

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

CRAIG E. SPITZER,

Debtor.

:
:
:
:
:

Case No. 90-1647-D H

Chapter 13

- - - - -

ORDER--OBJECTION TO CONFIRMATION OF PLAN

The Objection to Confirmation of the Plan came on for hearing on September 21, 1990. The Chapter 13 Trustee, J. W. Warford, appeared and Debtor appeared in person with his attorney of record, Reta Noblett-Feld. At the conclusion of the hearing, the Court took the matter under advisement.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). The Court, upon review of the pleadings, evidence admitted, and arguments, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS

1. An order for relief under Chapter 13 of the Bankruptcy Code was entered on June 19, 1990.

2. Debtor is a single person with no dependents.

3. Debtor has a net monthly income of \$965.00 with monthly expenses of \$815.00.

4. Debtor has scheduled two secured creditors. The first is GMAC with a claim of \$4,620.09 secured by a 1986 Pontiac which is Debtor's only motor vehicle. Debtor contends that this automobile has a market value of at least \$5,000.00.

The second secured creditor is Zales Jewelers with a claim of \$415.60 secured by a ring which is scheduled as having an unknown value.

5. Debtor has scheduled ten unsecured creditors with a total unsecured debt of \$22,066.43.

6. Debtor's plan proposes to pay \$150.00 each month over a period not longer than three years from date of confirmation of the plan. Unsecured creditors would receive 20 percent of each allowed unsecured claim.

7. Debtor proposes to pay GMAC outside the plan while paying Zales Jewelers inside the plan.

8. At the time of the hearing the 1986 Pontiac had a fair market value of \$4,000.00.

9. GMAC filed its claim on July 3, 1990. Since that time Debtor has paid monthly payments directly to GMAC leaving a balance of \$3,520.00 at the time of hearing.

10. Debtor is paying GMAC \$275.00 per month and as of the date of hearing there are approximately 13 monthly payments left on this contract.

11. Debtor has been negotiating with Zales Jewelers and Zales Jewelers has not objected to the confirmation of the plan.

ISSUES

The ultimate issue is whether Debtor's plan should be

confirmed. In reaching that issue, the following issues must be resolved: (1) the value of the motor vehicle; (2) whether the plan provision for paying the GMAC claim outside the plan is a classification of a claim contrary to 11 U.S.C. §.1322(a)(3) and 1322(b)(1); and, (3) whether the plan represents the best efforts of the Debtor as provided in 11 U.S.C. § 1325(b)(1)(B).

DISCUSSION

I. The Value of the Motor Vehicle.

The value of the motor vehicle should be determined by valuing this collateral as of the date of confirmation of the plan. In re Erwin, 25 B.R. 363, 366 (Bankr. D. Minn. 1982).

In this case the motor vehicle has a value of \$4,000.00.

At the time of hearing there was a balance of approximately \$3,520.00 left on this contract. Accordingly, GMAC is a fully secured creditor.

II. Classification of Claims.

The plan provides for car payments outside the plan and the Trustee objects on the basis that GMAC is an undersecured creditor with an unsecured claim, and the plan should not be confirmed because there is no justification for treating the claim outside the plan.

First of all, the Court has concluded at the time of the

hearing GMAC has a fully secured claim.

The Trustee is correct that the payment of claims inside or outside the plan constitutes the classification of a claim and this classification must be carefully scrutinized to protect unsecured creditors from disparate treatment. In re Tanner, No. 81-2348-W, slip op. (Bankr. S.D. Iowa 1982); see In re Davidson, 72 B.R. 384, 389 (Bankr. D. Colo. 1987).

However, the classification of a fully secured creditor for payment directly by the debtor, "outside the plan," is permissible and may constitute a sound exercise of discretion under 11 U.S.C. §§ 1322 and 1325. Matter of Bradley, 705 F.2d 1409, 1411 (5th Cir. 1983). GMAC's claim is fully secured and the 1986 Pontiac is Debtor's only motor vehicle. Under the circumstances of this case, Debtor's classification for direct payment is reasonable and the interests of the unsecured creditors will not be unfairly discriminated against as set forth herein. Accordingly, this provision will not prevent confirmation of the plan.

III. Best Efforts

The Trustee also objects because the plan does not contemplate increasing payments to unsecured creditors after GMAC is paid in full.

Under 11 U.S.C. § 1325(b)(1)(B) the plan must provide that all of Debtor's projected disposable income to be

received within the three-year period following the date of the first payment to be made under the plan will be applied to make payments.

Debtor's plan fails to do this. The payments to GMAC will be completed within a few months and the monthly payment of \$275.00 to GMAC will then become disposable income. As such, this plan fails to satisfy 11 U.S.C. § 1325(b)(1)(B) as it is not Debtor's best effort over the life of the plan.

The holding in Bradley, supra, is distinguishable upon the facts as there is no showing that Debtor will be suffering from any tight financial circumstances.

ORDER

IT IS ACCORDINGLY ORDERED, as follows:

(1) Trustee's objection to confirmation of plan is sustained in part; and

(2) this Chapter 13 plan is not confirmed.

Dated this 6th day of September, 1991.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE