In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

KEITH M. RAML — Bankruptcy No. X89-01782S
Debtor(s). — Chapter 13

FINDINGS OF FACT CONCLUSIONS OF LAW & ORDER RE: OBJECTION TO CONFIRMATION

The matter before the court is the confirmation of the debtor's proposed chapter 13 plan filed on November 22, 1989 and orally amended at the confirmation hearing on March 28, 1990. The amended chapter 13 plan was filed on April 2, 1990. The chapter 13 trustee and the South Dakota Education Assistance Corporation (EAC) each filed objections to the debtor's original plan. The court now issues the following findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

STIPULATED FINDINGS OF FACT

The following findings of fact are adopted from the facts stipulated by the parties and read into the record during the confirmation hearing:

> South Dakota Education Assistance Corporation is a nonprofit guaranteed student loan agency designated by the State of South Dakota and the U. S. Department of Education. South Dakota Education Assistance Corporation is presently servicing the student loans of Kenneth [sic] Raml, the debtor in this chapter 13 proceeding. Mr. Raml's debt to South Dakota Education Assistance Corporation arises out of the following guaranteed student loans obtained by Mr. Raml for the purpose of attending college at Mount Marty College in Yankton, South Dakota and the University of South Dakota in Vermillion, South Dakota. Those loans were incurred on the following days and in the following amounts:
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> | | |
> |---|---|
> | August 5, 1980 | $ 2,500.00 |
> | June 24, 1982 | 2,094.00 |
> | June 10, 1983 | 405.00 |
> | August 19, 1983 | 2,095.00 |
> | August 13, 1984 | 2,500.00 |
>
> Mr. Raml made two voluntary loan payments to the South Dakota Education Assistance Corporation, one in June, 1986 in the amount of $35.00 and one in August, 1986 in the amount of $35.00. There have been two tax offsets, the proceeds of which have been

applied to that loan, one in 1988 in the amount of $231.28 and one in 1989 in the amount of $520.37.

ADDITIONAL FINDINGS OF FACT

In addition to the stipulated facts, the court finds the following facts. The debtor, Keith M. Raml (RAML), filed his chapter 13 bankruptcy petition and proposed plan on November 22, 1989. Raml's debts, all of which are unsecured, total approximately $14,700.00. Of that total, $11,502.25 is owed to EAC as a result of student loans procured by Raml between 1980 and 1984.

Raml attended college for three and one-half years before leaving school in November, 1984. At that time, he was working toward a degree in management of therapeutic and recreational facilities for the elderly. He quit school because partial deafness made him unable to manage his classes. An ear infection and high blood pressure left him deaf in one ear and with only partial hearing in the other ear. After leaving school, he continued to work as a production laborer at a local meat processing plant where he had been employed while still a student.

Raml's student loans matured between December, 1985 and January, 1986. At this time he stated that he was "barely making ends meet." He contacted EAC seeking a one-year extension, but no extension was granted. In the summer of 1986, EAC contacted Raml seeking loan payments. Raml's financial situation had improved by this time and he made two payments to EAC totaling $70.00. Shortly thereafter, Raml became unable to make payments due to a string of misfortunes including illness, a work-related injury, and a lockout followed by a strike at the meat processing plant. Raml did not contact EAC regarding these difficulties. Eventually, EAC informed Raml that it intended to garnish his tax refunds. Raml did not contest the garnishments, and his 1987 and 1988 tax refunds were taken by EAC.

After Raml returned to work, he contacted EAC, who had by then turned his case over to a collection agency. The collection agency refused to refinance his loan and informed him that if he did not begin making required payments, it would garnish his wages and charge him its attorney fees and court costs. As a result, Raml filed for chapter 13 relief.

Raml is 33 years old, single, and has no dependents. His hearing has not improved, and he believes that there is no opportunity to learn another trade due to his ailment. In addition, Raml suffers from bronchitis, a sinus condition, ulcers, and a spastic colon. He has two herniated disks in his neck, the result of a work-related injury. He intends to have surgery performed on his neck in the spring of 1990; the surgery and convalescence is covered by worker's compensation insurance, and his doctor believes he will be able to return to work in three to four months.

Raml earns approximately $18,000.00 annually. His work is seasonal; during the winter months he generally works between 32 and 36 hours a week, whereas during the peak summer months he works between 48 and 50 hours weekly. He believes his income and expenses should remain constant during the next three years.

DISCUSSION

The case trustee's objections to the plan have been resolved by oral amendments made at the confirmation hearing. These amendments specify that the debtor intends to pay $100.00 per month to the trustee for the 36-month duration of the plan. In addition, if Raml's disposable income for any of

these three years exceeds $1,200.00, he will pay the excess to the case trustee as required by 11 U.S.C. § 1325(b)(1)(B). The plan as amended will provide a 25% dividend on allowed unsecured claims.[1]

1 Raml's original plan provided for a 17% dividend on allowed unsecured claims and did not provide for the payment of all of his disposable income into the plan. Because the oral amendments satisfied the objections of the case trustee and improved the position of all other unsecured creditors, the confirmation hearing was permitted to continue based on the oral amendments. The oral amendment was embodied in a written amendment filed April 2, 1990. Notice of it was given to all creditors and parties-in-interest, and no further objections have been filed.

EAC objects to the plan on the ground that it fails to meet the good faith requirement of 11 U.S.C. § 1325(a)(3). EAC argues that because Raml's student loan is almost 80% of his debts, and because he has made only two voluntary payments to the EAC in more than three years, the plan is merely a vehicle to avoid Raml's student loan payments and is therefore not proposed in good faith. That Raml proposes only a three-year program to pay 25% of his student loans, is advanced as further indication of a lack of good faith by Raml.

Ordinarily, student loans are not dischargeable in bankruptcy. 11 U.S.C. § 523(a)(8). However, student loans are dischargeable by a chapter 13 discharge. 11 U.S. C. § 1328(a). See Education Assistance Corp. v. Zellner, 827 F.2d 1222, 1225 (8th Cir. 1987) (the fact that a student loan is non-dischargeable under chapter 7 does not make it non-dischargeable under chapter 13); U.S. v. Estus (In re Estus), 695 F.2d 311, 314-5 (8th Cir. 1982).

That a debtor attempts to discharge a debt that would not be dischargeable under chapter 7 is not itself sufficient to warrant a finding that the plan was not proposed in good faith because the debtor cannot be faulted for making use of available statutory provisions. State of Ohio, Student Loan Commission v. Doersam (In re Doersam), 849 F.2d 237, 239 (6th Cir. 1988); In re Makarchuk, 76 B.R. 919, 923 (Bankr. N.D. N.Y. 1987). Rather, the court should judge each case on its own fact after considering all the circumstances of the case. In re Estus, 695 F.2d at 316. The amount of the proposed repayment to unsecured creditors is one of many factors to consider in determining whether the plan meets the statutory good faith requirement. Id. at 317. "Other factors for exceptional circumstances might exist which would preclude a finding of bad faith even though only a nominal repayment to unsecured creditors is proposed." Id. The Estus court went on to list a number of factors that may be considered by a court in making its determination of good faith. Id.

Subsequent to the Eight Circuit Court's decision in In re Estus, 11 U.S.C. § 1325 was amended to include a provision requiring that in the event the trustee or the holder of an allowed unsecured claim objects to the confirmation of the chapter 13 plan, the court may not approve the plan unless "all of the debtor's disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan." 11 U.S.C. § 1325(b)(1)(B). The Eight Circuit has since held that this new "ability to pay" criteria "subsumes most of the Estus factors and allows the court to confirm a plan in which the debtor uses all of his disposable income for three years to make payments to his creditors." Education Assistance Corp. v. Zellner, 827 F.2d at 1227.

The court finds that Raml's plan provides for the commitment of all of his disposable income over the three-year term of his plan. In addition, the court finds Raml's estimated expenses are reasonable. Although EAC disputes some of the items in Raml's budget, it has failed to demonstrate how specific expenses may be reduced in order to increase his disposable income. Consequently, by satisfying the ability to pay requirement of 1325(b)(1)(B), Raml has satisfied most of the good faith factors set out in Estus and Zellner.

However, committing all disposable income to a chapter 13 plan alone is insufficient to guarantee confirmation; courts must also look at Estus factors not addressed by the 1984 amendments to determine whether a debtor has proposed his chapter 13 plan in good faith. Handeen v. LeMaire (In re LeMaire), 898 F.2d 1346, 1349 (8th Cir. 1990). As the Eight Circuit stated in In re Estus, "the basic inquiry should be whether or not under the circumstances of the case there has been an abuse of the provisions, purpose, or spirit of [the Chapter] in the proposal of the plan." In re Estus, 695 F.2d at 316 (quoting Deans v. O'Donnell, 692 P.2d 968, 972 (4th Cir. 1982)).

EAC contends that because student loans that could not have been discharged under chapter 7 compose 79% of Raml's entire debt, and because Raml's plan provides for only a 25% dividend to all unsecured creditors, that this plan is proposed solely to discharge Raml's student loan debts and therefore is not proposed in good faith.

Chapter 13 should not be used solely to discharge otherwise non-dischargeable debts. Such use is an abuse of the spirit and intent of chapter 13. However, mitigating factors in this case indicate that Raml's plan has been proposed in good faith. Raml's poor health forced his departure from college before the completion of his degree. Raml's current job was not procured as a result of his college education, and there is no indication that his income has been enhanced by his college experience. Raml's assets total less than $5,000.00, the most significant item of which is a 1984 Dodge worth $3,700.00. Raml's total savings is less than $25.00, and there is no indication that he will be able to substantially improve his earning capability in the future. In addition, expenses arising from Raml's continued health problems, not all of which are covered by worker's compensation benefits, constitute a special circumstance which helps to explain Raml's difficult financial situation. See In re Estus, 695 F.2d at 317 (the existence of special circumstances such as inordinate medical expenses is a factor courts may find meaningful in making a determination of good faith).

