

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re:
WILLIAM CLYDE HOOVER,
Debtor.

Case No. 04-31648whb
Chapter 13

**OPINION AND ORDER DENYING OBJECTION TO CONFIRMATION
AND MOTION TO DISMISS**

On October 6, 2004, the Court heard the contested objection to confirmation of the Debtor's chapter 13 plan, which objection was combined with an alternative motion to dismiss this case.. The objection, with its motion, was filed by the chapter 13 trustee, and the basis for the pleading was that the Debtor's case was not filed nor was his plan proposed in good faith due to the alleged ability of the Debtor to obtain improved employment that would yield a higher income. Essentially, the objection is based upon the Debtor being voluntarily under-employed.

ISSUE

The sole issue, therefore, is whether the Debtor's choice of self-employment at a rather small monthly income level may constitute lack of good faith in a plan proposal or in the filing of the chapter 13 case itself.

UNDISPUTED FACTS

The Debtor filed this chapter 13 case on July 28, 2004, and the Debtor's plan was filed on

that same date, proposing to pay \$395 per month to the chapter 13 trustee for distribution to creditors. The Debtor reached a consensual agreement with the car lender, under which that creditor is under-secured. An objection to confirmation was also filed by another creditor, asserting a secured claim, but that objection was not before the Court for determination. The trustee's analysis is that the proposed plan payments would pay 20% to the unsecured debt, principally the unsecured portion of the car lender's claim.

The Debtor testified that he was self-employed and that the last time he worked as an employee for another person or entity was twenty years ago. He is 51 years of age and has lived in the same rental residence for ten years, paying \$300 a month in rent. He is certified in the construction of dental appliances such as bridges and crowns, and has been doing that work for thirty years; however, he lost some of his dentist clients and now does limited work in that area. He started a business selling flags and NASCAR items, but that business has been slow and declining, earning him about \$100 per month. His total income is approximately \$1,000 a month. The Debtor obviously has chosen to live a modest lifestyle with modest income.

Upon the trustee's questioning, the Debtor testified that he had not applied for a job in twelve years but was considering applying. He was in the process of "getting his resume together." The trustee, of course, argues that the Debtor is capable of getting employment that would earn more and would permit a higher distribution to his unsecured creditors. The creditors have not made that argument, and it would appear that the creditors extended credit to the Debtor while he was in his present "under-employed" status.

DISCUSSION AND CONCLUSION

Under the law of the Sixth Circuit, there is no particular test for determining whether a bankruptcy petition was filed in good faith. Good faith is generally evaluated "under flexible and multiple standards," *Michigan National Bank v. Charfoos (In re Charfoos)*, 979 F.2d at 390, 393 (6th Cir. 1992), and it is determined on an *ad hoc* basis. *Industrial Insurance Services, Inc. v. Zick (In re Zick)*, 931 F.2d 1124, 1129 (1991). See also *Society National Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 591 (6th Cir. 1992) ("Our circuit's good faith test requires consideration of the totality of circumstances."). In the chapter 13 context, in *Charfoos*, the court confirmed that bad faith is an *ad hoc* determination, evaluated under various flexible standards, but specifically noted that bad faith should only be found in egregious cases. 979 F.2d at 392.

Section 1325(a)(3) requires that a condition to confirmation of a chapter 13 plan is that it be “proposed in good faith...,” but good faith is not defined by example or specificity. As a result, this section is “the most litigated provision of Chapter 13 and one of the most litigated provisions of the entire Code.” Hon. Keith M. Lundin, CHAPTER 13 BANKRUPTCY 3D ED., §177.1 (2004). The economic analysis for good faith is not found in § 1325(a)(3); rather, the following sections of the Code seem to constitute the only economic reasons to object to confirmation:

§ 1325(a)(4)—the best-interests-of-creditors’ test, requiring a debtor to pay at least as much to unsecured creditors as they would receive in a chapter 7 liquidation;

§ 1325(a)(6)—the feasibility test, limiting confirmation to what is feasible for a debtor to pay;

§ 1325(b)—the disposable income test, requiring a debtor to pay all disposable income for at least three years; and

§ 1322(d)—the duration limitation, limiting a chapter 13 plan to a maximum of five years.

Lundin, CHAPTER 13 BANKRUPTCY 3D ED., at §193-2.

There is no contention here by the creditors or the trustee that this Debtor is failing to meet these tests; rather, the trustee’s argument is that the Debtor can and should be required to do better. A decision supporting that objection would be a life-style choice by the Court. To deny confirmation on the basis that the Debtor must be required to seek employment rather than remain self-employed, assuming that the Debtor can earn more than he currently does, would be dangerously close to imposing an involuntary servitude on the Debtor. So long as he is proposing to pay his disposable income for at least three years, a sufficient amount apparently to satisfy the best-interests-of-creditors’ test, the trustee’s objection provides no legal basis for the Court to deny confirmation. It is not a part of the statutory feasibility test that the Debtor could pay more; rather, that test is one of whether the Debtor can pay what he proposes to pay. Finding nothing in the proof to support a statutory objection to confirmation or a motion to dismiss, the Court concludes that it cannot deny confirmation on the grounds of requiring the Debtor to obtain more income than he currently earns. As a result, IT IS ORDERED that the trustee’s motion to dismiss and objection to confirmation are DENIED, and the trustee shall prepare an order confirming the Debtor’s proposed plan, subject to further orders resolving the objections to confirmation filed by two creditors.

Service List:

Debtor

Debtor's attorney

Chapter 13 Trustee

Attorneys of record for creditors