

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: Sherri Gentry, Debtor

**No. 5:05-bk-77009
Ch. 13**

ORDER

Before the Court is an Objection to Confirmation of Plan as Modified Post-Confirmation on 07/25/2008 filed on August 12, 2008, by the chapter 13 trustee in the above captioned case. The Court held a hearing on the objection on September 8, 2008, at which time the Court took the matter under advisement. For the reasons stated below, the Court sustains the trustee's objection.

This Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(I) and (L). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

On September 16, 2005, the debtor filed a chapter 13 voluntary petition and plan. A modified plan was confirmed on April 21, 2006. On July 25, 2008, the debtor filed a Modification of Chapter 13 Plan, in which the debtor added 19 post-petition debts owed to various creditors to section seven of her plan.¹ Section seven states that the unsecured creditors listed were added to the plan and that post-petition unsecured creditors would be paid a pro-rata dividend. On August 12, the trustee filed an objection stating that "the Debtors should not add post-petition creditors that have not filed a proof of claim." At the September 8 hearing, debtor's counsel indicated that the post-petition creditors were added in order to give them notice of the bankruptcy and that the creditors were "not necessarily" being forced to participate in the plan.

¹ The debtor also added several creditors to Schedule F. However, at the hearing, only the modification of the plan was at issue.

The debtor may intend to simply give notice of the bankruptcy to her post-petition creditors through modifying her chapter 13 plan to include those creditors, but the proposed modification does more. The modification states that the added post-petition creditors “shall be paid a pro-rata dividend.” Although 11 U.S.C. § 1322(b)(6) allows a debtor to “provide for the payment of all or any part of any claim allowed under section 1305” in the chapter 13 plan, in order for a post-petition claim to be “allowed under section 1305,” the holder of the claim must first file a proof of claim.² *In re Laymon*, 360 B.R. 902, 904 (Bankr. E.D. Ark. 2007). In this case, at the time of the hearing, only two of the added post-petition creditors had filed a proof of claim. The debtor may not use the proposed modification of her confirmed plan to “provide for”³ the other post-petition debts for which the holder has not filed a proof of claim. *Id.* at 904. Further, the proposed modification could mislead post-petition creditors as to whether they must file a proof of claim⁴ and whether the debt owed will be discharged.⁵ *See In re Trentham*, 145 B.R. 564, 568-69 (Bankr. E.D. Tenn. 1992). For these reasons, the trustee’s objection is sustained. The debtor shall have 20 days to modify her plan consistent with this Order.

IT IS SO ORDERED

² Under § 1305, “[a] proof of claim may be filed by any entity that holds a claim against the debtor . . . that is a consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor’s performance under the plan.” 11 U.S.C. § 1305(a)(2).

³ A chapter 13 plan “provides for” a debt “where the plan acknowledges the debt, even if the plan does not propose to make any payments on the claim.” *United States v. Hairopoulos (In re Hairopoulos)*, 118 F.3d 1240, 1243 (8th Cir. 1997).

⁴ Post-petition creditors may refrain from filing a proof of claim, “thereby waiving the possibility of a distribution under the chapter 13 plan, in hopes of recovering against the debtor after the closing of the case.” 8 Collier on Bankruptcy at ¶ 1305.02.

⁵ Section § 1328(a) states that “the court shall grant the debtor a discharge of all debts provided for by the plan” 11 U.S.C. § 1328(a).

Ben Barry

DATE

BEN T. BARRY
UNITED STATES BANKRUPTCY JUDGE

cc: John M. Blair, attorney for debtor
Joyce Bradley Babin, chapter 13 trustee
All creditors and interested parties