

11 U.S.C. § 1322(d)
11 U.S.C. § 1329(c)
11 U.S.C. § 1326(a)

In re Richard Allen Dunn, Jr.

Case No. 389-36079-psh13

5/4/95

PSH

Unpublished

The IRS moved to dismiss the case on the grounds that the plan had exceeded the statutory limit set forth in § 1322(d) which states that a plan may not run for longer than five years. The debtor argued that the plan had not exceeded five years and therefore dismissal was not warranted.^a

The Code provides that payments in a case must be completed within five years. § 1322(d). In a case in which a modified plan has been filed the plan must be completed within five years of the date the first payment under the original confirmed plan is due. § 1329(c). The first payment in a case is generally due within 30 days of the date the plan is filed. § 1326(a).

In this case the plan was originally filed on December 28, 1989. However, a modified plan was filed on April 11, 1990, prior to confirmation. Thus the first payment under the modified plan, which was the original confirmed plan, would not have been due until May 11, 1990. Further, under the terms of the confirmed plan the debtor was not required to make monthly payments. Rather, he was required to pay to the trustee the dividend from his annual profit sharing checks which were distributed on or before December 1 of each year. The court concluded that under the facts of this case the first payment under the original confirmed plan was not due until December 1, 1990 and the plan had not yet exceeded five years. Therefore the court denied the IRS's motion to dismiss.

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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON
11 In re)
12) Case No. 389-36079-psh13
13 RICHARD ALLEN DUNN JR)
14 DEIDRE EVE DUNN)
15) OPINION
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Debtor(s)

16 This matter came before the court on the motion of the IRS to
17 dismiss this case. The IRS contends that dismissal is warranted
18 because the plan has exceeded the statutory limitation set forth in
19 the Bankruptcy Code.¹

20 Under the Code, a chapter 13 plan:

21 "may not provide for payments over a period that
22 is longer than three years, unless the court,
23 for cause, approves a longer period, but the

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26 ¹ This case was originally filed in December of 1989 and is,
therefore, governed by the provisions of the Code then in place.
However, the relevant code sections, §§ 1322(d), 1326((a)(1), and
1329((c) have not changed since that time.

1 court may not approve a period that is longer
2 than five years." §1322(d)²

3 In a case with a modified confirmed plan in place, the plan, as
4 modified,

5 "may not provide for payments over a period that
6 expires after three years after the time that
7 the first payment under the original **confirmed**
8 plan was due, unless the court, for cause,
9 approves a longer period, but the court may not
10 approve a period that expires after five years
11 after such time." §1329(c) emphasis added.

12 In order to determine whether this plan has exceeded this
13 statutory limitation one must determine when the first payment under
14 the debtor's original confirmed plan was due.

15 The Code provides that:

16 "Unless the court orders otherwise, the debtor
17 shall commence making the payments proposed by a
18 plan within 30 days after the plan is filed" §
19 1326(a)

20 The facts of this case are uncommon. The debtors' original
21 plan was filed on December 28, 1989. This plan provided for regular
22 monthly payments plus "60% of annual profit sharing checks received
23 from Northwest Aluminum beginning with the 1990 check."
24 Consequently, the first monthly payment under this plan was
25 presumably made on or before January 28, 1990. Had this plan been
26 confirmed and subsequently modified, the statutory time limit would
have begun to run on January 28, 1990. However, the original plan
was modified prior to confirmation and is therefore not the "original
confirmed plan".

² Formerly §1322(c)

1 The "original confirmed plan" in this case was the debtors
2 second pre-confirmation modified plan. That plan was filed on April
3 11, 1991. Under § 1326(a) the debtor generally would have been
4 required to make his first payment not later than May 12, 1991, which
5 would extend the statutory period until May 13, 1996. However, this
6 case differs from the norm in that this plan does not provide for
7 regular monthly payments. Rather, this plan, as confirmed, provides
8 that:

9 "For a minimum of three years from Dec. 29,
10 1989, Debtors shall pay to the trustee the net
11 profit sharing checks paid to them from
12 Northwest Aluminum Commpany (sic), less the sum
 of \$5,940.00."

13 This language is ambiguous. On the one hand, it appears to
14 require that payments begin on December 29, 1989. If this is
15 correct, then the five year statutory period expired on December 30,
16 1994. On the other hand, it is arguable that the plan requires that
17 the debtor make his first plan payment upon receipt of the first
18 profit sharing check received after December 29, 1989. The file
19 indicates that the debtor receives his profit sharing checks in
20 November of each year. Therefore, if the second interpretation is
21 adopted, the first payment under the confirmed plan was not due until
22 November of 1990, and the statutory limitation period of §1329(c)
23 does not expire until December 1, 1995.

24 The court sympathizes with the IRS's frustration with this case
25 and its desire to see the case dismissed. Nonetheless, in light of
26 the Bankruptcy Code's goal of giving debtors the opportunity of a

1 fresh start free of past debts, the court finds that it must resolve
2 the ambiguity in the plan language in favor of the debtor. The Court
3 therefore finds that the first payment under the "original confirmed
4 plan" was not due until November, 1990. The final payment under the
5 plan is not due until November, 1995.

6 The IRS's motion to dismiss is, therefore, denied. However,
7 unless this plan is completed by December 1, 1995, at that time the
8 case will be dismissed for failure to complete the plan within the
9 statutory time limits.
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12 POLLY S. HIGDON
13 Bankruptcy Judge
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