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IT IS SO ORDERED.

Dated: January 06, 2012



Burton Perlman
Burton Perlman
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In Re:)	Case No. 11-15097
)	
Michael P. Knecht)	Chapter 13
)	
)	
Debtor)	Judge Burton Perlman

ORDER RE: TRUSTEE'S OBJECTION TO CONFIRMATION

In this chapter 13 case, debtor has filed his First Amended Plan & Application to Confirm (the "amended plan"). The Chapter 13 Trustee has filed an objection to confirmation.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(b) and the General Order of Reference entered in this district. This is a core proceeding arising under 28 U.S.C. §157 (b)(2)(L).

Debtor's amended plan states that debtor is above median income. In ¶ 1(B) the plan provides that debtor will pay all projected disposal income in the following manner: the sum of \$1,024.00 monthly for 24 months; the sum of \$524.00 monthly for 12 months; and the sum of \$1,292.00 monthly for 24 months. The amended plan, then, is for 60 months. In ¶ 1 (C) it is stated that this is a percentage plan and the percentage is 5%. In ¶1 (D) the amended plan provides that a payroll deduction from debtor's wages will fund the plan.

Paragraph 7 of the amended plan is entitled "SECURED CLAIMS-VEHICLES PURCHASED WITHIN 910 DAYS OF FILING AND OTHER VALUABLE COLLATERAL PURCHASED WITHIN ONE YEAR OF FILING." No creditors are listed in this paragraph. Paragraph 8 is entitled "OTHER SECURED CLAIMS." In it creditor Cinti Health Care Assoc FCU is stated, with monthly payment of \$225.00 on the "PROPOSED AMOUNT OF ALLOWED SECURED CLAIM" of \$11,920.00. Paragraph 9 of the amended plan deals with domestic support obligations and states that debtor does have an obligation to pay a domestic support obligation. He does this by a current payroll deduction, and he is current on this obligation.

In ¶ 10, which is entitled "Plan Disbursements-Default Payments 'Inside the Plan,'" debtor states that he proposes to cure a default to PNC Bank N.A. with a monthly payment of \$594.00 on a default of \$35,594.89. In ¶12 the amended plan states that PNC Bank N.A. will be paid \$2,149.94 monthly, with payments beginning September 2011.

All of the foregoing, together with a number of paragraphs to which the Court has not made reference, are essentially those provided in a standard chapter 13 plan in use in Cincinnati. The standard plan adds a ¶ 30 entitled "ADDITIONAL PROVISIONS PERTAINING TO THE DEBTORS(S)," which is reserved for any deviations from the form

plan. In ¶ 30 of the amended plan at hand, Debtor seeks to amend ¶¶ 1(C), 1(D), 6,7,8, and 20.

The amended plan also includes four additional provisions:

ADEQUATE PROTECTION PAYMENTS TO REDUCE SECURED CLAIM BALANCE(S)

Any amounts received by a secured creditor under the provisions of Paragraph 5 shall be deemed payment on, and shall reduce the balance of, such creditor's related secured claim.

PLAN MODIFICATION

The provisions of Paragraph 27, concerning plan modification, shall not be interpreted to limit the provisions of 11 U.S.C. 1329. If the court allows, then a plan modification may proceed upon agreed order of affected parties, or upon motion and order without the filing of an amended plan.

SALE OF REAL ESTATE DURING THE PLAN

Though a sale of real property is not contemplated by the plan, the confirmed plan, without modification, shall be deemed to allow for a sale of real estate upon separate motion or application, in accordance with Local Bankruptcy Rule 6004-1.

AVOIDANCE OF WHOLLY-UNSECURED MORTGAGE OF FIFTH THIRD BANK; FINAL DETERMINATIONS OF VALUE OF REAL PROPERTY AND OF SECURITY INTEREST

Confirmation shall fix and determine the value of the real property located at 12134 Huntergreen Drive, Cincinnati, Ohio, to be **that value most recently assigned thereto in Debtors' schedules**, or any amendment thereof.

Confirmation shall further operate as a determination that the security interest granted or assigned to Fifth Third Bank, and arising by mortgage appearing in the records of the Hamilton County, Ohio, Recorder's Office in **Volume 10138 at Page 2064**, attaches to no unencumbered equity of Debtor(s) in the underlying property, that such security interest is of no economic value, and that such security interest cannot form a basis for an allowed secured claim under 11 U.S.C. 506.

Said mortgage shall be released of record upon either (1) issuance of a discharge under 11 U.S. C. § 1328(a), or (2) Court order and/or Trustee approval allowing either sale or refinancing of the real property encumbered by said mortgage; whichever event may occur first.

The amended plan concludes with a "NOTICE," which reads:

THE CONFIRMATION HEARING IN THIS MATTER WILL CONSTITUTE A VALUATION HEARING UNDER 11 U.S.C. 506(A) AND B.R. 3012.

ISSUES OF VALUE WILL BE DETERMINED WITH FINALITY UPON CONFIRMATION REGARDING THE VALUE OF THE REAL PROPERTY UNDERLYING THE AFORESAID MORTGAGE AND REGARDING THE VALUE OF THE SECURITY INTEREST ARISING FROM THE AFORESAID MORTGAGE. **ANY OBJECTION TO THE VALUE DETERMINATIONS PROPOSED HEREIN MUST BE TIMELY FILED AS AN OBJECTION TO THE PLAN.**

SURRENDER OF 2005 REGAL BOAT; TREATMENT OF CLAIMS FOR DEBTS SECURED THEREBY

Debtors propose to surrender a 2005 Regal Boat to any and all creditors whose debts are secured thereby (including, but not limited to, Fifth Third Bank); and Debtors propose that the plan shall pay only as general unsecured claims any and all allowed claims for such debt(s), which shall be allowable only to the extent that deficiencies remain due following liquidation of said property. Any claims related to debt secured by said property shall be filed within 270 days of confirmation of the plan.

PLAN TREATMENT OF MORTGAGE ARREARAGE OWED TO PNC BANK NA

This plan proposes, except as conditioned, to cure a default under 11 USC 1322(B)(5) on a debt owed to **PNC Bank NA**, secured by a mortgage against real property located at 12134 Huntergreen Drive, Cincinnati, Ohio.

If the mortgage, or any assignee, obtains relief from stay respecting such property, any claims(s) for debt(s) secured by said property shall thereafter be payable only as general unsecured claim(s), and in accordance with the following provisions.

Any such claim shall be **filed or amended** within 30 days of entry of an order granting relief from stay, to set forth an estimate of any deficiency balance anticipated to remain upon liquidated of the property. See 11 U.S.C. 502(c)(1). Thereafter, but within 270 days of entry of the order of relief from stay, any such claim shall be amended to set forth any actual deficiency balance owed. Upon a failure to file or amend a claim as hereinabove provided, the Trustee shall cease further payment of the claim, and any balance due thereon shall be deemed waived.

Upon issuance of an order granting relief from stay respecting the aforesaid real property, debts and/or claims secured by the property shall no longer be deemed to be "provided for under section 1322(b)(5)," as that phrase is used in 11 U.S.C. 1328(a)(1).

DISCUSSION

The Chapter 13 Trustee's objection came on for hearing before the Court on November 8, 2011. At the hearing, the Chapter 13 Trustee essentially stated her position to be that the submitted amended plan was overly complicated and made it difficult for her office to conclude whether or not to recommend confirmation. Debtor's counsel responded that his deviations from the standard plan, however extensive, are carefully and thoughtfully laid out in ¶ 30, as required.

In dealing with the Trustee's objection, the Court generally acknowledges that matters provided for by statute or rule ought not to be restated, and provision for matters not relevant to the present debtor should not be included. Apart from these, the task of the Chapter 13 Trustee ought not to be made more onerous by unnecessary departures from the standard plan applicable in this community. Substantive matters essential to the debtor, however, must be allowed.

The first ground of objection by the Trustee, that the plan should step up payments

at the end of the third plan year when debtor's first child graduates from high school, was addressed by debtor's amended plan and the Trustee orally assented to the change at the November 8, 2011 hearing.

To the extent that the Trustee's objection is directed at the additional plan provision that the wholly-unsecured mortgage of Fifth Third Bank is to be avoided, with the attendant determinations of value of real property and security interest, any objection must be overruled. The attended notice suffices to meet due process requirements. In re Bivens, Case No. 08-31447, Adv. No. 08-3361, September 30, 2009 (Bankr. S.D. Ohio 2009).

What remains to be discussed are Debtor's proposed departures from standard plan ¶¶ 1 (B), 1 (C), 1 (D), 6, 7, 8, and 20. Debtor proposes language in ¶¶ 1(B) and (1)(C), which the Court finds adds nothing to the provisions of the standard plan, and therefore must be deleted. As to ¶ 1(D), the standard plan requires the first payment within thirty days after the date of filing of the plan unless the Court orders otherwise. Debtor proposes that payment begin only upon recommendation of confirmation by the Trustee. The Court is unwilling to grant this deviation. The objection is sustained as to this provision.

The amendment prescribed in the amended plan for ¶ 6 is not allowed, and the Trustee's objection is sustained as to it. The amendment to the first clause does not substantially change the standard plan provision. Furthermore, debtor's additional provision in this paragraph constitutes an unnecessary restatement of a provision of Bankruptcy Code, and should be omitted from future plan filings. In re Frazee, Case No. 11-12442, September 27, 2011 (Bankr. S.D. Ohio 2011).

The amended plan proposes to amend ¶ 7, but there is nothing in the plan showing that the provisions of ¶ 7 should be changed from the standard plan and the objection is

sustained.

As to ¶ 8, we find that the second sentence of the proposed amendment states the is surplusage and the objection to it is sustained.

In ¶ 20, the amended plan proposes to alter the third clause by adding that the value of a replacement vehicle shall be not less than the lesser amount of insurance proceeds payable to debtor, which is in addition to the provision in the standard plan that requires the value to be not less than the balance of the underlying secured claim. The Court finds this to be a helpful inclusion, and overrules the objection.

In her objection, the Chapter 13 Trustee cites United Student Aid Funds, Inc. the Espinosa, 130 S. Ct. 1367 (2010). The purpose in citing Espinosa appears to be as authority for a trustee generally to police plans submitted by debtors. In Espinosa, a controversy was resolved regarding the res judicata effect of a confirmation order where the order affected debtor's rights with regard to payment on a student loan. While the Court agreed that such a provision was improper in a confirmation order, it nevertheless held the order to be binding. The Supreme Court did say that a Bankruptcy Court had an obligation with regard to a determination of undue hardship in a student loan case to make an independent determination "even if the creditor fails to object or appear in the adversary proceeding at all." Id. at 1380. This Court recognizes such an obligation and appreciates the effort of the Chapter 13 Trustee in identifying issues in chapter 13 plans that should be dealt with by the Court before it grants a confirmation order.

The objection of the Trustee is sustained in part and overruled in part as stated above. Confirmation is denied at this time. Debtor shall file an amended plan within 30 days from the date of this order.

SO ORDERED.

Copies to:

Default List

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