IN THE UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF GEORGIA

WAYCROSS DIVISION

IN RE:	)	
	)	
MARY WATSON,	)	CHAPTER 13 CASE NO.
	)	93-50486
Debtor	)	

BEFORE

JAMES D. WALKER, JR.
UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For the Debtor: FRANKLIN D. HAYES
Post Office Box 2423
Douglas, Georgia 31533

For the Movant: JEFFREY D. GARMON
Post Office Box 1592
Waycross, Georgia 31502

The Chapter 13 Trustee: SYLVIA FORD BROWN
Post Office Box 10556
Savannah, Georgia 31412

MEMORANDUM OPINION

This matter comes before the Court on the Objection To Confirmation of Plan filed by Coats Federal Credit Union ("Coats"), a creditor in this case. For the reasons stated in this Memorandum Opinion, Coats' objection is overruled.

FINDINGS OF FACT

On October 24, 1987, Coats financed Mary Watson's ("Debtor") purchase of a 1987 Nissan Maxima for Seventeen Thousand One Hundred Seventy-Five Dollars ($17,175.00). Coats holds a security interest in the automobile.

Debtor filed a prior voluntary petition under Chapter 13 of the Bankruptcy Code on November 9, 1990. She voluntarily dismissed the petition on May 12, 1993. At the hearing on the Objection to Confirmation of Plan, Debtor presented testimony that she voluntarily dismissed her prior Chapter 13 case because she was laid off from work and had incurred medical bills from her daughter's injury in a car accident. This second Chapter 13 petition was filed on September 17, 1993.

In the prior case, Coats filed a proof of claim for Thirteen Thousand Seventy-Three Dollars and Eighty-One Cents ($13,073.81). Of that amount, Eleven Thousand Seventy-Three Dollars and Eighty-One Cents ($11,073.81) represented the balance due on the car loan, and Two Thousand Dollars ($2,000.00) was claimed for an unrelated, unsecured loan. In

that case, the Court valued the 1987 Nissan Maxima at Eight Thousand Two Hundred Dollars ($8,200.00).

While the prior case was pending, Debtor paid Three Thousand Twenty-Three Dollars and Thirty-Nine Cents ($3,023.39) toward principal, and One Thousand Two Hundred Thirty-One Dollars and Sixty-One Cents ($1,231.61) in interest on the Coats' claim, leaving a secured principal balance of Five Thousand One Hundred Seventy-Six Dollars and Sixty-One Cents ($5,176.61).

In this case, Coats has filed a proof of claim for Nine Thousand Two Hundred Seventy-Four Dollars and Seventy-Five Cents ($9,274.75). The car has been valued at Six Thousand Seven Hundred Dollars ($6,700.00). Coats contests this valuation, and objects to the confirmation of Debtor's plan of reorganization. Coats asks this Court to set the value of the car at Eight Thousand Two Hundred Dollars ($8,200.00).

CONCLUSIONS OF LAW

Coats claims that its collateral has depreciated between Debtor's first petition and second petition and that valuing the collateral at the depreciated level penalizes Coats for Debtor's failure to complete the first plan. Thus, Coats claims, Debtor's plan is not proposed in good faith, is not the best effort of Debtor, and does not adequately protect the interest of Coats.

Coats contends that Debtor's second bankruptcy petition is

filed in bad faith and therefore unconfirmable. There are two separate issues of bad faith: bad faith filing and bad faith in the proposed plan.

It is not bad faith per se to file successive bankruptcy petitions. Johnson v. Home State Bank, 111 S.Ct. 2150, 115 L.Ed. 2d 66 (1991). The court looks to the totality of the circumstances in determining if the case was filed in good faith. Id. In this case, Debtor offered a legitimate reason for dismissing her first case. She said that medical bills and a lost job prevented her from continuing payments under the first plan. Such bona fide changes in Debtor's circumstances will not support a finding of bad faith. Compare In re Jones, 105 B.R. 1007 (N.D. Ala. 1989)(serial filings solely to stop foreclosure); In re Smith, 105 B.R. 50 (Bankr. C.D. Cal. 1989)(serial filings solely to stop eviction). The Court declines to conclude that this case was filed in bad faith.

The Bankruptcy Code requires that a plan be proposed in good faith if it is to be confirmed. 11 U.S.C. § 1325(a)(3). Debtor has the burden of proof as to the good faith requirements for confirmation of the plan. In re Wolff, 22 B.R. 510 (Bankr. 9th Cir. 1982). The factors to be considered in making a determination as to a debtor's good faith are: 1) debtor's budget; 2) duration of the plan; 3) debtor's motivations in seeking Chapter 13 relief; 4) debtor's degree of effort; 5) debtor's future income; 6) special circumstances such as large

medical expenses; 7) the frequency of debtor's bankruptcy petitions; 8) debtor's past dealings with creditors; 9) the burden which the plan's administration places on the trustee. In re Kitchens, 702 F.2d 885, 888-889 (11th Cir. 1983).

Consideration of the factors set out in Kitchens leads this Court to the conclusion that Debtor's plan was proposed in good faith. The Court cannot find that Debtor has proposed her plan in bad faith where Coats is obtaining a higher payment in the second plan than it would have received if Debtor had completed her first plan. The balance of Coats' claim at the end of Debtor's first case was $5,176,61. By valuing the car at $6,700.00 in this case, Debtor is paying Coats $1,523.39 more through the second plan than if Debtor had remained in the first plan. Debtor's degree of effort and treatment of Coats' claim in her prior case are indications of her good faith. These facts preclude a finding that Debtor's plan was not proposed in good faith.[1]

Coats argues that because the value of the car has

[1] If Coats is better off in this case because of the serial filing, other creditors may be worse off. While the Court is bound to consider the objection raised by Coats to see if its claim is unfairly treated by the plan, the inquiry must focus on the entire case. If the advantage Coats enjoys in this case had come at the expense of unsecured creditors, the plan might not satisfy the requirements of 11 U.S.C. § 1322(b)(1) as to class discrimination. The dissatisfaction of objecting creditors cannot be remedied at the expense of passive creditors. However, there is no evidence that unsecured creditors are being treated any differently in this case as compared to the last case.

depreciated between Debtor's two petitions, its interest is not adequately protected by the proposed plan. Although adequate protection is not mentioned specifically in section 1325 of the Bankruptcy Code, this Court concludes that the presence or absence of adequate protection may be relevant to a determination of good faith under section 1325(a)(3) or the requirement for compliance with applicable sections of the Bankruptcy Code under section 1325(a)(1). Therefore, the Court will address Coats' adequate protection arguments.

In this case, the Court finds that Coats' interest is adequately protected. The car was valued at $8,200.00 in Debtor's first case, and $6,700.00 in Debtor's second case. Between Debtor's two bankruptcy petitions, the car appears to have depreciated $1,500.00. In the first case, Debtor paid $3,023.39 in principal and $1,231.61 in interest toward the Coats' claim. Therefore, based on Debtor's past payment history compared to the depreciation of Coats' collateral, the value of the collateral is not depreciating faster than the claim is being reduced. Debtor's payments of principal were twice the amount of the depreciation of the car's value. Since Coats receives interest payments on the unpaid principal, the Court concludes that Coats is adequately protected.[2]

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[2] Coats offered no evidence as to the rate of depreciation which might occur in the future. The depreciation tendency of certain types of collateral may be easily discerned such as might be the case with real estate or tomatoes. Such tendencies in other types of collateral would be problematical or

The Court finds that this case, Debtor's second bankruptcy petition, was not filed in bad faith, and that Debtor's plan is proposed in good faith in compliance with 11 U.S.C. §1325(a)(3). Moreover, Coats' interest in the collateral is adequately protected.

DATED this 21st day of March, 1994.

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JAMES D. WALKER, JR.
United States Bankruptcy Judge

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speculative, such as securities or precious metals. Cars will generally decline in value, but so will the balance on the claim if the Debtor funds the reorganization plan. The conclusions stated here as to adequate protection are based on the available evidence.

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that a copy of the attached and foregoing was mailed to the following:

FRANKLIN D. HAYES
Post Office Box 2423
Douglas, Georgia 31533

JEFFREY D. GARMON
Post Office Box 1592
Waycross, Georgia 31502

SYLVIA FORD BROWN
Post Office Box 10556
Savannah, Georgia 31412

This 21st day of March, 1994.

_____
Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

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ORDER

In accordance with the memorandum opinion entered this date, it is hereby

ORDERED that the Objection To Confirmation of Plan filed by Coats Federal Credit Union is hereby OVERRULED.

SO ORDERED this 21st day of March, 1994.

_____
JAMES D. WALKER, JR.
United States Bankruptcy Judge

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