

In the United States Bankruptcy Court

for the Northern District of Iowa

DAVID ALLAN WEBER
REVETTE ANN WEBER
Debtor(s).

Bankruptcy No. 00-01613-C
Chapter 13

JOHN ROBERT LUND
Debtor(s).

Bankruptcy No. 00-01683-C
Chapter 13

ORDER RE CHAPTER 13 PLANS

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

DAVID ALLAN WEBER
REVETTE ANN WEBER
Debtor(s).

Bankruptcy No. 00-01613-C
Chapter 13

JOHN ROBERT LUND
Debtor(s).

Bankruptcy No. 00-01683-C
Chapter 13

ORDER RE CHAPTER 13 PLANS

Both of the captioned cases came before the Court for confirmation of Chapter 13 plans. The proposed plans contain identical provisions regarding disposable income under §1325(b)(1)(B), to which Trustee objects. Debtors David and Revette Weber and Debtor John Lund are represented by Joseph Peiffer. Carol Dunbar is Chapter 13 Trustee. The Court confirmed the plans in both Chapter 13 cases, subject to resolution of the disposable income issue which the Court took under advisement. The Court now finds these matters are ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(L).

STATEMENT OF THE CASE

Debtors' Chapter 13 plans each provide for submission of all disposable income to the plan for the first three years of plan payments. Both plans have terms longer than three years. Debtors David and Revette Weber propose a Chapter 13 plan with a term of 54 months. Debtor John Lund proposes a plan with a term of 60 months. It is now undisputed that Debtors have shown cause to extend their plan payments beyond three years. Trustee objects that Debtors should submit their disposable income to plan payments for the entire duration of the plans, not just for the first three years.

The parties filed briefs in the Weber case, No. 00-01613-C. Debtors argue §1325(b)(1)(B) does not require them to devote all disposable income to plan payments beyond the first thirty-six months. They assert that, unlike §1225(b)(1)(B) which extends the disposable income requirement to the entire term of Chapter 12 plans, the plain language of §1325(b)(1)(B) limits the disposable income requirement to the first three years of Chapter 13 plans.

Trustee asserts Debtors' submission of disposable income should continue for the entire term of the plans. She urges the Court to look at the totality of the circumstances and review Debtors' good faith in proposing their plans. Trustee asserts that since Debtors are receiving the benefit of extending the length of the plan, they should accept the burden of committing all disposable income during the duration of the plan to fund the plan. In this way, Trustee argues, Debtors are properly held responsible to their unsecured creditors.

CONCLUSIONS OF LAW

Section 1325(b)(1) is referred to as the "best efforts" or "disposable income" requirement of Chapter 13. In re Miller, 247 B.R. 795, 797 (Bankr. W.D. Mo. 2000). This section provides, in part:

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan --

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected 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). Thus, as a requirement for confirmation, Chapter 13 plans must either (1) pay unsecured claims in full or, (2) upon objection by the trustee or an unsecured creditor, dedicate all disposable income to plan payments over a three-year period. This "best efforts" requirement allows creditors or the trustee to object to confirmation on the ground that the debtor has the ability to and must pay a greater dividend to unsecured creditors. Miller, 247 B.R. at 797.

The Eighth Circuit Bankruptcy Appellate Panel considered the requirements of §1325(b)(1)(B) in the context of determining whether it applies to post-confirmation plan modifications. In re Forbes, 215 B.R. 183, 186 (B.A.P. 8th Cir. 1997). It concluded Congress omitted the best efforts test of §1325(b)(1)(B) from plan modification requirements. Id. at 191. The court noted, however, that the best efforts test is met by devoting three years of disposable income to the plan, and the Bankruptcy Code requires no more. Id. at 192. The B.A.P. concluded that the debtor's settlement proceeds, having been received outside the first three years of his Chapter 13 plan, "are irrelevant to any calculation" under §1325(b)(1)(B). Id.

Other courts have interpreted §1325(b)(1) to require Chapter 13 debtors to dedicate all disposable income for three years and no more. In re Burris, 208 B.R. 171, 178 (Bankr. W.D. Mo. 1997). In In re Messinger, 241 B.R. 697, 700 (Bankr. D. Idaho 1999), the court states the best efforts test does not require the debtor to commit disposable funds available in the fourth and fifth years of the plan. The court further notes, however, that most debtors who propose a plan extending beyond 36 months

voluntarily commit all disposable income in the additional months in order to minimize the total plan term and exit bankruptcy sooner. Id. n.10.

Section 1325(b)(1)(B) clearly requires disposable income for three years. In re Gilliam, 227 B.R. 849, 852 (Bankr. S.D. Ind. 1998). It could have, but does not, require debtors to pay disposable income for three years plus any relevant extended period. Id. For example, §1225(b)(1)(B) requires payment of disposable income in Chapter 12 cases "for three years or such longer period as the court may approve under §1222(c)". "Such longer period" is up to five years if cause for extension of the plan is shown. 11 U.S.C. §1222(c) (identical to §1322(d)). Thus, as Rowley v. Yarnall, 22 F.3d 190, 193 (8th Cir. 1994) notes, §1225(b)(1)(B) establishes a duty of Chapter 12 debtors to provide payment of net disposable income to unsecured creditors during the entire plan period, not just the first three years.

In Chapter 13 cases, the notion of a 36-month best effort is still a cornerstone. In re Walsh, 224 B.R. 231, 238 (Bankr. M.D. Ga. 1998). Unsecured creditors and the trustee have the right to expect debtors to commit all disposable income to the plan for three years, and no more. In re Karayan, 82 B.R. 541, 544 (Bankr. C.D. Cal. 1988). Any additional expectation of unsecured creditors is neither warranted nor supported by Chapter 13. Id.

One case holds that if the term of a Chapter 13 plan is extended beyond three years, the debtor must also dedicate disposable income to the plan beyond three years for the entire duration of the plan. In re Norris, 165 B.R. 515, 517 (Bankr. M.D. Fla. 1994). The court reasons that because §1322(c) allows a 60-month plan, the 36-month period in §1325(b)(1)(B) is not exclusive of a 60-month disposable income requirement. Id. Further, the court found that principles of fair play and equity require the debtors to fully fund the plan for the entire 60 months. Id. Norris is cited by commentators for the proposition that the Chapter 13 disposable income requirement extends to the entire duration of plans up to 60 months. No other courts, however, have gone so far.

Trustee urges the court to look to the totality of the circumstances and consider the principles of equity and fair play to direct Debtors to dedicate disposable income for the entire length of the plan. This argument raises the issue of Debtors' good faith. In the Eighth Circuit, the good faith inquiry turns on whether the debtor has (1) stated debts and expenses accurately, (2) made any fraudulent misrepresentation to mislead the bankruptcy court or (3) has unfairly manipulated the Bankruptcy Code. In re Nielsen, 211 B.R. 19, 22 (B.A.P. 8th Cir. 1997); Education Assistance Corp. v. Zellner, 827 F.2d 1222, 1227 (8th Cir. 1987). The disposable income requirement is a measure of what can be done to promote fairness to creditors. Rowley, 22 F.3d at 193 (considering Chapter 12 plan). Courts utilize the disposable income analysis in exercising discretion in confirming a plan. See In re Sounakhene, 249 B.R. 801, 805 (Bankr. S.D. Cal. 2000).

Based on the foregoing, the Court concludes that Debtors are not mandated by the Bankruptcy Code to devote disposable income to their Chapter 13 plan for longer than the first three years of the plan. The Code requires Debtors pay 36 months of disposable income. It does not require Debtors to pay disposable income for any extended term of their plans beyond the first 36 months.

The fact that Debtors do not devote such disposable income is not, alone, grounds to question Debtors' good faith. This is not an indication that Debtors have unfairly manipulated the Bankruptcy Code. To the contrary, Debtors have proposed to pay exactly as the Code requires in §1325(b)(1)(B). Trustee has not pointed to any other factors in the totality of the circumstances upon which the Court could make a finding of bad faith.

WHEREFORE, Trustee's objections to Debtors' plans, limiting disposable income provisions to the first three years of the plans, are OVERRULED.

SO ORDERED this 21 day of December, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge