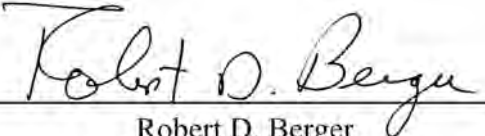


The relief described hereinbelow is **SO ORDERED**.

SIGNED this 14th day of December, 2021.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

**BEAU JON CHARBONNEAU and
VICKY KAY CHARBONNEAU,**

Debtors.

Case No. 19-22454
Chapter 13

**JOURNAL ENTRY AND NOTICE OF CONTINUANCE OF PRETRIAL
STATUS CONFERENCE**

On December 7, 2021, the Court held a pretrial status conference on the following contested matters in this case: (1) the Chapter 13 Trustee's Motion for Dismissal for Failure to Make Plan Payments;¹ (2) Debtors' Motion for Compromise

¹ ECF 107; *see also* ECF 146 (Debtors' reply).

per Rule 9019 and Approve Distribution of Prepetition Funds;² and (3) Debtors' Motion for Post-Confirmation Amendment of Plan.³ At that hearing, the Court made the following findings of fact and conclusions of law:

1. Debtors filed a voluntary Chapter 13 petition on November 18, 2019.⁴
2. Debtors listed a pre-petition claim of unknown value against Mortgage Lenders of America on their Schedule B attached to the petition.⁵
3. This Court confirmed Debtors' Chapter 13 plan on April 20, 2020.⁶
4. Section 11.5 of Debtors' confirmed plan provides that creditors Community America Credit Union and Toner's Jewelry "will be paid the value of the collateral listed below or the amount of the claim, whichever is less."⁷
5. Section 11.6 of Debtors' confirmed plan provides that creditor Corporate America Family "will be paid the amount of the debt owed."⁸
6. Section 15 of Debtors' confirmed plan provides that the value of Debtors' nonexempt property is \$39,620.45 and that "there are no funds available for general unsecured creditors."⁹

² ECF 125; *see also* ECF 130 (Chapter 13 trustee's objection); ECF 132 (creditor Toner Jewelers' response);

³ ECF 150; *see also* ECF 159 (Chapter 13 trustee's objection).

⁴ ECF 1.

⁵ *Id.*

⁶ ECF 58.

⁷ ECF 36 § 11.5.

⁸ *Id.* § 11.6.

⁹ *Id.* § 15.

7. In April 2021, debtor Beau Charbonneau's lawsuit against Mortgage Lenders of America in the United States District Court for the District of Kansas, Case No. 18-2062-HLT, was successfully mediated. *See* ECF 139.

8. Mr. Charbonneau was awarded \$325,558.54 as a result of that mediation: \$162,779.27 for wages and \$162,779.27 for special statutory damages. *See id.*

9. Pursuant to this Court's order dated August 23, 2021,¹⁰ Mr. Charbonneau has received those wage funds that were claimed exempt under K.S.A. § 60-2310.

10. The Trustee argues that the remaining amount of \$162,779.27 should be applied to priority claims and general unsecured claims; Debtors argue that it should be applied to the secured claims of Toner Jewelers, Corporate America Family Credit Union, and Community America Credit Union.

11. The Court finds that *United Student Aid Funds v. Espinosa*, 559 U.S. 260 (2010), controls here.

12. Under *Espinosa*, and because Debtors listed the claim against Mortgage Lenders of America as an asset on their Schedule B, Debtors' confirmed plan is *res judicata* as to whether the best-interest-of-creditors test (*see* 11 U.S.C. § 1325(a)(4)) requires unsecured creditors to receive any funds resulting from the liquidation of that claim.

¹⁰ ECF 139.

13. Debtors' confirmed plan provides that unsecured creditors will not receive any funds from liquidation of the claim against Mortgage Lenders of America. Under *Espinosa*, this is *res judicata* as to satisfaction of the best-interest-of-creditors test.

14. The Trustee is therefore directed to make payments to pay off Toner Jewelers (POC 24), Corporate America Family Credit Union (POC 8), and Community American Credit Union (POC 1) from the funds on-hand from Case No. 18-2062-HLT.

15. All remaining issues in the parties' pending motions (ECF 107; ECF 125; ECF 150) are continued to pretrial status conference on February 1, 2022, at 11:30 a.m.

16. The Court hereby orders Debtors to amend their Schedules I and J by January 6, 2022.

17. The Court hereby orders Debtors to provide a copy of their 2021 federal and state tax returns to the Trustee and any interested creditors by February 15, 2022.

IT IS SO ORDERED.

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