

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re)	Case No. 07-23096-A-13G
)	
CESAR and BRENDA MEDEL,)	Docket Control No. RDG-1
)	
Debtors.)	Date: July 9, 2007
)	Time: 9:00 a.m.
)	

On July 9, 2007 at 9:00 a.m., the court considered the chapter 13 trustee's objection to the confirmation of the debtors' proposed chapter 13 plan. The court's ruling on the objection is appended to the amended minutes of the hearing. Because that ruling constitutes a "reasoned explanation" of the court's decision, it is also posted on the court's Internet site, www.caeb.uscourts.gov, in a text-searchable format as required by the E-Government Act of 2002. The official record, however, remains the ruling appended to the minutes.

FINAL RULING

The hearing on the objection will be continued to July 30, 2007 at 9:00 a.m. for the reasons explained below.

The objection complains that the plan, despite not paying unsecured claims in full, fails to devote all "projected disposable income" to the plan in violation of 11 U.S.C. § 1325(b). In support of this argument, the chapter 13 trustee points out that Schedule J shows the debtor is likely to have \$604 a month in "projected disposable income" but the plan promises to distribute only \$143 a month to unsecured creditors. This will result in the payment of a mere .55% dividend to Class 7 general unsecured creditors.

Schedule J does not report a chapter 13 debtor's "projected disposable income." Projected disposable income is reported at Part V, Line 58 of Form 22C, the Statement of Current Monthly

1 Income, etc.

2 After the BAPCPA of 2005, 11 U.S.C. § 521(a)(1)(B)(v) was
3 added to the Bankruptcy Code to require a debtor to file a
4 statement of "monthly net income" which itemizes how that amount
5 was calculated.

6 Schedules I and J were thereafter modified to provide for
7 this statement of monthly net income. Monthly net income is
8 nothing more than what remains from the income reported on
9 Schedule I after the expenses reported on Schedule J are
10 deducted. That is, it is gross monthly income as of the petition
11 date as reported on Schedule I, less the taxes also reported on
12 Schedule I, less the expenses reported on Schedule J.

13 The statement of monthly net income on Schedule J, Lines
14 20(a)-(c), does not report "projected disposable income." It
15 reports "monthly net income." The latter is an indication of
16 what the debtor's actual income and expenses were on the date the
17 petition was filed.

18 On the other hand, a chapter 13 debtor's projected
19 disposable income amounts to a largely hypothetical amount that
20 may have nothing to do with the debtor's monthly net income.
21 This is so for several reasons.

22 First, the income used in this projection starts with an
23 average of the debtor's income for the six months prior to filing
24 bankruptcy. See 11 U.S.C. §§ 101(10A), 707(b)(2)(A), 1325(b).
25 So, if by the date the debtor files a petition, that debtor's
26 income has gone up or down significantly, the debtor's "projected
27 disposable income" could be very different than the debtor's
28 monthly net income.

1 Second, the definition of current monthly income found at
2 section 101(10A), and used in the Statement of Current Monthly
3 Income to calculate projected disposable income, excludes social
4 security income. Schedule I and the statement of monthly net
5 income at the bottom of Schedule J, however, includes social
6 security income. Thus, relying on Schedule J and the statement
7 of monthly net income to predict "projected disposable income"
8 could be an error because it includes income that is not part of
9 current monthly income.

10 Third, in chapter 13 cases, other income a debtor may
11 receive is not included as part of the debtor's current monthly
12 income. Section 1325(b)(2) provides that child support payments,
13 foster care income, or disability payments for a dependent child,
14 to the extent reasonably necessary for the child, must be
15 deducted from the debtor's current monthly income. Like social
16 security income, these types of income are included on Schedule I
17 and, hence, on the statement of monthly net income on Schedule J.
18 But, income from these sources are not included in a chapter 13
19 debtor's current monthly income as reported on the Statement of
20 Current Monthly Income. Once again, then, relying on Schedule J,
21 and the statement of monthly net income that is part of Schedule
22 J, to predict "projected disposable income" could inaccurately
23 predict a chapter 13 debtor's projected disposable income.

