

In the United States Bankruptcy Court

for the Northern District of Iowa

KEN W. LEFLER
LU ANNE LEFLER
Debtor(s).

Bankruptcy No. 96-12601KC

Chapter 13

ORDER RE: FINAL CONFIRMATION HEARING

This matter came before the undersigned on July 15, 1997 for final hearing on confirmation of Debtors' First Amended Chapter 13 Plan. The following were present at the hearing: Thomas McCuskey for Debtors, Martin McLaughlin for the IRS, and Carol Dunbar as Chapter 13 Trustee. After the presentation of evidence and argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

FINDINGS OF FACT

Debtor Ken Lefler previously ran a bike shop in Iowa City. He is now an employee of the bike shop which operates under the name of Ken Bing's Cycling & Fitness. Debtor Lu Anne Lefler continues to work as indicated on Schedule I at the Paper Warehouse as well as at the bike shop. Both Debtors anticipate reasonable raises in their salaries each year.

Debtors' First Amended Plan calls for monthly payments of \$600 during the first year, \$750 during the second year, \$850 during the third year and \$965 during the fourth and fifth years. The Plan also anticipates a balloon payment of \$26,782.64 to the IRS during the last 120 days of the Plan. Debtors have remained current in their Plan payments to date.

Approximately \$18,000 in equity currently exists in Debtors' homestead. Debtors are purchasing their home on contract and are current in making their payments. The Plan calls for Debtors to continue monthly payments on this real estate contract outside the Plan. They contemplate refinancing their home at the end of the Plan to pay the balloon payment to the IRS.

Trustee filed an objection to confirmation. She states that Schedules I and J do not show Debtors will be able to pay the increased payments in years two through five.

The IRS asserts the Plan is not feasible because Debtors have not shown their ability to make all the payments under the Plan. The IRS objects that Debtors' proposal to pay its claim with a balloon payment presents a potential for abuse. The Court's calculations indicate that the IRS's claim will be paid in full through the monthly plan payments plus the proposed balloon payment. The IRS asserts the right to receive 9 percent interest on its claim, rather than 8.5 percent proposed by Debtors. Debtors have conceded that 9 percent is the correct interest rate for the IRS.

CONCLUSIONS OF LAW

The Court recently addressed the confirmability of a Chapter 13 plan which similarly provided for graduated monthly payments and a final lump sum payment, in In re Engelby, No. 96-10008-C (Bankr. N.D. Iowa July 15, 1997), and applied the following principles. To be confirmed, a Chapter 13 plan must meet the requirements of § 1325(a). 11 U.S.C. § 1329(b)(1). Under § 1325(a)(6), debtors have the burden to prove that their plan is feasible, i.e. that they "will be able to make all payments under the plan and to comply with the plan." Debtors must have a sufficiently stable income to regularly make payments under the plan. 5 William L. Norton, Jr., Norton Bankruptcy Law and Practice 2d § 115:4 (1994). In addition, if debtors are unable to meet living expenses, the plan fails the feasibility test of § 1325(a)(6) and cannot be confirmed. In re Wilson, 117 B.R. 714, 714 (Bankr. M.D. Fla. 1990).

Several factors affect the feasibility of a plan, including: the future earning capacity of the debtor, the future disposable income of the debtor, whether the plan provides for payment of interest to secured creditors, whether the plan provides significant payment to unsecured creditors, the debtor's perseverance and motivation to execute the plan successfully, the type of employment the debtor is engaged in or may be engaged in, whether the plan includes a cushion for unexpected expenses, and whether the plan considers the possibility of inflation. See In re Olson, No. L90-00423W, slip op. at 7 (Bankr. N.D. Iowa Oct. 14, 1994) (citations omitted).

The Bankruptcy Code does not explicitly prohibit Chapter 13 plans which call for lump sum payments. In re Stone, 145 B.R. 38, 39 (Bankr. C.D. Ill. 1992). Courts tend to scrutinize such plans, however, in terms of feasibility of the plans. In re Hogue, 78 B.R. 867, 870 (Bankr. S.D. Ohio 1987). In In re Craig, 112 B.R. 224, 225 (Bankr. N.D. Ohio 1990), the debtor proposed to fund the plan with increasing payment amounts over five years plus a lump sum proposed to be collected after confirmation from a promissory note admitted to be uncollectible. The court found that the graduated payment schedule culminating in the lump sum payment did not meet the confirmation requirements of good faith and feasibility. Id. at 226. In Hogue, the debtors proposed to consummate their plans with sales of their residences at the end of their three to five year plans. 78 B.R. at 869. The court stated that it could not conclude that the plans satisfied the feasibility requirement because of the myriad of contingencies which could preclude the proposed sales or refinancing, particularly where they were postponed for three to five years. Id. at 874. It noted that the lump sum or balloon payment provision appeared to constitute little more than a delaying tactic. Id. n.11.

After Mr. Lefler's bicycle shop failed, he became employed by the new owner of the business. He now has some history of steady income through that employment. Mrs. Lefler's income also appears to be steady. They have included increases of \$100 to \$150 per month in their plan payments each year. This appears to be reasonable in light of the anticipated increases in their salaries.

Debtors' Exhibit 1 shows their monthly income and expenses. This indicates they are maintaining a fairly tight though workable budget. The record is undisputed that their home has the value they attribute to it and will hold its value. This helps substantiate the feasibility of the proposed balloon payment.

There are significant differences between Debtors' plan and the plan which failed to meet confirmation requirements in Engelby. The debtors in Engelby did not have a stable history of income, they proposed increases of \$300 per month in their plan payments in later years, and they had been unable to keep current in the initial plan payments during the pendency of their Chapter 13 case. The Court finds the Leflers' projections of income to fund their plan more credible and better substantiated in this record. Based on the foregoing, the Court concludes that Debtors have proved

that they "will be able to make all payments under the plan and to comply with the plan." 11 U.S.C. § 1325(a)(6).

WHEREFORE, Debtors' First Amended Bankruptcy Plan is CONFIRMED.

FURTHER, Objections filed by the IRS and Trustee are OVERRULED, except to the extent that Debtors will increase the interest rate applicable to the IRS claim to 9 percent.

FURTHER, Trustee shall submit a proposed order of confirmation conforming with this ruling.

SO ORDERED this 28th day of July, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge