

SIGNED.

Dated: September 13, 2012



James M. Marlar

James M. Marlar, Chief Bankruptcy Judge

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7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF ARIZONA**

9 In re:

10 DELBERT C HODGE and RENEE D
11 HODGE,

12 Debtors.

Chapter 11

No. 2:09-bk-26411-JMM

MEMORANDUM DECISION

13 Before the court is a motion to "reconsider" its order of July 2, 2012 (ECF No. 287).
14 This court will treat it as a motion to alter or amend under FED. R. BANKR. P. 9023.

15 In the motion, BankUnited asks the court to determine the amount by which the Debtors
16 are in default.

17 This request is not asking the court to correct what might be a misunderstanding, but is
18 asking for the court to determine for the first time (1) that a default exists under the July 13,
19 2012 Memorandum Decision and July 2, 2012 Order (ECF Nos. 283 and 286), (2) establish
20 what the amount of the default is under the Memorandum Decision and Order, (3) find that
21 such default, if any, has not been cured within the 21 days after July 2, 2012, or (4) that new
22 defaults have occurred since.

23 The court's Memorandum Decision and Order merely established the interpretation of
24 the confirmed plan. It was not intended to do an accounting of where the case stands once the
25 monthly payments of \$409.24 and \$914.82 were found by the court.

26 Therefore, there is nothing to either "reconsider" or correct in the court's July 2, 2012
27 Order. On that basis, BankUnited's motion must be DENIED.

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1 What BankUnited actually appears to be seeking is a judicial declaration that a default
2 has occurred--which has not been cured--under the court's directive that the confirmed plan
3 required payments of \$409.24 and \$914.82. That is a new issue beyond the purview of a FED.
4 R. BANKR. P. 9023 motion.

5 The legal issues concerning interpretation of the plan's provisions--as established by the
6 Memorandum Decision and July 2, 2012 Order--have been decided. The Rule 9023 motion
7 will therefore be DENIED. If the court erred in its decision concerning how the confirmed plan
8 is to be construed henceforth, the losing party is free to seek appellate review. FED. R. BANKR.
9 P. 8002.

10 As for the issue of whether the Debtors defaulted under the plan, as interpreted by the
11 Memorandum Decision and July 2, 2012 Order, BankUnited is not prohibited from seeking that
12 relief, provided it supplies a legible, understandable, lawyer-created matrix of relevant
13 information. At some point, not in the distant future, if the parties cannot sort out this issue, the
14 court will appoint its own expert, a CPA, with the losing party to pay the fee, to act as the
15 court's expert on these accounting issues. FED. R. EVID. P. 706.

16 A separate order will be entered which DENIES BankUnited's "motion for
17 reconsideration."

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19 DATED AND SIGNED ABOVE.

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21 COPIES to be sent by the Bankruptcy Noticing
22 Center ("BNC") to the following:

23 German Yusuf, Attorney for Debtors
24 Leonard McDonald, Attorney for BankUnited
25 Office of the U.S. Trustee
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