and priority claims not listed within Class 5
14 are not provided for by the plan. Whether or not a
15 proof of claim is filed, Debtor shall make ongoing
16 post-petition installment payments on Class 1 and 4
17 claims.

18 Because the proof of claim, not the plan, will determine the
19 amount of a claim as well as its characterization as a general
20 unsecured, priority unsecured, or secured claim, and because the
21 bar date for filing proofs of claim typically comes after
22 confirmation of the plan (as in this case), confirmation of a
23 plan will sometimes mean that a plan fails to provide for filed
24 claims in a manner consistent with 11 U.S.C. §§ 1322 and 1325.

25 For instance, suppose a plan provides for a claim on the
26 assumption that it is a general unsecured claim but the claim
27 holder files a proof of claim asserting that it is secured or is
28 entitled to priority treatment under 11 U.S.C. § 507. If the
29 plan is not modified, or if the claim is not disallowed, the plan
30 will run afoul with the requirements of section 1325(a)(5)
31 (requiring that secured claims be paid in full absent a surrender
32 of the creditor's collateral) or section 1322(a)(2) (requiring
33 payment in full of priority claims). See 11 U.S.C. §§ 1322(a)(2)
34 and 1325(a)(5)(A) & (B).

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1 Similarly, if the plan provides for payment in full of a
2 secured claim on the assumption that it totals \$5,000 but the
3 secured creditor files a proof of claim demanding \$50,000, the
4 plan cannot be completed within its term and also pay the secured
5 claim in full. In other words, when a plan is evaluated in light
6 of the claims filed by creditors, it may no longer be feasible.
7 See 11 U.S.C. § 1325(a)(6).

8 In some courts, problems such as these are sidestepped by
9 delaying confirmation of the plan until after the expiration of
10 the bar date for filing proofs of claim. Once the bar date has
11 passed, the amount and character of the claims can be ascertained
12 with precision. This makes evaluation of the plan's feasibility
13 and compliance with the other requirements of sections 1322 and
14 1325 a much easier task.

15 However, it also means that there will be a rather lengthy
16 delay before a plan is confirmed.

17 The bar date for nongovernmental creditors to file proofs of
18 claim does not expire until 90 days after the first date set for
19 the meeting of creditors. Fed. R. Bankr. P. 3002(c). The
20 meeting of creditors may be set no earlier than 20 days and no
21 later than 50 days after the filing of a chapter 13 petition.
22 Fed. R. Bankr. P. 2003(a).

23 The bar date for governmental creditors to file proofs of
24 claim does not expire until 180 days after the filing of a
25 chapter 13 petition. Fed. R. Bankr. P. 3002(c)(1).

26 When one takes into account the additional 30 days given to
27 the debtor, the trustee, and any guarantor, surety, indorser, or
28 other codebtor to file a proof of claim on behalf of a creditor,

1 as well as the requirement that creditors be given at least 25
2 days' notice of the deadline for objecting to a plan and of the
3 confirmation hearing, delaying confirmation until after the
4 expiration of all bar dates means delaying confirmation until a
5 minimum of 235 days after the filing of the petition. Fed. R.
6 Bankr. P. 3004, 3005, 2002(b), 3015.⁸

7 The primary drawback to such a scheme is the trustee's
8 inability to make payments to creditors prior to confirmation of
9 the plan. Section 1326(a)(2) requires the trustee to hold all
10 payments made by the debtor pursuant to a proposed plan until the
11 plan is confirmed. See 11 U.S.C. § 1326(a)(2).

12 Delaying payments to creditors for over six months virtually
13 guarantees that secured creditors will file motions seeking
14 either adequate protection payments or relief from the automatic
15 stay. These motions clutter the docket and drive up the costs of
16 all parties.

17 If the court deals with these motions by requiring the
18 trustee to make adequate protection payments to secured
19 creditors, the trustee likely will not be compensated for his
20 services since 28 U.S.C. § 586(e)(1)(B) permits compensation only
21 in connection with distributions pursuant to the plan.

22

23 ⁸ The 235 days consists of the 180-day deadline for
24 governmental claims, the additional 30 days for the debtor and
25 others to file a claim on behalf of a creditor, and the 25 days'
26 notice of the hearing on the confirmation of the plan. Because
27 Rule 2002(b) requires 25 days' notice of both the deadline for
28 objections to the plan and the confirmation hearing, this
calculation assumes that objections can be raised at the
confirmation hearing. If the court requires written objections
to be filed prior to the confirmation hearing, confirmation will
be further delayed.

1 On the other hand, if the court does not conscript the
2 trustee and require him to make adequate protection payments to
3 secured creditors, it must keep in mind that the debtor usually
4 has the right to dismiss the petition at any time. See 11 U.S.C.
5 § 1307(b). So, after making plan payments to the trustee for six
6 or more months while using the automatic stay to keep creditors
7 at bay, a debtor could dismiss the petition prior to confirmation
8 of the plan, thereby compelling the trustee to refund all of the
9 plan payments to the debtor. See 11 U.S.C. § 1326(a)(2).

10 Confirming a plan prior to the expiration of the bar dates
11 for filing claims requires the court to find some other method
12 for reconciling the plan with the claims actually filed by
13 creditors.

14 Some courts do this by subjugating the claims allowance
15 process to the plan confirmation process.

16 For instance, some courts hold that if the plan states that
17 the collateral for a secured claim is worth \$5,000 and the
18 creditor does not object to confirmation, its secured claim is
19 limited to \$5,000 even though the bar date for filing proofs of
20 claim has not expired and even though the debtor has not filed
21 and served a contested matter objecting to the proof of claim or
22 valuing its collateral. See Fed. R. Bankr. P. 3007, 3012, 9013,
23 9014. Cases such as In re Harnish, 224 B.R. 91, 93-94 (Bankr.
24 N.D. Iowa 1998) (failure of plan to provide for secured claim in
25 confirmed plan meant that claim was unsecured notwithstanding the
26 timely filing of secured proof of claim), Factors Funding Co. v.
27 Fili (In re Fili), 257 B.R. 370, 372-74 (B.A.P. 1st Cir. 2001)
28 (disclaiming liability in confirmed plan meant later proof of

1 claim was nullity), and In re Ross, 162 B.R. 785, 789-90 (Bankr.
2 N.D. Ill. 1993) (valuation in confirmed plan supercedes valuation
3 in proof of claim), typify this approach.

4 This court takes a different approach.

5 It confirms chapter 13 plans as soon as possible in order to
6 start the flow of payments to creditors. After the bar dates for
7 filing proofs of claim have expired, the trustee and the debtor
8 then reconcile the plan with the filed claims. This may entail
9 objecting to claims, filing proofs of claim on behalf of
10 creditors, avoiding liens, valuing collateral, or modifying the
11 plan.

12 The lynchpin of this process is the trustee's preparation of
13 a Notice of Filed Claims. Nothing in the Bankruptcy Code or the
14 Federal Rules of Bankruptcy Procedure requires the trustee to
15 prepare this Notice. The Notice of Filed Claims is a creature of
16 this court's General Order on chapter 13 practice. See General
17 Order 01-02, its predecessors, General Orders 97-02 and 00-02,
18 and its successor, General Order 03-03 at ¶ 6. The terms of the
19 General Order are incorporated into every chapter 13 plan,
20 including the plan in this case, confirmed by the court.

21 Once the plan is confirmed, and after all bar dates for
22 filing proofs of claim have expired, the trustee reviews the
23 proofs of claim, compares them to the debtor's schedules and
24 plan, and then summarizes the claims, both scheduled and filed,
25 in the Notice of Filed Claims. It is then filed and served on
26 the debtor and the debtor's attorney.