24 Fourth, the statement of monthly net income subtracts the
25 debtor's actual expenses as of the petition date from the
26 debtor's actual income on that date. The Statement of Current
27 Monthly Income takes an average of some of the debtor's pre-
28 petition income and deducts from that average some actual

1 expenses and some expenses that are limited to, or are capped by,
2 the IRS National, Local, and Other Expense Standards. These
3 standards were developed by the IRS to determine a taxpayer's
4 ability to pay delinquent taxes. See
5 www.irs.gov/individuals/article/0,,id=96543,00.html and
6 www.irs.gov/irm/part5/ch15s01.html. Use of these standards means
7 that a chapter 13 debtor's actual expenses reported on Schedule J
8 are likely to be quite different than the expenses reported on
9 the Statement of Current Monthly Income. So, by using Schedule J
10 and the statement of monthly net income to project disposable
11 income during the chapter 13 case could result in an over or
12 under-projection of "projected disposable income," at least for a
13 chapter 13 debtor with over median income. See 11 U.S.C. §
14 1325(b)(3).

15 For these reasons, any argument under section 1325(b) that a
16 chapter 13 debtor has projected disposable income that must be
17 devoted to the plan that is premised on the income reported on
18 Schedule I, the expenses reported on Schedule J, or the monthly
19 net income reported on Line 20(c) of Schedule J will be rejected
20 out of hand by the court, as this objection is rejected.

21 To the extent the trustee maintains that the court should
22 project the debtor's likely disposable income during the plan's
23 duration by disregarding the Statement of Current Monthly Income
24 and considering only Schedules I, J, and the statement of monthly
25 net income, or some other predictor of future net income, the
26 objection will be overruled.

27 In the words of the bankruptcy court in In re Alexander:

28 *"What is now considered "disposable" is based upon*

1 historical data-current monthly income derived from the
2 six-month period preceding the bankruptcy filing. 11
3 U.S.C. § § 101(10A), 1325(b)(2). The court finds that,
4 in order to arrive at "projected disposable income,"
5 one simply takes the calculation mandated by §
6 1325(b)(2) and does the math.

7 ...

8 To veterans of Chapter 13 practice, it runs afoul of
9 basic principles to suggest that a debtor with no
10 disposable income can nonetheless propose a confirmable
11 plan. Yet BAPCPA permits precisely that. [Footnote
12 omitted.] Because the pre-BAPCPA definition of
13 "disposable income" calculated a real number rather
14 than a statutory artifact, it largely mirrored §
15 1322(a)(1)'s basic requirement that the debtor have
16 future earnings or income "as is necessary for the
17 execution of the plan." 11 U.S.C. § 1322(a)(1).
18 Because disposable income largely took into
19 consideration all income and all expenses, a debtor
20 with no positive number simply had no means to fund the
21 added costs of a Chapter 13 plan. The result is
22 different under BAPCPA. For any number of reasons,
23 because a debtor has income not counted in the
24 definition of current monthly income, has housing or
25 transportation expenses less than the permissible IRS
26 deductions, has huge secured debt for luxury items
27 that, bizarrely, may be deducted in full as a
28 reasonable and necessary expense, or wishes to continue
to contribute to or repay a loan to her 401(k) plan
rather than pay her unsecured creditors, a debtor under
the new "disposable income" test may show a zero or
negative number, yet may be able to make the required
showing that she actually has enough income to fund a
confirmable plan. The debtor is at least entitled to
try."

20 In re Alexander, 344 B.R. 742, 749-50 (Bankr. E.D.N.C.
21 2006). See also In re Barr, 341 B.R. 181 (Bankr. M.D.N.C. 2006);
22 In re Rotunda, 349 B.R. 324 (Bankr. N.D.N.Y. 2006); In re
23 Trammers, 355 B.R. 234 (Bankr. D. Mont. 2006); In re Kagenveama,
24 2006 Bankr. Lexis 259 (Bankr. D. Az. July 10, 2006); In re Hanks,
25 2007 WL 60812 (Bankr. D. Utah Jan. 9, 2007); In re Miller, 2007
26 WL 128790 (Bankr. N.D. Ala. Jan. 18, 2007); In re Lawson, 2007 WL
27 184733 (Bankr. D. Utah Jan. 25, 2007); In re Brady, 2007 WL
28 549359 (Bankr. D.N.J. Feb. 13, 2007); In re Kolb, 2007 WL 219951

1 (Bankr. S.D. Ohio March 30, 2007).

