

In the United States Bankruptcy Court

for the Northern District of Iowa

DEANNA R. PLOESSL
Debtor(s).

Bankruptcy No. 00-01673-D
Chapter 13

ORDER RE OBJECTIONS TO AMENDED PLAN

This matter came before the undersigned on November 15, 2000 on Creditors' Objections to Confirmation of Chapter 13 Plan. Burton H. Fagan appeared as counsel for Creditor USA Group. Martin H. McLaughlin appeared as counsel for Creditor United States Department of Education. Carol F. Dunbar appeared as the Chapter 13 Trustee. Debtor Deanna R. Ploessl appeared with attorney Brian W. Peters. Objections were argued after which the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

STATEMENT OF THE CASE

Debtor Deanna R. Ploessl filed for bankruptcy protection under Chapter 13 on July 6, 2000. The initial confirmation hearing was held on August 1, 2000. Due to objections to the plan, Debtor was required to file an amended plan which was filed on September 7, 2000. The United States Department of Education, USA Group, and the Chapter 13 Trustee have all filed objections to the amended plan. The objections are to the proposed discharge of interest accruing postpetition on nondischargeable student loans. Trustee also objects that Debtor failed to include both a liquidation analysis and a cash flow statement.

Debtor's Schedule F lists a total of \$31,993.17 in unsecured claims. Debtor lists approximately \$27,000 for student loans and approximately \$5,000 in credit card debt. The plan proposes to pay \$600 per month for 60 months. Debtor estimates that the plan will pay all unsecured claims in full. Debtor is delinquent on plan payments by \$750 as of November 1. Another \$600 plan payment is due on December 1.

The plan states that "[n]o creditor, including the student loan creditor, shall receive any interest, finance charges, delinquency charges, or other amounts other than their lawful balance as of the date of filing. . . . payment of 100% of the proofs of claim submitted will discharge all unsecured creditors." Student loan creditors object to this language because it discharges the interest which will accrue on their nondischargeable claims postpetition through the life of the plan.

DISCUSSION

As holders of nondischargeable claims, Debtor's student loan creditors' right to receive interest on their debts postpetition is also excepted from discharge. *In re Leeper*, 49 F.3d 98, 101-02 (3rd Cir. 1995). The fact that Debtor intends to pay off the prepetition debt in full does not discharge her

obligation to pay interest accruing over the life of the plan. Educational Credit Management Corp. v. Kielisch, 252 B.R. 338, 341 (E.D. Va. 2000). Because the plan proposes to discharge the interest on a nondischargeable debt, it is not confirmable. In re Mammel, 221 B.R. 238, 240-41 (Bankr. N.D. Iowa 1998).

The Supreme Court has ruled that a debtor may not discharge the interest accrued postpetition on a nondischargeable debt. Bruning v. United States, 376 U.S. 358, 363 (1964). The rationale behind this decision is that when Congress makes a debt nondischargeable, it intends that personal liability for the debt will survive the bankruptcy. Id. at 361. The interest on a debt is considered an integral part of that debt. Id. at 360. If the debt is nondischargeable, then as an integral part of the debt, the interest on the debt is nondischargeable. Id. at 362.

Despite the fact that Bruning antedates the Bankruptcy Code, it is still applicable. In re Fulmer, 962 F.2d 1463, 1468 (10th Cir. 1992) (applying Bruning to a nondischargeable tax penalty under the Bankruptcy Code); In re Burns, 887 F.2d 1541, 1543 (11th Cir. 1989) (same). Bruning has been expanded to apply to other forms of nondischargeable debt under the Bankruptcy Code. In re Hanna, 872 F.2d 829, 830-31 (8th Cir. 1989) (reading §§ 502 and 523 to demonstrate congressional intent to codify the result achieved in Bruning); In re Brace, 131 B.R. 612, 613-14 (Bankr. W.D. Mich. 1991) (applying Bruning to debt arising out of fraudulent misrepresentation). Bruning also applies to Student loan debts. Leeper, 49 F.3d at 101-02; In re Pardee, 218 B.R. 916, 921 (9th Cir. B.A.P. 1998). Thus, the student loan creditors are entitled to collect postpetition interest on those debts from Debtor.

Debtor argues that full payment of the prepetition debt will satisfy the obligation and therefore Creditors may not demand payment of postpetition interest. This argument has been expressly rejected in other student loan cases. Kielisch, 252 B.R. at 341; Pardee, 218 B.R. at 922. "[F]ull payment of principal and prepetition interest under the plan does not extinguish the debtor's liability for postpetition interest." Kielisch, 252 B.R. at 341. Debtor's liability for the postpetition interest is not extinguished by the completion of a plan that provides for complete repayment of the prepetition debt.

Debtor may not pay the accruing interest under the terms of the plan because interest payments are disallowed under § 502. Leeper, 49 F.3d at 102-03; Kielisch, 252 B.R. at 341. The student loan creditors can not demand payment on the postpetition interest during the plan because the interest is disallowed. In re Bell, 236 B.R. 426, 429 (N.D. Ala. 1999). However, this does not limit the creditors' right to collect the deficiency created by the postpetition interest after completion of the plan. Id. at 429. Debtor may make arrangements to pay the postpetition interest on the student loans outside of the bankruptcy plan, but is not obligated to pay the postpetition interest until the completion of the plan. Id.

The proposed plan can not be confirmed because it is inconsistent with the provisions of the Code. 11 U.S.C. § 1325(a)(1). The plan proposes to discharge the interest that will accrue on the student loan debt prior to the completion of the plan. Section 1328 provides for a discharge only after the completion of the plan. 11 U.S.C. § 1328(a). This section also excludes student loan debts from discharge. 11 U.S.C. §§ 1328(a)(2), 523(a)(8). This Court has held that a plan provision attempting to discharge student loan debt made a plan unconfirmable. Mammel, 221 B.R. at 240-41.

CONCLUSION

Creditors holding nondischargeable claims are entitled to collect the interest that will accrue on those claims postpetition over the life of the plan. The postpetition interest must be paid outside of the plan, and a plan provision that purports to discharge this interest makes the plan unconfirmable. Debtor's plan contains a provision discharging postpetition interest on a nondischargeable debt. Therefore, Debtor's plan cannot be confirmed.

WHEREFORE, the objections to Debtor's plan are SUSTAINED.

FURTHER, Debtor is granted 14 days from the date of this order within which to amend the plan to satisfy the objections. If the plan is not timely amended, the case will be dismissed without further notice or hearing.

SO ORDERED this 4th day of December, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge