

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA**

In re:

LEBARON DRYWALL, INC.,

Debtor.

Case No. A07-00070-DMD  
Chapter 11

**Filed On  
4/7/09**

**MEMORANDUM REGARDING PLAN AMENDMENT**

The debtor's third amended plan of reorganization was approved July 1, 2008. The plan provided for full payment of First National Bank Alaska's ("FNBA") \$9.6 million secured claim with a payment of \$1,165,195.00 due no later than December 31, 2008. On November 26, 2008, the debtor filed a motion to amend the plan to change the effective date from December 1, 2008 to March 1, 2009. Payment to FNBA was to be extended to March 1, 2009. FNBA opposed the amendment. It sought increased payment for the delay. On February 27, 2009, the debtor filed a supplemental motion to amend the plan seeking another delay from March 1, 2009 to April 15, 2009. FNBA opposed the supplemental motion. At a continued hearing held March 31, 2009, FNBA was to advise the court as to whether or not the sale occurred. On April 6, 2009, FNBA advised that the purchasers had failed to obtain financing and that the original sale had failed.

11 U.S.C. § 1127(b) and (c) provide:

(b) The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify

such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title.

(c) The proponent of a modification shall comply with section 1125 of this title with respect to the plan as modified.

Circumstances do not warrant modification of the plan as the sale that was to fund the plan has failed. The proposed modifications cannot result in confirmation of an amended plan under 11 U.S.C. § 1129 because the modifications are not feasible under 11 U.S.C. § 1129(a)(11). The debtor has not complied with 11 U.S.C. § 1125. The debtor's motion and supplemental motion to amend must be denied.

DATED: April 7, 2009.

BY THE COURT

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

Serve: J. Siemers, Esq.  
J. Beard, Esq.  
U. S. Trustee

04/07/09