The fact that Raml's plan provides for a dividend of only 25% on otherwise non-dischargeable student loan debts is not in and of itself evidence of bad faith. In In re Estus, the Eight Circuit noted with approval a decision by the Fourth Circuit, Deans v. O'Donnell, 692 F.2d 968 (4th Cir. 1982), which refused to require a per se rule of substantial payment as an element of good faith. In re Estus, 695 F.2d at 316. Rather, substantial payment is only one factor to be considered in the good faith analysis. In re LeMaire, 898 F.2d at 1349. Furthermore, the 1984 amendments to the Bankruptcy Code appear to resolve the question of whether any particular amount must be paid to unsecured creditors. "Since Congress has now dealt with the issue quite specifically in the ability-to-pay provisions [11 U.S.C. § 1325(b)(1)(B)], there is no longer any reason for the amount of a debtor's payments to be considered even a part of the good faith standard." In re Adamu, 82 B.R. 128, 130 (Bankr. D. Ore. 1988) (quoting 5 Collier on Bankruptcy (15th Ed.) 1325.04[3]). Bankruptcy courts have confirmed chapter 13 plans paying as little as 1% of unsecured student loan debts as long as the plan itself was filed in good faith. See In re Winthurst, 97 B.R. 457 (Bankr. C.D. Ill. 1989) (36-month plan paying 1% of student loan debts confirmed); In re Falquist, 85 B.R. 566, 567-8 (Bankr. D. Ore. 1988) (36-month plan paying 10% of student loan debts confirmed); In re Adamu, 82 B.R. at 130-1 (36-month plan paying 6% of student loan debts confirmed); In re Reese, 38 B.R. 681, 681 (Bankr. N.D. Ga. 1984) (plan paying 1% of student loan debt confirmed).

EAC also argues that where the primary purpose of a chapter 13 plan is to discharge student loan debts, confirmation has generally been denied. See In re Makarchuk, 76 B.R. at 923. Because Raml admits that he filed his chapter 13 bankruptcy primarily in order to discharge his student loans, the EAC contends that his plan should therefore be denied.

Although intent is a factor in determining good faith, the court should look to the totality of the debtor's conduct, both before and after the plan is submitted, when evaluating whether the debtor has acted in good faith. In re LeMaire, 898 F.2d at 1349; In re Doersam, 849 F.2d at 239. Raml readily admits that the pressure of his student loan debts was the primary motivation behind his filing for chapter 13 relief. However, his bankruptcy was not motivated by bad faith. Rather, as Raml's medical and other expenses mounted, he became unable to pay these expenses and still make full payments on his student loan debts. In the face of increased collection efforts, Raml, perceiving no other effective alternatives, filed bankruptcy. When viewed in this light, the court does not believe Raml's admission that he filed for relief under chapter 13 in order to discharge his student loans is tantamount to bad faith.

In the event that Raml's chapter 13 plan is confirmed, EAC argues that payments under the plan should be extended to 60 months, as is permitted by § 1322(c), as proof of Raml's good faith. Some courts have found chapter 13 plans not extending beyond three years to be an indication of the debtor's lack of good faith. In re Todd, 65 B.R. 249, 256 (Bankr. N.D. Ill. 1986); In re Williams, 42 B.R. 474, 476 (Bankr. E.D. Ark. 1984). However, S 1322(c) merely precludes chapter 13 plans providing for payment periods long than three years absent court approval. Section 1322(c) was not inserted into the Bankruptcy Code to permit creditors to coerce debtors into making payments beyond three years. Rather, it was inserted to protect the debtor from the type of lengthy and extended chapter 13 plans that plagued debtors under the old Bankruptcy Act. In re Winthurst, 97 B.R. at 459.

> The usual reason for extension of plan payments beyond three years is the debtor's inability to cure a default under section 1322(b)(5) or to pay priority or allowed secured claims in a shorter time. Extensions up to the five year maximum should be allowed without difficulty in such circumstances, since without them the debtor may be unable to obtain effective relief under chapter 13.

In re Winthurst, 97 B.R. at 459 (quoting 5 Collier on Bankruptcy (15th Ed. 1988) ¶ 1322.15).

This court does not agree with the proposition that a debtor must extend his chapter 13 plan beyond three years to demonstrate his good faith. No such requirement can be inferred from the Code. Indeed, § 1322(c) clearly contemplates that many chapter 13 plans will not extend beyond 36 months. Debtors may voluntarily choose to extend their plans beyond three years; however, it is generally improper for courts to require such an extension. Washington Student Loan Guarantee Association v. Porter (In re Porter), 102 B.R. 773, 777-8 (9th Cir. BAP 1989).

ORDER

IT IS THEREFORE ORDERED that Keith Raml's amended chapter 13 plan shall be confirmed by separate order. The case trustee shall submit a proposed order of confirmation. The order shall provide for employer payment to the trustee under § 1325(c).

SO ORDERED THIS 21st DAY OF MAY, 1990.

William L. Edmonds
Chief Bankruptcy Judge