

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY**

In re:)	
)	
TRAVIS P. CONNELLY and)	CASE NO. 08-32156
CHRISTINE D. CONNELLY)	CHAPTER 13
Debtor(s))	
_____)	

MEMORANDUM

This case comes before the Court on the debtors' Amended Motion to Incur Credit Post Confirmation. In the motion, the debtors request authority to borrow \$137,425.00 to purchase a house. The debtors state that the mortgage payment on this property would be approximately \$50.00 less each month than their current rent payment. They further state that they "were able to place a down payment on the mortgage by borrowing money from the debtor's 401K."

The debtors filed this case on May 26, 2008, and on July 1, 2008, the Court confirmed the debtors' plan of reorganization as a 60 month plan with a 10% distribution to unsecured creditors. The confirmation order called for plan payments of \$138.00 each two weeks until June 26, 2010; then plan payments of \$300.00 each two weeks thereafter. On March 4, 2011, the debtors filed a motion to borrow in order to purchase a house. The debtors supported this motion with updated Schedules I & J, which reflected that the debtors could make the new mortgage payment in addition to their regular monthly expenses. The Chapter 13 Trustee filed a response to the motion to borrow. While the Trustee did not object to the debtors borrowing the funds to purchase a house, he did note that the debtors' Schedule I showed a 401k loan in the amount of \$305.24 that expired in 2010. Thus, the debtors should be able to increase their plan payment by \$250.00 to \$300.00 per month. In light of the Trustee's response, the Court set the motion to borrow for hearing to be held on April 6, 2011. Prior to that hearing, on April 1, 2011, the debtors filed their first amended motion to

borrow. The debtors again sought authority to borrow the \$137,425.00, and proposed to increase their plan payments to \$850.00, a \$250.00 increase from their current plan payments. The Trustee filed a response to this amended motion to borrow, recommending approval of the motion.

At the hearing on April 6, 2011, the Court informed debtors' counsel of the existence of a Local Form Motion to incur credit post confirmation. (Local Form G). Local Form G required certain information to be provided before a motion to borrow could be approved. Specifically, Local Form G required information as to any down payment, and closing costs, and required the debtors to attach a copy of any contract to the motion. As this information was not provided in either the original motion to borrow or the amended motion to borrow, the Court allowed debtors' counsel until April 15, 2011, to file an amended motion to borrow to include this information. On April 8, 2011, the debtors filed the motion to borrow currently before the Court.

Apparently, debtors' counsel did not listen to the Court when it directed the debtors to use Local Form G. In the current motion, the debtors provide no information as to the closing costs, including the amount, or the source of payment for the closing costs. The debtors failed to provide a copy of the contract. Finally, and perhaps most troubling, with respect to the down payment, the debtors state they borrowed against their 401K to place a down payment. The debtors borrowed against their 401K without any authority from this Court, and in violation of the provisions of the confirmation order. The debtors do not state how much they borrowed, or what their repayment obligation is on the 401K loan. In the absence of this information, the Court cannot ascertain whether the debtors can afford to borrow the money requested, cannot know if they can afford to pay the closing costs, if any, and cannot know if the debtors can afford to make the 401K loan payments used to make the down payment. As such, the Court will not authorize the debtors to obtain credit post confirmation. The Court will also order the debtors to file a separate motion to

modify the plan to increase their plan payments as indicated in the Amended Motion to Incur Credit Post Confirmation. For the reasons set forth above, an order will be entered this same date consistent with the findings and conclusions of this Memorandum.

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ORDER

Pursuant to the court's Memorandum entered this same date and incorporated herein by reference, and the court being otherwise sufficiently advised,

IT IS ORDERED that the debtors' Amended Motion to Incur Credit Post Confirmation is **DENIED.**

IT IS FURTHER ORDERED that the debtors file a motion to modify as explained above no later than April 29, 2011.