27 If a proof of claim has been filed, the Notice of Filed
28 Claims states the date it was filed, the amount of the claim, the

1 amount scheduled, and the character of the claim (unsecured,
2 priority, or secured). If a proof of claim has not been filed
3 for a scheduled claim, this is also noted in the Notice of Filed
4 Claims.

5 Suppose a proof of claim was not filed by a secured
6 creditor. The plan, as noted above, requires that a proof of
7 claim be filed before a claim may be paid through the plan. See
8 also United States v. Osborne (In re Osborne), 76 F.3d 306, 308-
9 309 (9th Cir. 1996); Ledlin v. United States (In re Tomlan), 102
10 B.R. 790, 791-92 n.1 (E.D. Wash. 1989), *aff'd per curiam*, 907
11 F.2d 114 (9th Cir. 1990). Because a lien will survive the
12 chapter 13 discharge if the debt it secures is not satisfied, a
13 chapter 13 debtor is usually motivated to file a proof of claim
14 on behalf of a secured claim holder. This insures the claim will
15 be paid, ultimately freeing the claim's collateral from the lien.
16 See e.g., Matter of Tarnow, 749 F.2d 464, 465 (7th Cir. 1984);
17 Bisch v. United States (In re Bisch), 159 B.R. 546, 549 (B.A.P.
18 9th Cir. 1993). The Notice of Filed Claims informs the debtor
19 when it is necessary to file a claim on behalf of a secured
20 creditor.⁹

21 If the plan fails to provide for a secured claim, the claim
22 will not be paid even if the creditor files a proof of claim. In
23 such cases, in order to comply with sections 1322(a)(2) and
24

25 ⁹ For instance, a chapter 13 debtor might be motivated to
26 file a claim on behalf of an unsecured creditor whose claim could
27 not be discharged. Claims for most student loans, for instance, are
28 not dischargeable in chapter 13. See 11 U.S.C. § 1328(a)(2).
Every dollar paid to a student lender is a dollar the debtor will
not have to pay after the conclusion of the chapter 13 case.

1 1325(a)(5) and to obtain the broadest possible chapter 13
2 discharge pursuant to 11 U.S.C. § 1328(a), the debtor will
3 usually wish to modify the plan in order to provide for any
4 omitted secured or priority claim.

5 Similarly, if the claims are higher than expected, and the
6 plan cannot be completed within its term, the Notice of Filed
7 Claims informs the debtor of the problem in time to object to the
8 claim(s) causing the over-extension, modify the plan, or both.
9 Without this information, the debtor might complete the plan only
10 to discover that he or she had not paid all claims as promised.
11 Because all payments had been completed, the debtor would be
12 unable to modify the plan. See 11 U.S.C. § 1329(a) (a plan may
13 be modified "any time after confirmation of the plan but before
14 the completion of payment. . . ."). And, because all promised
15 dividends were not paid, the debtor would not be entitled to a
16 discharge. See 11 U.S.C. § 1328.

17 The Notice of Filed Claims, then, alerts the debtor to the
18 possible need to object to a proof of claim, file a proof of
19 claim on behalf of a creditor,¹⁰ move to value the collateral
20 securing a claim, move to avoid a lien pursuant to 11 U.S.C. §
21 522(f), modify the plan to provide for an omitted claim, or
22 anything else needed to insure that the plan completes within its
23 term, pays the promised dividend to creditors, and satisfies all

24

25 ¹⁰ Because the deadline set by Fed. R. Bankr. P. 3004 for
26 filing proofs of claim on behalf of a creditor will likely expire
27 before the trustee prepares and serves the Notice of Filed
28 Claims, the general order provides that this deadline is extended
to 90 days after service on the debtor of the Notice of Filed
Claims. Fed. R. Bankr. P. 9006(b) does not preclude this
extension.

1 the requirements of sections 1322 and 1325.

2 III

3 Because the stream of plan payments had no hope of paying
4 Red Shield in full over 36 to 42 months, it was incumbent on the
5 debtors to object to Red Shield's claims in order to eliminate
6 them or at least reduce them to a level that could be managed by
7 the plan. As noted previously, they attempted to disallow its
8 claims in two adversary proceedings.

9 The first adversary proceeding, Adv. No. 01-2192, was
10 voluntarily dismissed by the debtors. The second adversary
11 proceeding, Adv. No. 03-2260, was dismissed by the court on
12 September 7, 2004 for the reasons explained in a Memorandum
13 Decision also filed on September 7.

14 Therefore, the debtors have completed their plan payments
15 and, even though they were unable to disallow Red Shield's
16 secured claims, they have not paid those claims in full as their
17 plan required. This breach warrants dismissal of the case
18 pursuant to 11 U.S.C. § 1307(c)(6) unless the debtors are willing
19 and able to modify their plan to provide for payment of the
20 claims.

21 The debtors are no longer able to modify their plan. Their
22 plan permitted them to make a maximum of 42 monthly plan payments
23 to the trustee. The forty-second monthly payment fell due on
24 September 25, 2004. A review of the docket reveals no motion by
25 the debtors, the trustee, or any unsecured creditor to modify the
26 plan. See 11 U.S.C. § 1329(a). It does not appear anyone wishes
27 to modify the plan.

28 ///

1 Further, it is now too late to modify the debtors' confirmed
2 plan. Section 1329(a) requires that any post-confirmation
3 modification of a chapter 13 plan be accomplished "before the
4 completion of payments under such plan." In this case, the
5 debtors have completed the payments required by their confirmed
6 plan.

7 In other chapter 13 cases involving a disputed secured
8 claim, the plans typically include some provision for the payment
9 of the claim if the claim is allowed. For example, if the
10 monthly plan payments are insufficient to pay the claim, the
11 debtor sometimes provides for the sale or refinance of the
12 property in order to pay the secured claim.¹¹

13 Here, the debtors gambled that they would be successful in
14 their efforts to disallow Red Shield's secured claims. They were
15 unsuccessful, their plan left them with no means of paying those
16 claims, and it is too late to modify the plan to rectify this
17 problem.

18 It bears mention that the court previously warned the
19 debtors that could find themselves in this predicament if they
20 were unable to disallow Red Shield's secured claims. In a
21

22 ¹¹ In addition to a debtor's disposable income, payments
23 under a chapter 13 plan may be based on the proceeds from the
24 sale or refinance of property. If a debtor's income is not
25 sufficient by itself to pay claims in full, there is nothing in
26 11 U.S.C. § 109(e) that requires a debtor to pay claims only from
27 future disposable income. The plan may also propose to sell
28 property or refinance it in order to pay claims. See e.g., In re
Hogue, 78 B.R. 867, 870-71 (Bankr. S.D. Ohio 1987). This is
specifically permitted by 11 U.S.C. § 1322(b)(8). See also In re
Gavia, 24 B.R. 573, 575 (B.A.P. 9th Cir. 1982) ("[W]e construe
[section 1322(b)(8)] as permitting a plan to supplement payments
from future income.").

1 Memorandum Decision filed on December 29, 2003, the court urged
2 the debtors

3 "to consider modifying their plan to make some provision for
4 the payment of the creditors' claims in the event the
5 debtors do not prevail in the adversary proceeding. The
6 court is not suggesting that the debtors cannot prevail.
7 Rather, it is suggesting only that they carefully consider
8 the impact of 11 U.S.C. § 1329(a). Section 1329(a) will
9 preclude them from modifying their plan once they have made
10 their [last plan payment]. Because the adversary proceeding
11 will be concluded at approximately the same time they make
12 this last plan payment, the debtors will lose the ability to
13 reorganize these claims if they are allowed."

14 The debtors did not modify their plan and now it is too late
15 to do so. Because their confirmed plan did not pay Red Shield's
16 secured claims as it required, there is cause to dismiss the
17 petition.

18 A separate order will be entered.

19 Dated: October 8, 2004

20 By the Court

21 /s/
22 Michael S. McManus, Chief Judge
23 United States Bankruptcy Court
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