

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the matter of :
 : Chapter 13
WILLIAM C. FALLS and :
LORIE L. FALLS, : BANKRUPTCY NO. 91-824-C-
H :
 :
Debtors. :
- - - - -

ORDER DENYING CONFIRMATION OF DEBTORS' PLAN

The hearing on confirmation of Debtors' Chapter 13 plan, and the objections thereto was held on June 3, 1991. Michael J. Jenkins appeared as counsel for the Debtors and the Chapter 13 Trustee J.W. Warford, also appeared. At the conclusion of the hearing, the Court took the matter under advisement upon a briefing schedule. Briefs were timely filed and the matter is fully submitted.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). The Court now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

- 1) Debtors William Carlton Falls and Lorie Lynn Falls filed their Chapter 13 petition and plan on March 21, 1991.
- 2) William is employed as a stockman for Pirelli Armstrong. His net monthly income is \$1,777.00.
- 3) Lorie is not employed outside the home.
- 4) William and Lorie have two children; a son, age 7, and a daughter, age 3.

5) Debtors scheduled expenses in the amount of \$1,421.00 per month. The scheduled expenses include \$60.00 a month as a food expense for their dogs, two Great Danes.

6) The Debtors' plan proposes monthly payments of \$356.00 for 48 months.

7) Creditor Brenton National Bank filed an objection to confirmation of the plan on April 4, 1991, and Creditor Associates Finance, Inc. filed an objection to confirmation on April 5, 1991. Both of these objections concerned the valuation of collateral securing the Creditors' claims and both were settled prior to the hearing.

8) The Trustee filed an objection to confirmation on April 10, 1991. The Trustee contends the Debtors' monthly dog food expense of \$60.00 is excessive and the Debtors' plan does not provide that all of the Debtors' projected disposable income will be applied to make payments under the plan. 11 U.S.C. §1325(b)(1)(B). The Trustee also argued the plan should be extended to 54 months to enable all unsecured creditors to be paid in full.

DISCUSSION

A) Disposable Income Requirement - § 1325(b)(1)(B)

The Trustee claims the plan does not meet the disposable income requirement of §1325(b)(1)(B), because it provides for a monthly expenditure of \$60.00 for dog food. The Trustee asserts this amount is excessive and

could be used to pay a larger percentage to unsecured creditors.

Section 1325(b) encompasses the "ability to pay" criteria adopted in 1984. The "disposable income" definition of §1325(b)(2)(A) imposes upon a court the duty of deciding whether a debtor's expenses are "reasonably necessary" for the maintenance or support of the debtor or a dependent of the debtor. 5 Collier on Bankruptcy ¶ 1325.08[b] (15th edition, 1991).

At the confirmation hearing it was revealed Debtors have two Great Danes and a cat, and the \$60.00 monthly expenditure for dog food reflects the wholesale cost for the food. While the Court can empathize with the feelings of enjoyment and companionship which accompany pet ownership, the Court is bound by the statutory requirements of the Code. Upon a trustee's objection, a court may not confirm a plan unless all of the debtor's projected disposable income is applied to make payments under the plan. "Disposable income" means income received by a debtor which is "not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor." §1325(b)(2)(A). It cannot be argued that the monthly purchase of dog food is necessary for the maintenance of the Debtors or their dependent children. The expenditure is excessive and the

trustee's objection to confirmation must be sustained.

B. Length of Plan - §1322(c)¹

The Trustee has also objected to confirmation based on the length of the Debtors' proposed plan. The Debtors have proposed a 48-month plan which would pay 84% of the unsecured claims. The Trustee contends that since the Debtors will be requesting that the Court approve a plan that is longer than 36 months, the plan should be extended to 54 months to enable them to pay all of their creditors in full.

Section 1322(c) provides:

The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.

In enacting §1322(c), Congress had wished to eliminate the lengthy Chapter XIII proceedings in which debtors had virtually become economic slaves to wage earner plans. See In re Pearson, 4 B.R. 376, 378 (Bankr.N.D. Ohio 1980). Congress wished to avoid the appearance of debt peonage, and had it established a mandatory time period during which a debtor had to work for his creditors, it would have run afoul of the spirit,

¹Although confirmation is denied based on the Debtors' noncompliance with §1325(b)(1)(B), the Court will address the Trustee's remaining objection as it is likely it would arise upon the Debtors' submission of an amended plan.

if not the letter, of the involuntary servitude provisions of the 13th Amendment to the U.S. Constitution. In re Markman, 5 B.R. 196, 199 (Bankr.E.D. N.Y. 1980).

The language and structure of the statute point to an assumption on Congress' part that the appropriate and preferred term for the average Chapter 13 plan would be three years, and that five year plans would be the exception rather than the rule. In re Baker, 129 B.R. 127, 130 (Bankr.W.D. Tex. 1991). "[E]xtension of a plan beyond three years should be strictly the debtor's option." In re Capodanno, 94 B.R. 62, 67. (Bankr.E.D. Pa. 1988), see also In re Porter, 102 B.R. 773, 777. (9th Cir.BAP 1989) ("debtors must voluntarily choose to extend their plan beyond three years").

The Code contains no definition of the "cause" necessary for the extension of a plan beyond three years.

The definition of "cause" is left to judicial discretion to be decided on a case-by-case basis. In re Pierce, 82 B.R. 874, 881 (Bankr.S.D. Ohio 1987). Some courts have taken a limited view of what constitutes "cause." See In re Fries, 68 BR 676, 680 (Bankr.E.D. Pa. 1986) (debtor's inability to cure a default under §1322(b)(5) or to pay priority or allowed secured claims in a shorter time are grounds for approving plans longer than 3 years); In re

Karayan, 82 B.R. 541, 543 (Bankr.C.D. Cal. 1988) (court could allow extended plan if purpose was to pay at least 70% of unsecured claims or to discharge an otherwise nondischargeable debt). These courts tend to reject the argument that a debtor's desire to increase payments to creditors is in and of itself "cause" to extend a plan beyond 36 months. See Karayan, 82 B.R. at 543. Other courts take a broader view of what constitutes cause for extending a plan. See Pierce, 82 B.R. at 882-83 (debtor's desire to extend plan beyond three years in order to increase dividends to unsecured creditors constitutes "cause"); Capodanno, 94 B.R. at 67 ("permission to extend plan-periods beyond three years should be freely given whenever any reasonable justification for same is articulated by the debtor").

This Court agrees a debtor's desire to increase payments to creditors constitutes "cause" under §1322(c) for extending a plan beyond three years. The Trustee's objection in this case appears to implicitly raise two concerns: 1) If the Debtors choose to extend their plan beyond three years, must they extend the plan to the point where they will be able to pay 100% of unsecured claims, and 2) Does the Debtors' refusal to extend the plan to pay unsecured creditors in full reflect a lack of good faith in proposing the plan?

The Court finds no statutory or case law basis for requiring debtors who choose to extend their plan beyond three years to extend it to a point which will ensure 100% repayment of unsecured creditors. Depending upon a debtor's income, expenses and amount of debt, some debtors might not be able to comply with such a requirement even if plan payments were extended to the statutory maximum of five years. Debtors have the most familiarity with their financial resources and obligations, and their judgment regarding their ability to fund a plan beyond thirty-six months should not be easily disregarded.

A plan must be proposed in good faith and not by any means forbidden by law. §1325(a)(3). A court has an obligation to make a determination of "good faith" in light of the totality of the circumstances. In re LeMaire, 898 F.2d 1346, 1349 (8th Cir. 1990). While the "good faith" determination was modified somewhat in response to the enactment of §1325(b), the factors set forth in In re Estus, 695 F.2d 311, 317 (8th Cir. 1982), are still relevant. See LeMaire, 898 F.2d at 1349.

In assessing "good faith," a court must determine whether a plan constitutes an abuse of the provisions, purpose or spirit of Chapter 13. Estus, 695 F.2d at 316.

"Good faith" is evaluated on a case-by-case basis and

there are no precise formulas or measurements to be deployed in a mechanical good faith equation. LeMaire, 898 F.2d at 1353.

The Eighth Circuit has held the good faith requirement of §1325(a)(3) does not impose a rigid and unyielding requirement of substantial payment to unsecured creditors. Estus, 695 F.2d at 316. "A per se minimum payment requirement to unsecured creditors as an element of good faith would infringe on the desired flexibility of Chapter 13 and is unwarranted." Id.

The term of a plan is a relevant consideration to the good faith inquiry, and under a totality of the circumstances analysis the percentage of the payout is significant. Baker, 129 B.R. at 131; see also Estus, 695 F.2d at 317 (amount and duration of plan payments are meaningful factors in making a good faith determination).

However, these factors alone do not appear to be dispositive and generally an objection can usually be sustained only if additional factors indicative of bad faith are present. Baker, 129 B.R. at 131.

The Debtors' plan proposes 48 monthly payments which will result in an 84% payment of unsecured claims. The only indicia of bad faith raised by the Trustee is that the plan term is 48 rather than 54 months. The Trustee has set forth no other basis for arguing the plan was

proposed in bad faith. Under the totality of the circumstances, this Court cannot find the Debtors' plan was proposed in bad faith. See Baker, 129 B.R. at 133 (debtor's refusal to extend plan from 3 to 5 years when a 3-year plan would produce a 10% payment to unsecured creditors was not by itself sufficient to warrant a finding of bad faith). But see In re Rogers, 65 B.R. 1018, 1022 (Bankr. E.D. Mich. 1986) (debtor's four year plan not proposed in good faith when plan provided for retention of Corvette and a 17% payout to unsecured creditors).

IT IS HEREBY ORDERED:

- 1) The Trustee's objection based on the § 1325(b)(1)(B) disposable income requirement is sustained;
- 2) The Trustee's objection based on the length of the Debtors' plan, § 1322(c), is overruled; and
- 3) The Debtors have 15 days to submit an amended plan, or to dismiss or convert their Chapter 13 case. If Debtors take no action, the case will automatically be dismissed without further hearing and notice at the expiration of the 15-day period.

Dated this 20th day of November 1991.

JUDGE

RUSSELL J. HILL
UNITED STATES BANKRUPTCY