
In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)
) Chapter 13 Case
TERRY D. HARRIS)
SANDRA J. HARRIS) Number 96-20116
)
Debtors)

ORDER ON OBJECTION TO CONFIRMATION

Debtors' case was filed February 2, 1996, and came on for confirmation in Brunswick, Georgia, on July 10. A written objection to confirmation was filed on behalf of First Family Financial Services ("First Family") alleging that Debtors' plan is not proposed in good faith and does not comply with 11 U.S.C. Sections 1322 and 1325 in part because Debtors have proposed to pay their long-term indebtedness to First Family by payments through the Trustee's Office over a period of sixty (60) months. In other words, Debtors' plan provides for an acceleration of the due date of the obligation to First Family. While on the face of it this would appear attractive to a creditor, First Family objects.

As the contentions of counsel were presented at the hearing, and based on a supplementation of the record received from the Office of the Chapter 13 Trustee at the Court's request, Debtors' plan was proposed at a rate of \$420.00 per month for sixty (60) months. To pay the First Family claim by disbursements from the Chapter 13 Trustee and

pay at least a minimal dividend to unsecured creditors would require the Debtors to pay \$490.00 per month. By contrast, if Debtors funded the First Family claim by maintaining direct monthly payments of \$265.00 per month, the Debtors could fund all remaining secured and priority claims and pay at least a minimal dividend by tendering \$193.00 per month to the Trustee for a total payment of \$458.00 per month. The Debtors' budget, as filed in the case showed disposable income of \$420.00, not including any direct payments to First Family.

Nevertheless, Debtors agreed at confirmation to raise their payments to \$490.00 per month in order to pay the First Family claim by disbursements through the Trustee and to maintain a minimal dividend to unsecured creditors. First Family argues, first that the Debtors' plan is not feasible because the required monthly payments are higher than their disposable income; alternatively that if Debtors can afford \$490.00 per month to fund their plan as proposed, that plan is offered in bad faith because the same \$490.00, paying First Family direct at a rate of \$265.00 per month, would raise their payments to the Trustee from \$193.00 to \$225.00 per month. The additional \$32.00 per month payments would yield an additional \$1,800.00 which would be distributed to unsecured creditors, yielding a more substantial dividend.

The contention is that their proposal to accelerate the rate of repayment to First Family is not made in good faith because it harms the interest of unsecured creditors in contrast to what would be paid if Debtors simply maintained the regular payment schedule

to First Family. Debtors' contend that they have the right to modify the First Family claim to pay the debt out quicker, and at a lower rate of interest. Thus, they will save money in the long run, although they cannot dispute that the effect would be detrimental to unsecured creditors. Debtors' counsel argues, however, that Debtors' plan should be confirmed as proposed because it is in Debtors' best interest.

Chapter 13 does not contain a best interest of debtors provision. Nor, in the sections which govern confirmation, is there expressly a best interest of creditors test, although some of the provisions provide very specific creditor protections. *See* 11 U.S.C. §§ 1325(a)(4), 1325(a)(5) and 1325(b)(1)(B). Nevertheless, after consideration of the arguments of counsel I conclude that confirmation will be denied. There is no express provision in Section 1325 which prohibits a provision such as the one Debtors have proposed, because modification of this claim is permissible under 11 U.S.C. Section 1322(b)(2). Nevertheless, I find that the intent of that section, as well as section 1325(b)(5) dealing with long-term debt are intended as powerful tools that may be employed by a debtor who is financially distressed to cure certain defaults and achieve financial rehabilitation by stretching out the cash outlays necessary to meet financial obligations. The provisions are not intended as tools by which Debtors can redirect what would otherwise be a reasonable outlay of cash to satisfy unsecured claims to the accelerated repayment of a secured obligation. Accordingly, I find that the treatment of unsecured creditors is not proposed in good faith and the plan cannot be confirmed. However, Debtors should be given the opportunity to file a modification to propose a plan which would meet the good faith

requirement set forth in this Order. Notwithstanding the fact that they agreed to raise their payments to as much as \$490.00 per month, I do not find their plan to be deficient for failure to fund it at that level in light of the budget, which no one has proven to be inaccurate, and shows their disposable income to be \$420.00 per month.

Accordingly, confirmation is denied. Debtors are given fifteen (15) days from the date of this Order to file a modified plan and in the absence of any further action on their part the case will be dismissed.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ___ day of August, 1996.