2 While other bankruptcy courts have taken the approach
3 suggested by the trustee, the court finds them to be ill-
4 reasoned. See In re Hardacre, 338 B.R. 718 (Bankr. N.D. Tex.
5 2006); In re Jass, 340 B.R. 411 (Bankr. D. Utah 2006); In re
6 Schanuth, 342 B.R. 601 (Bankr. W.D. Mo. 2006); In re Johnson, 346
7 B.R. 256 (Bankr. S.D. Ga. 2006); In re Fuller, 346 B.R. 472
8 (Bankr. S.D. Ill. 2006); In re Edmunds, 350 B.R. 636 (Bankr.
9 D.S.C. 2006); In re Pak, 357 B.R. 549 (Bankr. N.D. Cal. 2006); In
10 re Devilliers, 358 B.R. 849 (Bankr. E.D. La. 2007); In re
11 Slusher, 359 B.R. 290 (Bankr. D. Nev. 2007); In re Ward, 359 B.R.
12 741 (Bankr. W.D. Mo. 2007); In re Zimmerman, 2007 WL 295452
13 (Bankr. N.D. Ohio, Jan. 29, 2007); In re LaPlana, 2007 WL 431627
14 (Bankr. M.D. Fla. Feb. 9, 2007); In re Kibbe, 2007 WL 512753
15 (B.A.P. 1st Cir. Feb. 20, 2007); In re Grant, 2007 WL 858805
16 (Bankr. E.D. Tenn. March 19, 2007); In re Watson, 2007 WL 1086582
17 (Bankr. D. Md. April 11, 2007

18 Further, even if the court were inclined to follow cases
19 such as these, most of them conclude that a chapter 13 debtor's
20 projected disposable income is presumptively based on what is
21 reported on the Schedule of Current Monthly Income. See e.g.,
22 Slusher. Only when this presumption is rebutted by the trustee
23 do these courts utilize Schedule I and J and the statement of
24 monthly net income to project disposable income.

25 In this case, the trustee has made no persuasive showing
26 that projected disposable income as calculated on the Statement
27 of Current Monthly Income is inaccurate.

28 ///

1 The trustee attempts one such argument. So far, the
2 argument is unpersuasive.

3 The debtor is paying \$400 a month in tuition and other costs
4 for a 21-year old son's college education. This expense is
5 reported on Schedule J. Because, according to the trustee, this
6 expense is not a reasonable and necessary expense, excluding the
7 expense will yield additional "disposable income."

8 The court agrees that the process mandated by sections
9 707(b) (2) (A) and 1325(b) permit the deduction of education
10 expenses only for minor children of the debtor. However, a
11 review of Form 22, the Statement of Current Monthly Income filed
12 in this case, reveals that the debtor has not taken any deduction
13 for these expenses. And, even though this deduction was not
14 taken, Line 58 of that statement shows no projected disposable
15 income.

16 When a debtor demonstrates compliance with section 1325(b),
17 as in this case, but nonetheless has actual net income, as
18 reported on the statement of monthly net income at the end of
19 Schedule J, not being contributed to the plan, the trustee may
20 use this fact to support an objection that the plan has not been
21 proposed in good faith as required by 11 U.S.C. § 1325(b) (3).

22 In In re Edmunds, 350 B.R. 636 (Bankr. D.S.C. 2006), the
23 bankruptcy court declined to conclude that the strict and
24 mechanical application of the disposable income test necessarily
25 ended the inquiry into whether the debtor has devoted sufficient
26 income to the plan.

27 A plan must be proposed in good faith and determining
28 whether a plan is proposed in good faith is based upon the

1 totality of the circumstances. Cases like Deans v. O'Donnell,
2 692 F.2d 968, 972 (4th Cir. 1982) and In re Warren, 89 B.R. 87
3 (B.A.P. 9th Cir. 1988), direct bankruptcy courts to consider a
4 nonexclusive list of factors to determine whether a plan has been
5 proposed in good faith. Included in this list is a debtor's
6 current financial situation, length of the plan, surplus income
7 not devoted to the plan, and the dividend promised to unsecured
8 creditors. See, also In re LaSota, 351 B.R. 56 (Bankr. W.D.N.Y.
9 2006); In re Johnson, 346 B.R. 256 (Bankr. S.D. Ga. 2006). Cf.
10 Sunahara v. Burchard (In re Sunahara), 326 B.R. 768 (B.A.P. 9th
11 Cir. 2005).

12 Unfortunately, in this case, the trustee has not yet
13 addressed the "totality of the circumstances." He points out
14 only that the debtor has monthly net income reported at Line
15 20(c) of the statement of monthly net income that is not being
16 paid to creditors. This is one circumstance, not a totality of
17 circumstances.

18 The court will continue the hearing and allow the trustee to
19 amend his objection so that he may make an argument that the
20 totality of the circumstances demonstrate that this plan has been
21 proposed in bad faith.