```
MIME-Version:1.0
From:cmecfdataquality@nmcourt.fed.us
To:cmecfdataquality@nmcourt.fed.us
Bcc: Jill_Peterson@nmcourt.fed.us, Mary_B_Anderson@nmcourt.fed.us, cmecf@swcp.com, daviswf@nmbankruptcy.com, file_c
Message-Id:<1213346@nmcourt.fed.us>
Subject:03-14316-s13 Doc. 58 H. Greg Faust and Patrice Burbidge-Faust -- Memorandum Opinion
```

Content-Type: text/html

*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

U.S. BANKRUPTCY COURT

New Mexico

Notice of Electronic Filing

The following transaction was received from jeb entered on 12/12/2007 at 4:35 PM MST and filed on 12/12/2007

Case Name: H. Greg Faust and Patrice Burbidge-Faust
Case Number: 03-14316-s13
Document Number: 58

Docket Text:
Memorandum Opinion (RE: related document(s)[47] Motion to Dismiss Case for Failure to Make Plan Payments, [44] Motion to Modify Plan). (jeb)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:j:\ace\x.pdf
Electronic document Stamp:
[STAMP bkecfStamp_ID=1021991579 [Date=12/12/2007] [FileNumber=1213344-0] [371ffde418aae4d28ccf633e28ba4e7ba6c1a28ef9695f1fecdf48d36c060be610f967d059be7ea19e7e4a5a12bcddbb63ac7f4a40eaee028c58417be27e123c]]

Notice will be electronically mailed to:

William F. Davis daviswf@nmbankruptcy.com, jgarcia@nmbankruptcy.com

Ronald E Holmes ronholmes@prodigy.net, file_copy@ronholmes.com;notices@ronholmes.com

Kelley L. Skehen opmgr@ch13nm.com, cmecf@swcp.com

United States Trustee ustpregion20.aq.ecf@usdoj.gov

Ronald E xHolmes ronholmes@prodigy.net, notices@ronholmes.com

Notice will not be electronically mailed to:

Sallie Mae Servicing L.P.
220 Lasley Avenue
Wilkes-Barre, PA 18706

Helen Marguerita Turner
PO Box 574
Fulshear, TX 77441

United Student Aid Funds
11100 USA Parkway
Fishers, IN 46038

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
H. GREG FAUST and
PATRICIA BURBIDGE-FAUST,
Debtors. No. 13-03-14316 SA

MEMORANDUM OPINION ON DEBTORS' MOTION TO MODIFY (doc 44) AND TRUSTEE'S MOTION TO DISMISS (doc 47)

This matter came before the Court for trial on the merits of Debtors' Motion to Modify (doc 44) and Trustee's Motion to Dismiss (doc 47). Debtors appeared through their attorney Ronald Holmes. The Trustee Kelley Skehen was self-represented. These are core proceedings. 28 U.S.C. § 157(b)(2)(A)[1]. The Court will deny the motion to modify and conditionally grant the motion to dismiss.

PROCEDURAL HISTORY

Debtors filed a voluntary Chapter 13 petition on May 29, 2003, and their Chapter 13 Plan (doc 5) on June 11, 2003. Two objections to confirmation were filed (docs 12 and 13). Debtors then filed an Amended Chapter 13 Plan on September 18, 2003 (doc 16) ("Amended Plan") which drew two objections from the same parties (docs 23 and 24). Confirmation was scheduled for February 18, 2004, but no trial occurred on that date; rather, the parties submitted a "Stipulated Order Confirming Debtors' Amended Chapter 13 Plan Dated September 18, 2003, Valuation of

[1]This case was filed prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, so the changes made by that law do not apply in this case.

Secured Property and Rejection of Executory Contracts." (doc 34)("Order"). This Order was drafted by Debtors' attorney. The decretal portion of the Order reads, in part:

> IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Amended Plan of the Debtors filed on September 18, 2003, in the above captioned and numbered case as amended by subsequent modifications, if any, be and the same is hereby confirmed.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:
>
> 1. The payment, in certified funds (cashier's check, money order or other instrument guaranteeing payment) required under the aforesaid Plan, or any subsequent modifications, shall be made to Kelley Skehen, 625 Silver Ave SW, Albuquerque, NM 87102, on or before the 5th day of July 2003, and shall continue on the same numbered date of each month thereafter until the Plan is completed or until further Order of this Court. Debtors shall increase their plan payment to $175.00 a month for a period of forty-six months starting with the March 2004 payment and shall continue until further order of this Court.

