UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

IN RE IDA MARIE CORNELIOUS, Debtor	Case No. 98-26405-L Chapter 13
LEDGER MARTIN, JR., Debtor	Case No. 98-26407-L Chapter 13
NATALIE CARMELIUS LAMASTER, Debtor	Case No. 98-26402-L Chapter 13
TERESA DEVUNN BUTTS, Debtor	Case No. 98-27132-L Chapter 13

ORDER SUSTAINING OBJECTION BY STATE OF TENNESSEE TO CONFIRMATION OF PLAN IN EACH CASE

The objections to confirmation in these cases were consolidated for hearing before this Judge, sitting by interchange for the Honorable Jennie D. Latta. In each of the cases, the debtors' chapter 13 plans have been confirmed, but without prejudice to the objection(s) filed by the state of Tennessee or its agency. The effect of such confirmation orders is to temporarily and conditionally confirm the proposed plans but, as the Court will here order, to reduce the conditional confirmation to a nullity if the objection(s) is sustained. The objections in the Cornelious and Butts cases were filed by the Attorney General on behalf of the Tennessee Student Assistance Corporation (TSAC), and the objections in the Martin and Lemaster cases were filed by the state's Attorney General, with no particular agency described.

The objections are similar, and in some instances identical. The debtors' proposed plans include language that deviates from that normally found in confirmation orders in the Western District of Tennessee. Specifically, each proposed plan contains the following addendum language:

"1. Each creditor shall be considered a separate class for purpose of confirmation and treatment under 11 U.S.C. 1329; 2. Title to the debtor's property shall vest in the debtor upon confirmation of the plan [although in the Martin and Lemaster plans the language is apparently mistakenly typed 'not confirmed'] and 3. Allowed claims for post petition debtor shall be paid unsecured pro rata and be discharged" [and the Butts plan adds to this number 3 the following ", except as limited by 11 U.S.C. Sec. 1328(c) & (d)"]. On the day of the July 28 hearing, debtor's counsel submitted modification language to the Cornelious plan, which language presumably would also modify the other three plans in its paragraphs 2 and 3: "1. That TSAC may offset debtor's income tax refunds; 2. That allowed claims for post petition debts be paid unsecured, pro rata, and be discharged when the case is discharged, except as limited by 11 U.S.C. § 1328 (c) and (d); and 3. That the language of '(e)ach creditor shall be considered a separate class for purpose of confirmation and treatment under 11 U.S.C. 1329' is deleted." These debtors take a broad shot at an unproven target, in what often happens in chapter 13 practice: The debtors attempt to set new general standards for what appear to be case-specific problems.

The state of Tennessee and TSAC raise several objections. A tangential point was made by the Attorney General that the state is not routinely receiving copies of the chapter 13 confirmation orders from this judicial District. Different interpretations could be placed upon the Local Bankruptcy Rules in this District as to whether the confirmation order should be noticed to all creditors at all; whether the chapter 13 trustees, who prepare the orders, should mail them to all creditors; or whether the debtors' counsel should be mailing a copy of the confirmation orders to all creditors. See Local Bankruptcy Rule 9013-1(c), (d). This District enjoys a chapter 13 liaison committee, consisting of the bankruptcy judges, chapter 13 trustees, the United States trustee,

representative debtors' attorneys, and representative creditors' attorneys. The Court will recommend that this committee, which is chaired by the Honorable G. Harvey Boswell, examine this issue and make a recommendation as to the need for and responsibility for service of confirmation orders.

On the merits of these debtors' proposed plan language, the objector TSAC points out that the debtor Cornelious fails to dedicate income tax refunds that may be received within the plan term as disposable income to the plan effort, and it appears that the same objection, although more general, is made in the Butts case. See 11 U.S.C. § 1325(b)(1)(B). The debtor's response in the Cornelious case was to allow TSAC to offset any tax refunds, apparently in a goal of getting all possible money to the nondischargeable student loan. This would, however, lead to an apparent discrimination against other unsecured creditors in the Cornelious plan, and the chapter 13 trustee objects to this modification by the debtor. The Court is not in a position to rule in favor of or against the merits of the Cornelious debtor's modification to permit an offset by TSAC, as the debtor put on no proof. In fact, no proof was offered by anyone on anything; rather, these disputes involved legal argument and discourse concerning the practical effects of the debtors' proposed plan terms. In the absence of proof to support the need for an offset of tax refunds in favor of only one unsecured creditor, the Court must conclude that there has been no justification for such a plan term, and the Court will sustain the objection by TSAC to that Cornelious plan term.

As to the debtors' remaining proposed plan terms, the Court understands that each of these debtors has withdrawn the proposed language to consider each creditor as a separate class. This leaves two issues, the first being whether it is appropriate to include in the debtors' plans language

that "allowed claims for post petition debts be paid unsecured, pro rata, and be discharged when the case is discharged, except as limited by 11 U.S.C. § 1329(c) & (d)." The state finds this language confusing, as does the Court. The debtors' counsel appears to be reacting to an observation found in an opinion by Judge Latta, *In re Bagby*, 218 B.R. 878, 890 (Bankr. W.D. Tenn. 1998), that full payment of post-petition claims may be proposed in the original plan, but that opinion did not suggest specific language to accomplish that. Judge Latta limited her comment to the concept that a chapter 13 plan could provide that post-petition claims, if allowed, would be paid in full, but Judge Latta went on to point out correctly that full payment of post-petition claims could not be accomplished to the detriment of pre-petition unsecured creditors absent notice to the pre-petition creditors and proof of the need for discriminatory treatment in favor of the post-petition creditors. *Id.; In re Goodman*, 136 B.R. 167, 170 (Bankr. W.D. Tenn. 1992).[1] There arguably would be no prejudice to pre-petition creditors if the percentage to be paid them were not reduced by the payment of allowed post-petition claims. As the state has pointed out as to the present proposals, however, there is no way that it can know the effect of the proposed language, thus leading to an automatic objection to confirmation of every plan that contains such language. The proposed language as to post-petition debt is too general, leaving open such questions as how much post-petition debt will there be and how will it impact the amount that the pre-petition unsecured creditors would otherwise receive; therefore, this language gives pre-petition unsecured creditors no effective notice. Moreover, in view of Judge Latta's *Bagby* opinion, these debtors' proposal fails to provide for full

[1] Chief Judge Julia S. Gibbons' recent decision in *Othie B. Hobbs, Sr. v. Methodist Hospitals of Memphis, Inc., et al.*, No. 98-2121-G/Bre (W. D. Tenn. June 25, 1998), has no precedential value in these cases, as it concerned a confirmed but modified plan in which specific post-petition claims had been allowed. These debtors attempt to assure discharge of unknown, and not-yet-incurred, post-petition debts.

payment of the post-petition creditors, which might have allowed claims. The § 1328(c) and (d) exceptions mentioned in the proposal also undercut the first part of the proposal. In short, these debtors' proposed plan term concerning post-petition debt accomplishes nothing, while putting pre-petition creditors in great doubt as to its effect. If the debtors' counsel has suggestions for how this District's chapter 13 confirmation orders should address post-petition debts, the better approach is for him to introduce suggestions through the District's chapter 13 liaison committee process, which will enable all of the participants in the chapter 13 process to consider and to comment upon such changes.

The same must be said for the last proposal, to vest title to the debtors' property back in each debtor immediately upon confirmation. As has been previously observed, the chapter 13 confirmation orders in this District are generated by the chapter 13 trustees, thus assuring uniformity of language as to recurring plan terms. The bankruptcy judges of this District recently instructed the trustees to alter the vesting language, so that the confirmation orders in every chapter 13 case now read: "All property shall remain property of the chapter 13 estate under §§ 541 and 1306(a) and shall revest in the debtor(s) only upon discharge pursuant to § 1328(a), dismissal of the case, or specific order of the court. The debtor(s) shall remain in possession of and in control of all property of the estate not transferred to the trustee, and shall be responsible for the protection and preservation of all such property, pending further orders of the court." These debtors' proposals would reverse this recent change, and the proposals have not enjoyed the liaison committee process nor the presentment to all of the bankruptcy judges for consideration. This one judge is not willing to consider a basic change to confirmation order language, which would impact each of the other judges, the chapter 13 practice in general, and the uniformity in procedure that has been enjoyed in this District, a

uniformity which adds predictability and stability to the practice of all attorneys.

There having been no proof to support the plan terms offered by these debtors, the objections to each of these proposed plan terms is sustained. The practical effect of sustaining the objections is that each of the debtors is in hiatus, having a confirmed plan that has now become unconfirmed. To remedy this situation, in each debtor's case either another proposed plan must be filed by the debtor or the debtor must file a pleading that accepts the original order of confirmation, as entered and without the proposed alterations. Should any of the debtors fail to do one or the other within ten days of entry of this Order, the confirmation order in that particular case shall be set aside and that case may be subject to the trustee's or creditors' dismissal motions.

SO ORDERED, this August 11, 1998.

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UNITED STATES BANKRUPTCY JUDGE
WILLIAM HOUSTON BROWN

Debtors
Irving S. Zeitlin, attorney for debtors
George W. Stevenson, chapter 13 trustee
Jeanne Chick Schuller, Assistant Attorney General
Sally Ramsey, Assistant Attorney General
Honorable G. Harvey Boswell, Chair, chapter 13 liaison committee