

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA

Filed On  
6/8/07

In re:  
JIMMY A. KAMPF,  
Debtor.

Case No. A07-00136-DMD  
Chapter 13

**MEMORANDUM RE PLAN CONFIRMATION ISSUES**

On May 3, 2007, the debtor filed an amended chapter 13 plan which proposes monthly payments to the trustee of \$1,287.00 for a period of 47 months starting on June 15, 2007. The debtor also commits his permanent fund dividends and tax returns to the trustee during the plan period. Finally, the debtor proposed making two additional payments of \$644 each to the trustee, the first on May 20, 2007, and the second on May 25, 2007. These two additional payments are to be disbursed by the trustee as preconfirmation adequate protection payments on secured claims Nos. 5 and 6.<sup>1</sup>

Under the plan, administrative expenses consisting of the trustee's commission and debtor's attorney's fees in the sum of \$976.00 will be paid in full. Mortgage arrears will be paid under the plan in 47 monthly payments of \$400.00. Modified secured claims also will be paid under the plan, as follows:

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<sup>1</sup> The adequate protection payments were calculated based on the assumption that the plan is confirmed this month. Claim No. 5 is to receive \$235.00 monthly and Claim No. 6 is to get \$160.00 monthly, for a period of 3 months.

Creditor/Collateral	Collateral Value	Number of Payments	Estimated Payment	Interest Rate
Alaska USA (2003 Ford F-150)	\$15,840.000	32	\$526.00	4.5%
Alaska USA (2004 Chevy Aveo)	\$10,920	32	\$375.00	6.9%
Alaska USA (furniture)	\$1,000.00 <sup>2</sup>	47	\$21.27	0%

The plan is not feasible and cannot be confirmed. First, although not plainly stated in the plan, the debtor’s counsel has indicated that “the lower adequate protection is designed to free up funds for earlier payment of administrative costs, including attorney fees, which are paid before post-confirmation car payments and mortgage arrears.”<sup>3</sup> He cites *In re DeSardi*<sup>4</sup> in support of his position. The *DeSardi* decision is not helpful, however. The court in that case held that adequate protection payments were senior in priority to attorney’s fees of debtor’s counsel, and were to be paid before any unpaid chapter 13 attorney’s fees.<sup>5</sup> There is no support for the contention that adequate protection payments can be lowered to accommodate earlier payment of fees to a debtor’s attorney.<sup>6</sup>

The plan is also not feasible because the amount the debtor proposes to pay to the trustee each month, \$1,287.00, is insufficient to make the payments contemplated under the plan. The sum total required to service the monthly plan payments for the debtor’s

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<sup>2</sup> The amended plan placed a value of \$500.00 on the furniture. At the confirmation hearing, the debtor represented that AK USA had stipulated to a value of \$1,000.00 for the furniture, with payments over the life of the plan, no interest to accrue.

<sup>3</sup> See Mem. in Supp. of Mot. to Value Security Interests Held by Alaska USA Fed. Credit Union, filed May 3, 2007 [Docket No. 20], at p. 1.

<sup>4</sup> 340 B.R. 790 (Bankr. S.D.Tx. 2006).

<sup>5</sup> *DeSardi*, 340 B.R. at 798-803.

<sup>6</sup> Here, the court will assume that amount of the adequate protection payments proposed under the amended plan are sufficient, because Alaska USA hasn’t objected to the plan on this basis.

two car loans, his furniture debt and the mortgage arrears is \$1,322.27.<sup>7</sup> The trustee's 10% commission would increase this sum to \$1,470.00.<sup>8</sup> The debtor's monthly payment is insufficient to make all the disbursements contemplated under the plan.

For the foregoing reasons, confirmation of the debtor's amended plan will be denied. An order will be entered consistent with this memorandum.

DATED: June 8, 2007

BY THE COURT

/s/ Donald MacDonald IV  
DONALD MacDONALD IV  
United States Bankruptcy Judge

Serve: C. Johansen, Esq.  
M. Coryell, Esq.  
R. Ullstrom, Esq.  
L. Compton, Trustee  
U. S. Trustee

06/08/07

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<sup>7</sup> This sum consists of the two car payments provided for under the plan (\$526.00 and \$375.00), the furniture payment of \$21.27, and the mortgage arrearage payment of \$400.00.

<sup>8</sup>  $\$1322.27 \div .90 = \$1,469.18$ .