The Order was not appealed. Debtors' original and Amended Plans had called for payment of $125.00 per month for 36 months. By the time of confirmation, Debtors had made eight $125.00 payments and commenced making the $175.00 payments in March, 2004. Debtors continued to pay $175.00 per month through June, 2007, for total payments of $7,825.00. Debtors claim they have completed their plan because the Order called for a total of 46 payments. Trustee argues that the Order called for 46 payments commencing on March 5, 2004 and that eight payments remain due.

This Debtors' and Trustee's motions came on for trial on December 4, 2007. Mr. Faust testified, as did Ms. Annette DeBois, who was the Trustee's attorney that negotiated the Order.

Trustee made a general objection to any testimony by Mr. Faust that would violate the parol evidence rule. The Court took the evidentiary objection under advisement and allowed Mr. Faust to testify.

Mr. Faust testified that he recalled attending court the day of the confirmation hearing and discussing confirmation with his attorney, his wife, the trustee[2], and the attorney for creditor Carol Fisher Dunn. He recalled a proposal that the Plan needed an additional $3,500 to satisfy a secured claim[3] and that if he bumped his payment from $125 to $175 and added an additional eight months this would satisfy the claim. Debtor was adamant that he agreed to extend the Plan so that the total payments altogether were only 46. Finally, he testified that he never authorized his attorney to agree to a 55 month plan; he did admit that he employed his attorney and used his services to obtain

[2]The Court's minutes of the hearing (doc 33) indicate that the Trustee's attorney Annette DeBois was present, not the Trustee herself.

[3]The Order, ¶ 10, lists Carol Fisher Dunn as a secured creditor to receive $3,500 with interest at 10% postconfirmation. She previously had not been included in the Plan or Amended Plan. The secured creditor mentioned in the Plan, HPSC, failed to file a proof of claim for $2,300. Debtors therefore sought to have HPSC not paid the $2,300 and to pay an additional $1,200 (plus abut 11% representing the Trustee's 10% commission) into the Amended Plan to make up the $3,500. Although these facts and numbers are the gist of the change and the Trustee's determination of feasibility in this case, the Court has been unable to match the facts with the numbers. The parties did not attempt to reconcile the facts with the numbers, and given the Court's ruling, any such reconciliation is irrelevant.

confirmation. The Court finds that Mr. Faust testified completely truthfully.

Annette DeBois was the attorney for the Trustee that negotiated the confirmation in this case. Over the years she had handled over 1,000 cases as the attorney for the Trustee. When subpoenaed in this case she reviewed the court docket, several orders and her notes from the Trustee's internal record-keeping system. She admitted she had no independent recollection of this case. Her notes (Exhibit 1) indicated, however, that she would settle the confirmation issues if Debtors would increase their plan payment to $175 and extend the plan to 55 months[4]. The Court finds that Ms. DeBois testified completely truthfully.

A. DEBTORS' MOTION

Although Debtors' Motion is captioned as one to modify, it more closely resembles either a motion to reform the confirmation order or a motion under Rule 60(b) for relief from an order. The Court will analyze the motion as captioned, but also as one for reformation and as one for relief from an order. If Debtors' Motion cannot be granted, alternatively the Debtors ask the Court to construe the Order and agree with their interpretation that it calls for 46 payments in total. The Court approaches this task aware of the warning in Kutz v. Lamm, 708 F.2d 537, 539 (10th

[4] She conceded that the number 55 was a mathematical error; the number should have been 54, representing the 8 payments of $125 plus the 46 payments of $175 set out in the Order.

Cir. 1983): "We have stated that '[w]e cannot overlook or disregard stipulations which are absolute and unequivocal. Stipulations of attorneys may not be disregarded or set aside at will.'" (Citation omitted.)

1. TREATED AS A MOTION TO MODIFY

> A Chapter 13 reorganization plan is a contract between the debtor and creditors. Both creditors and the debtor are bound by a plan's provisions. In re Emly, 153 B.R. 57 (Bankr. D. Idaho 1993). The creditors are bound by the terms of this contract and have a justifiable expectation that they will be treated in accordance with its terms. Where a debtor seeks to modify the contract after confirmation, to change the terms for treatment of the creditors, the debtor must show some change in circumstance not foreseeable at the time of confirmation to support that modification.

In re Richardson, 192 B.R. 224, 228 (Bankr. S.D. Cal. 1996).

> [W]hen a bankruptcy court is faced with a motion for modification pursuant to §§ 1329(a)(1) or (a)(2), the bankruptcy court must first determine if the debtor experienced a substantial and unanticipated change in his post-confirmation financial condition. This inquiry will inform the bankruptcy court on the question of whether the doctrine of res judicata prevents modification of the confirmed plan. If the change in the debtor's financial condition was either insubstantial or anticipated, or both, the doctrine of res judicata will prevent the modification of the confirmed plan. However, if the debtor experienced both a substantial and unanticipated change in his post-confirmation financial condition, then the bankruptcy court can proceed to inquire whether the proposed modification is limited to the circumstances provided by § 1329(a). If the proposed modification meets one of the circumstances listed in § 1329(a), then the bankruptcy court can turn to the question of whether the proposed modification complies with § 1329(b)(1).

In re Murphy, 474 F.3d 143, 150 (4th Cir. 2007).

Debtors do not allege any change in their post-confirmation financial condition. The Motion to Modify should be denied.

2. TREATED AS A MOTION TO REFORM CONFIRMATION ORDER

> Mutual mistake is grounds for reformation of a written agreement. See Kimberly, Inc. v. Hays, 88 N.M. 140, 143-44, 537 P.2d 1402, 1405-06 (1975); Cleveland v. Bateman, 21 N.M. 675, 684, 158 P. 648, 650 (1916). According to the Restatement (Second) of Contracts § 155 (1981) [hereinafter Restatement]:
>
> > Where a writing that evidences or embodies an agreement in whole or in part fails to express the agreement because of a mistake of both parties as to the contents or effect of the writing, the court may at the request of a party reform the writing to express the agreement, except to the extent that rights of third parties such as good faith purchasers for value will be unfairly affected.
> >
> > Reformation is the remedy for errors in the written expression of an otherwise existing agreement. But, before a court may reform a writing, the proof must not only establish that the written agreement was not the agreement intended by the parties, but also what was the agreement contemplated by them at the time it was executed.... [P]laintiff 'must not only show clearly and beyond doubt that there has been a mistake, but he must also be able to show with equal clearness and certainty the exact and precise form and import that the instrument ought to be made to assume, in order that it may express and effectuate what was really intended by the parties.'
>
> 13 Samuel Williston, A Treatise on the Law of Contracts § 1548, at 124-25 (3d ed. 1970) (citations and footnotes omitted).

Twin Forks Ranch, Inc. v. Brooks, 125 N.M. 674, 677-78, 964 P.2d 838, 841-42 (Ct. App.), cert. denied, 126 N.M. 108, 967 P.2d 448 (1998). (Emphasis in original).

There was no mutual mistake in this case. The Trustee's evidence suggests a 55 month plan. Debtors did not meet the burden of proving by a preponderance of the evidence that the Trustee had agreed to a 46 month plan. Debtors did prove that they assumed that they were agreeing to an amended plan that would run for a total of 46 months, including the payments already made. Because there was no mutual mistake, the Court cannot reform the confirmation Order. See also Cheyenne-Arapaho Tribes of Indians of Oklahoma v. United States, 671 F.2d 1305, 1311 (Ct. Cl. 1982) ("Whatever the truth is, at best only one of the parties could have been mistaken about the issue. A unilateral mistake about a particular fact is insufficient to reform a contract otherwise properly entered into.")

3. TREATED AS A RULE 60(b) MOTION

Federal Rule of Civil Procedure 60(b) is applicable in bankruptcy cases. F.R.B.P. 9024. Rule 60(b) provides, in part:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has

been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.

Rule 60(c) states that "A motion under Rule 60(b) must be made within a reasonable time--and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." If relief is available under Rule 60(b)(1) only and is not pursued within a year, it may not thereafter be plead as a Rule 60(b)(6) matter to avoid the one-year limitation. Klapprott v. United States, 335 U.S. 601, 613 (1949).

In this case, the Order is a result of mistake, inadvertence, surprise, or possibly neglect[5]. Therefore, any motion for relief had to be filed within one year. Consequently, no relief is available under Rule 60(b).

4. THE COURT WILL CONSTRUE THE ORDER

The Order in this case is a consent order, agreed to by the parties and signed off on by the Court. Consent orders are contracts, Lewis v. City of Santa Fe, 137 N.M. 152, 156, 108 P.3d 558, 562 (Ct. App. 2005), which are construed under traditional contract principles. Securities and Exch. Comm'n v. Levine, 881 F.2d 1165, 1179 (2nd Cir. 1989).

[5]Furthermore, if the Order resulted from carelessness, that is not grounds for Rule 60(b)(1) relief in the Tenth Circuit. See Pelican Production Corp. v. Marino, 893 F.2d 1143, 1146 (10th Cir. 1990).

Before construing the contract, the Court will address New Mexico's[6] version of the parol evidence rule. New Mexico law formerly followed the traditional "four-corners" standard, under which extrinsic evidence was not admissible to vary or modify clear and unambiguous written terms of a contract. See, e.g., C.R. Anthony Co. v. Loretto Mall Partners, 112 N.M. 504, 508, 817 P.2d 238, 242 (1991). However, in C.R. Anthony, the New Mexico Supreme Court abandoned the four-corners standard:

> We hold today that in determining whether a term or expression to which the parties have agreed is unclear, a court may hear evidence of the circumstances surrounding the making of the contract and of any relevant usage of trade, course of dealing, and course of performance. See, e.g., Eskimo Pie Corp. v. Whitelawn Dairies, 284 F.Supp. 987, 995 (S.D. N.Y. 1968). New Mexico case law to the contrary is hereby overruled.

Id. at 508-09, 817 P.2d at 242-243. (Footnotes omitted.)

---

[6]The parties did not argue that the federal common contract law or federal parol evidence rule should be applied because confirmation of a Chapter 13 Plan is a federal question. See, e.g. Mohr v. Metro East Mfg. Co., 711 F.2d 69, 71-72 (7th Cir. 1983) (discussing circumstances under which it is appropriate to use federal common law and to apply a "uniform national parol evidence rule."). However, the national parol evidence rule appears to be much more restrictive than the New Mexico version, see, e.g., United States v. Triple A Machine Shop, Inc., 857 F.2d 579, 585 (9th Cir. 1988)("Evidence of a collateral agreement may be admitted if (1) it does not contradict a clear and unambiguous provision of a written agreement, and (2) the parties did not intend the written agreement to be the complete and exclusive statement of their agreement."). (Citation omitted.) Since the result in this case would be the same no matter which rule were followed, the Court will apply the rule of contract interpretation that most favors Debtors.

The Supreme Court revisited the parol evidence rule in Mark V, Inc. v. Mellekas, 114 N.M. 778, 781, 845 P.2d 1232, 1235 (1993) when it commented on C.R. Anthony's implications:

> New Mexico law, then, allows the court to consider extrinsic evidence to make a preliminary finding on the question of ambiguity. The present law in this state concerning the interpretation of ambiguous or unclear language in written agreements may be summarized as follows: An ambiguity exists in an agreement when the parties' expressions of mutual assent lack clarity. C.R. Anthony, 112 N.M. at 509 n. 2, 817 P.2d at 243 n. 2. The question whether an agreement contains an ambiguity is a matter of law to be decided by the trial court. Levenson v. Mobley, 106 N.M. 399, 401, 744 P.2d 174, 176 (1987). The court may consider collateral evidence of the circumstances surrounding the execution of the agreement in determining whether the language of the agreement is unclear. C.R. Anthony, 112 N.M. at 508-09, 817 P.2d at 242-43. If the evidence presented is so plain that no reasonable person could hold any way but one, then the court may interpret the meaning as a matter of law. Id. at 510, 817 P.2d at 244. If the court determines that the contract is reasonably and fairly susceptible of different constructions, an ambiguity exists. Vickers v. North Am. Land Dev., Inc., 94 N.M. 65, 68, 607 P.2d 603, 606 (1980).

In 2005, the New Mexico Court of Appeals dealt with the parol evidence rule in City of Sunland Park v. Harris News, Inc., 138 N.M. 588, 593, 124 P.3d 566, 571 (Ct. App. 2005), where it discussed the framework for analyzing admissibility of parol evidence:

> {13} There are two levels to analyzing when parol evidence may be used. Initially, we assess whether an ambiguity exists in the contract language. The district court may hear extrinsic evidence to answer this preliminary question. Mem'l Med. Ctr., Inc. v. Tatsch Constr., Inc., 2000-NMSC-030, ¶ 16, 129 N.M. 677, 12 P.3d 431. If the district court determines that the contract is not ambiguous, it need not admit

> the extrinsic evidence to aid it in its interpretation. Id. On the other hand, if the district court decides that a term is ambiguous, it may admit extrinsic evidence to explain what the parties meant the term to mean. C.R. Anthony Co. v. Loretto Mall Partners, 112 N.M. 504, 508, 817 P.2d 238, 242 (1991). Since its conclusion of ambiguity or lack of ambiguity is also a ruling on whether extrinsic evidence may or may not be heard, the admission or exclusion of extrinsic evidence to explain an ambiguous term is reviewed de novo. See Mem'l Med. Ctr., Inc., 2000-NMSC-030, ¶ 18 ("Whether ambiguity exists is a question of law; therefore, this Court reviews the district court's decision to exclude extrinsic evidence de novo.").

Under this analysis, the Court should overrule the Trustee's standing objection to the Court's hearing any extrinsic evidence surrounding the Order. The Court should consider this evidence to answer the preliminary question of whether there is an ambiguity in the Order. The Court has therefore considered all the evidence introduced by the parties.

The Court finds that the Order is not ambiguous. It is clear and calls for "a period of forty-six months starting with the March 2004 payment." Mr. Faust's testimony that he agreed only to a 46 month plan and never authorized his attorney to agree to more indicates either a miscommunication between the Debtors and their attorney or a case of the attorney ineffectually drafting the Order or exceeding his authority in settling confirmation. It does not cast doubt on the meaning of the clear words in the Order. Rather, this testimony is an attempt to contradict the Order, not to aid in its interpretation. See Central Security and Alarm Co., Inc. v.

Mehler, 121 N.M. 840, 853, 918 P.2d 1340, 1353 (Ct. App. 1996) (court must decide on case-by-case basis if evidence is offered to aid in interpretation or merely to contradict a writing.). Because the Court does not find the Order ambiguous, it does not need to admit the extrinsic evidence to explain what the parties intended by the term "a period of forty-six months starting with the March 2004 payment."

However, even if the Court were to find the Order ambiguous as calling for either a 46 or a 55 (or 54) month plan, the result would be the same. One rule of contract interpretation is that documents are construed most strongly against the party who drafted them. Manuel Lujan Ins., Inc. v. Jordan, 100 N.M. 573, 576, 673 P.2d 1306, 1309 (1983)(Citing Restatement (Second) of Contracts § 206 (1981)). In this case, Debtors' attorney drafted the document. The Court should construe the Order against the Debtors and in favor of the Trustee.

There is one additional argument the Court should address. At closing, Debtors argued there was clearly no meeting of the minds, so no contract. Debtors claim, therefore, that the modification should be permitted. The Court disagrees.

First, even if there were no contract that does not inevitably lead to the Debtors' getting to decide that the plan was 46 months. The objecting parties should have equal input.

Second, the Court disagrees that there was no contract. Debtors' attorney was their agent[7] and he had the power to enter the settlement contract for them.

> Plaintiffs' attorney is an agent of the Plaintiffs. See Comstock v. Mitchell, 110 N.M. 131, 132, 793 P.2d 261, 262 (1990) (discussing client/attorney relationship as that of principal/agent). "The clients are principals, the attorney is an agent, and under the law of agency the principal is bound by his chosen agent's deeds." United States v. 7108 West Grand Ave., 15 F.3d 632, 634 (7th Cir.), cert. denied, 512 U.S. 1212, 114 S.Ct. 2691, 129 L.Ed.2d 822 (1994).

---

[7]See Disclosure of Compensation of Attorney for Debtor, doc 1 ("I have agreed to render legal services for all aspects of the bankruptcy case including: ... b) Preparation and filing of any ... plan which may be required; c) Representation of the debtor at the ... confirmation hearing..."). Furthermore, Debtors' attorney appeared at the confirmation hearing with the Debtors and carried out negotiations in the Debtors' presence. This would lead a reasonable person to believe that the attorney was in fact authorized to act on behalf of the Debtors as their agent. There was no testimony that the Trustee's attorney or Carol Fisher Dunn's attorney were informed of any limitations on Debtors' attorney's authority. Compare Comstock v. Mitchell, 110 N.M. 131, 132-33, 793 P.2d 261, 262-63 (1990):

> > It is always competent for a principal to limit the authority of his agent, and if such limitations have been brought to the attention of the party with whom the agent is dealing, the power to bind the principal is defined thereby ** *. Clearly, a limitation by the principal of the agent's authority, communicated to a third party, is effective to excuse the principal from liability to that third party for acts by the agent in excess of the limit prescribed; and a person dealing with an agent must use reasonable diligence and prudence to ascertain whether the agent is acting within the scope of his powers.
>
> 3 Am.Jur.2d Agency § 82 (1986) (emphasis added); see also Chevron Oil Co. v. Sutton, 85 N.M. 679, 515 P.2d 1283 (1973); Echols v. N.C. Ribble Co., 85 N.M. 240, 511 P.2d 566 (Ct. App.), cert. denied, 85 N.M. 229, 511 P.2d 555 (1973).

Marchman v. NCNB Texas Nat. Bank, 120 N.M. 74, 92, 898 P.2d 709, 727 (1995). If all elements of contract formation were met among the Trustee's attorney, Carol Fisher Dunn's attorney and the Debtors' attorney, there is a contract.

"The essential attributes of a contract include an offer, an acceptance, consideration and mutual assent." Talbot v. Roswell Hosp. Corp., 138 N.M. 189, 193, 118 P.3d 194, 198 (Ct. App.), cert. denied, 138 N.M. 328, 119 P.3d 1265 (2005)(Citation omitted.) The only element at issue in this case is mutual assent. "Mutual assent is based on objective evidence, not the private, undisclosed thoughts of the parties. In other words, what is operative is the objective manifestations of mutual assent by the parties, not their secret intentions." Pope v. The Gap, Inc., 125 N.M. 376, 380, 961 P.2d 1283, 1287 (Ct. App. 1998). (Citations omitted.) In this case the Trustee agreed to confirm a 55 month plan at $175 per month; Debtors' attorney drafted an Order confirming a 55 month plan at $175 per month; and Carol Fisher Dunn's attorney approved the Order. All objective manifestations of intent are mutual, and a contract was formed.

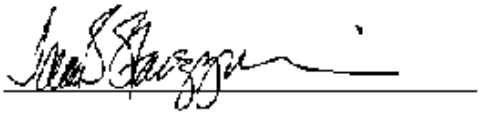
In conclusion, the Court construes the Order as providing for 46 monthly payments of $175 starting March, 2004 in addition to the previously made 8 payments of $125. The payment plan has not been completed.

B. TRUSTEE'S MOTION TO DISMISS

Trustee seeks dismissal of the case because the Debtors have stopped making payments and are delinquent. Debtors stipulated that the total paid in to date was $7,825 and that the last payment was June, 2007. Section 1307(c) provides, in part:

> [O]n request for a party in interest or the United States Trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—
> ...
> (6) material default by the debtor with respect to a term of a confirmed plan;...

There is a material default by virtue of the Debtors failure to make payments. The Trustee's Motion to Dismiss is well taken. Debtors will be given thirty days to resume making payments and if they fail to do so the Trustee will be instructed to submit an order dismissing the case.



Honorable James S. Starzynski
United States Bankruptcy Judge

date entered on docket: December 12, 2007

copies to:

Ronald E Holmes
112 Edith Blvd NE
Albuquerque, NM 87102-3524

Kelley L. Skehen
625 Silver Avenue SW
Suite 350
Albuquerque, NM 87102-3111