

SIGNED.

Dated: September 13, 2012



*James M. Marlar*

James M. Marlar, Chief Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

In re:

DELBERT C HODGE and RENEE D  
HODGE,

Debtors.

Chapter 11

No. 2:09-bk-26411-JMM

**MEMORANDUM DECISION**

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

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

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

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

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

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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