

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MICHIGAN

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In re:

MICHAEL HEIKKILA and MARIANNE  
HEIKKILA, fka MARIANNE KLINE  
fka MARIANNE ULDRIS,

Case No. DK 17-00637  
Chapter 13  
Hon. Scott W. Dales

Debtors.

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MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES  
Chief United States Bankruptcy Judge

Chapter 13 debtors Michael Heikkila and Marianne Heikkila (the “Debtors”), through counsel, filed a Motion for Moratorium on Payments (ECF No. 45, the “Motion”), proposing to stop making plan payments for three months, notwithstanding the terms of their confirmed plan. The Debtors used the court’s “notice with opportunity to object” procedure, serving the Motion on their mailing matrix.

The notice period expired without objection, so Debtors’ counsel filed a certificate of no response and uploaded a proposed order into the court’s order signing program. Despite the absence of objection, the court set the matter for hearing, which took place by telephone on September 18, 2020. The Debtors and chapter 13 trustee Barbara P. Foley, Esq. (the “Trustee”) participated through counsel.

At the hearing, counsel for both parties agreed that the Debtors are seeking to delay the payments that would otherwise come due in the months of July, August, and September, but not forgive them. Counsel agreed that the Debtors have suffered significant financial and other hardships in the last few months. Debtors’ counsel reported without contradiction that her clients

have made partial payments even during the requested moratorium period and reiterated their intention to file a further plan amendment to address any resulting or remaining plan arrears sometime after payments resume in October.

Although the Debtors did not frame their Motion as a post-confirmation plan amendment, the court regards the nature of the relief requested as equivalent to an amendment. In effect, the Motion embodies a request by the Debtors to “extend or reduce the time for” the payments required under their confirmed plan, here extending the time for three months. *See* 11 U.S.C. § 1329(a)(2). Granting the Motion would presumably preclude the Trustee, creditors, and other interested parties from seeking dismissal based on a default under the plan. And, the Debtors have given more than 21 days’ notice of the Motion to all creditors, just as Fed. R. Bankr. P. 3015(h) requires. In substance though not in form, the Debtors are seeking to amend their plan, and are doing so without objection after giving appropriate notice.

Denying the Motion for this formal defect would elevate form over substance, contrary to the philosophy of our practice, the Bankruptcy Code, and the rules. *Bank of Marin v. England*, 385 U.S. 99, 103 (1966) (“There is an overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction.”); *cf. Kilbourne v. CitiMortgage, Inc. (In re Kilbourne)*, 507 B.R. 219, 224 (Bankr. S.D. Ohio 2014) (“to dismiss the Complaint on procedural grounds alone would improperly elevate form over substance”); Fed. R. Bankr. P. 9005 (harmless error rule). Accordingly, the court will treat the Motion as if it were proposing a plan amendment and will approve the “deemed amendment,” thereby permitting the Debtors to extend the time for making their payments as requested. This means only that the Debtors’ plan payments for July through September are postponed but not forgiven; other aspects of the plan remain unchanged.

Payments will resume on October 17, 2020, and the Debtors will promptly file a further amendment to address the plan payment arrears, if any.

From time to time, the court has permitted payment moratoria but typically in response to a stipulation between the debtor and the trustee. In such cases, the court has regarded the “stipulated motion” as, in effect, the trustee’s stipulation not to seek dismissal based only on the anticipated payment defaults. Today’s motion, in contrast, was served on the Debtors’ mailing matrix, making it possible for the court to treat the request as a plan amendment. In the future, however, instead of requesting a moratorium on payments, the court expects that any debtor who seeks relief from payment obligations under a confirmed plan will file a request to amend the plan under Rule 3015(h) and § 1329. Following this “best practice” will avoid delays and possible confusion and conform our procedures to those that Congress envisioned by enacting 11 U.S.C. 1329.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion is GRANTED as provided herein and the Debtors’ confirmed plan is DEEMED AMENDED as provided herein.

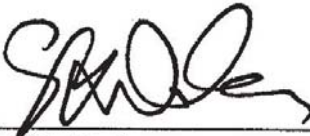
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Debtors, Allison Greenlee Korr, Esq., Barbara P. Foley, Esq., the United States Trustee (via first class U.S. Mail), and all parties listed on the Debtors’ mailing matrix.

END OF ORDER

**IT IS SO ORDERED.**

**Dated September 21, 2020**



  
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Scott W. Dales  
United States Bankruptcy Judge