UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	
	:	
JOSEPH T. COURTNEY,	:	Case No. 93-1056-D H
	:	Chapter 13
Debtor.	:	
	:	

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ORDER--CONFIRMATION OF CHAPTER 13 PLAN

On July 16, 1993, a hearing was held regarding the confirmation of the Chapter 13 plan and the Chapter 13 trustee's objection thereto. Debtor, Joseph T. Courtney, appeared by his attorney Michael A. Williams. The trustee, Albert C. Warford, appeared with his attorney Elizabeth E. Goodman. Briefing deadlines were set for August 20, 1993 and the matter was taken under advisement. Post-trial briefs have been filed and the matter is now considered fully submitted.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157 (b)(2)(L). Upon review of the pleadings, briefs, and arguments of counsel, the Court now enters findings of fact and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. On April 21, 1993, the Debtor filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code.

2. Debtor filed a Chapter 13 plan proposing full payment of a priority tax claim and of an unsecured claim of I.H. Mississippi Valley Credit Union in the amount of $2,462.00. General unsecured creditors are to receive nothing under the plan.

3. The unsecured claim of I.H. Mississippi Valley Credit Union is the result of a personal loan incurred in 1991 and co-signed by Thomas Courtney, Debtor's father.

4. The Chapter 13 trustee objected to Debtor's plan on May 21, 1993, asserting that the proposed full repayment of the co-signed claim constitutes unfair discrimination against general unsecured creditors who will receive nothing under the plan.

DISCUSSION

11 U.S.C. § 1322(b)(1) provides as follows:

> (b) Subject to subsections (a) and (c) of this section, the plan may--
>
> (1) designate a class or classes of unsecured claims, as provided in section 1122 of this Title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(emphasis added.)

The portion of the Code underlined above was added in

1984 by Congress through the enaction of the Bankruptcy Amendments and Federal Judgeship Act.

The Debtor argues that the amendment to § 1322(b)(1) provides an exception to the unfair discrimination standard for co-signed consumer debts. The trustee maintains that although the amendment allows the debtor to treat a co-signed claim "differently" than other secured claims, it does not allow for unfair discrimination between classes of claims. Since the 1984 amendment, courts have remained split on the effect of the amendment. This Court notes that the Eighth Circuit has not yet addressed this issue.

In In re Dornon, 103 B.R. 61 (Bankr. N.D.N.Y. 1989), the court found that the amendment sanctions different and favored treatment for such debts and constitutes a "carve out" to the unfair discrimination standard imposed by § 1322(b)(1). See also In re Lackey, 148 B.R. 626 (Bankr. N.D. Ala. 1992); In re Chapman, 146 B.R. 411 (Bankr. N.D. Ill. 1992); and In re Riggel, 142 B.R. 199 (Bankr. S.D. Ohio 1992). In Dornon, the court went on to analyze quasi- legislative history to determine that Congressional intent supported its finding that the amendment provides an exception to the unfair discrimination standard. Dornon, 103 B.R. at 64.

In contrast, the court in In re Easley, 72 B.R. 948 (Bankr. M.D. Tenn. 1987), found that a debtor's power to treat co-signed consumer debts "differently" has content separate

from that of the unfair discrimination standard. The court held that different treatments are not necessarily fair discriminations and rejected the classification as unfairly discriminatory. See also In re Whitelock, 122 B.R. 582 (Bankr. D. Utah 1990); In re Hamilton, 102 B.R. 498 (Bankr. W.D. Va. 1989); and Matter of Birriel Gonzalez, 73 B.R. 259 (Bankr. D.P.R. 1987).

This Court finds that the language of the amendment provides an exception to the unfair discrimination standard for co-signed consumer debts. Congressional use of the word "however" suggests an intention to create an exception to the limitations immediately preceding it. Additionally, the amendment plainly states that such debts may be treated differently. If these debts were to remain subject to the unfair discrimination standard, the amendment would have no real meaning. Available quasi-legislative history also supports such a finding as it reveals a recognition by Congress that a debtor's desire to repay debts on which relatives are cosigners outside of a plan might mean failure for a Chapter 13 plan. 5 Collier on Bankruptcy, ¶ 1322.05[1], pp. 1322-10 (15th ed. 1992) (citing S.Rep. No. 65, 98th Cong., 1st Sess., 17 (1983)). This history suggests an intent to allow debtors to separately classify such debts without the restrictions formerly in place.

The debt to I.H. Mississippi Valley Credit Union is

listed as a personal loan co-signed by Thomas Courtney. Debtor maintained at the hearing that this was a consumer debt used primarily for personal, family or household purposes. See 11 U.S.C. § 107(8). The trustee appears to have made no objection to this designation of the debt. Accordingly, the Court finds that the debt to I.H. Mississippi Valley Credit Union is a consumer debt on which another individual is liable with the Debtor. Therefore, pursuant to § 1322(b)(1), this debt may be separately classified and the trustee's objection is overruled.

The Court finds that the Chapter 13 Plan complies with § 1325 and, therefore, should be confirmed at this time.

ORDER

IT IS THEREFORE ORDERED that the trustee's objection to confirmation of the Chapter 13 plan is overruled.

IT IS FURTHER ORDERED that the Chapter 13 plan is hereby confirmed.

Dated this 15th day of November, 1993.

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RUSSELL J. HILL
U.S. Bankruptcy Judge