

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LEXINGTON**

**IN RE:  
WILLIAM C. HAMMOND**

**CASE NO. 11-50550**

**DEBTOR**

**ORDER OVERRULING OBJECTION TO CONFIRMATION  
AND  
DIRECTING TRUSTEE TO CONTINUE CONFIRMATION HEARING**

On Thursday, September 2, 2011, an evidentiary hearing was held on the objection to confirmation filed by Lenora Hammond, a creditor and ex-wife of the debtor William Hammond. The Objection, (Doc. 20), was based on Debtor's alleged lack of good faith in proposing his Chapter 13 Plan. In support of the Objection, Lenora filed a supplemental objection (Doc. 43), an affidavit (Doc. 69), a brief (Doc. 73), and an objection to William's affidavit (Doc. 80). William countered each of Lenora's filings with like documents: a response to the supplemental objection (Doc. 44), an affidavit (Doc. 70), a brief (Doc. 74), and an objection to Lenora's affidavit (Doc. 77). William managed to best Lenora with the filing of a brief in support of his objection to her affidavit. (Doc. 78). Both affidavit objections were overruled by order entered on August 30, 2011. (Doc. 81).

As provided in the Order Scheduling Evidentiary Hearing, (Doc. 53), the parties' affidavits represented their direct testimony. Each party was present at the evidentiary hearing and made available for cross-examination.

For the reasons that follow, the Objection is DENIED.

William filed this case under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code") on February 25, 2011. A Stipulation Denying Discharge and Order between William and the United States Trustee was entered on March 3, 2011. (Doc. 12). Lenora filed an unsecured proof of claim (Claim #2) in the amount of \$23,750.00 on April 1, 2011. William filed his objection to the claim on April 18, 2011, wherein he argued the sums owed to Lenora

were discharged in his previous Chapter 7 bankruptcy case, Case No. 10-52709. (Doc. 25). By order entered on June 27, 2011, this court overruled William's objection and determined William's Chapter 7 discharge did not discharge the debt owed to Lenora because the debt was a debt of the kind excepted from discharge by 11 U.S.C. § 523(a)(15). (Doc. 40).

The type of debt owed to Lenora would normally be dischargeable in a Chapter 13 case if some portion of the debt was provided for by the plan. 11 U.S.C. § 1328(a). This case is different. Under § 1328 William is not entitled to receive a Chapter 13 discharge because he received a discharge under Chapter 7 within the four years prior to the filing of this Chapter 13 case. 11 U.S.C. § 1328(f)(1). A stipulation acknowledging his ineligibility for a discharge was signed by William and his counsel and filed in the record on March 3, 2011.<sup>1</sup> Therefore, under the provisions of 11 U.S.C. § 1328(a), the court will not grant William a discharge of any debts provided for, but not fully paid, by his Chapter 13 Plan.

A debtor's Chapter 13 plan must be proposed in good faith. 11 U.S.C. § 1325(a)(3). The party seeking a discharge under Chapter 13 bears the burden of proving good faith. *Id.*; *In re Caldwell*, 895 F.2d 1123, 1127 (6th Cir. 1990). The inquiry into a debtor's good faith imposes a fact-specific analysis. "Courts should take into account the totality of the circumstances confronting the debtor" to determine whether a debtor's Chapter 13 plan is proposed in good faith. *In re Okoreeh–Baah*, 836 F.2d 1030, 1033 (6th Cir. 1988). The circumstances to consider in the good faith analysis include:

(1) the debtor's income; (2) the debtor's living expenses; (3) the debtor's attorney fees; (4) the expected duration of the Chapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under Chapter 13; (6) the debtor's potential for future earning; (7) any special circumstances such as unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt; (11) the burden which administration would place on the trustee; (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

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<sup>1</sup> This stipulation of no discharge was apparently not sufficient for Lenora, who filed her initial objection to confirmation a month later.

*In re Alt*, 305 F.3d 413, 419 (6th Cir. 2002) citing *Society Nat'l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 592 (6th Cir. 1992).

Additional considerations may be taken into account, including:

- (1) whether the debtor is attempting to abuse the spirit of the Bankruptcy Code;
- (2) that good faith does not necessarily require substantial repayment of the unsecured claims;
- (3) the fact a debt is nondischargeable under Chapter 7 does not make it nondischargeable under Chapter 13; and,
- (4) the fact that a debtor seeks to discharge an otherwise nondischargeable debt is not, *per se*, evidence of bad faith but may still be considered as part of the totality of the circumstances analysis...

*In re Caldwell*, 851 F.2d 852 (6th Cir. 1988) (internal citations omitted).

No one factor should be viewed as a dispositive indication of the debtor's good faith. *Id.* If the plan proposes to pay all of a debtor's disposable income over three years, and it otherwise meets the requirements of § 1325, the plan should be confirmed. *In re Owens*, 82 B.R. 874, 878 (Bankr. S.D. Ohio 1987).

During his testimony William stated he was disabled, unable to work, and did not anticipate obtaining future employment. Additionally, William testified he did not fully pay his divorce attorney and was unable to pay his bankruptcy attorney.

Examination of William's schedules and amended Chapter 13 Plan dated 5/23/11 shows the following: No secured claims and five unsecured nonpriority claims totaling \$26,070.00. Of this amount the debt related to the divorce proceeding with Lenora comprises more than 91% of the total. The remaining 9% of his debt relates to medical services. Social security disability is the sole source of income and after payment of monthly expenditures the scheduled monthly net income is \$5.00. William proposes a sixty month plan with payments totaling \$4,220.00.<sup>2</sup>

In his direct testimony William states his sole income source would cease if he were

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<sup>2</sup> The original plan proposed sixty monthly payments of \$5.00 each. Beginning in month five, the amended plan increases the monthly payment to \$75.00 for the remaining fifty-six months. A plan special provision states, "The Debtor has just been informed that he will be receiving Medicare which will decrease his monthly obligation for health insurance."

incarcerated. Under cross-examination, William admitted he may be subject to incarceration under order of the family court judge if his Chapter 13 case were dismissed.

No objection was made and no evidence produced to challenge the veracity of the Plan's statement of debts or expenses. Likewise no credible evidence is of record challenging William's disability or his prospects for obtaining future employment.

Weighing the totality of the circumstances and the evidence of record, a majority of the factors considered in determining whether William's Amended Chapter 13 Plan is proposed in good faith weigh in William's favor. As long as the bankruptcy case is pending and William continues to receive disability income, the Plan provides William will channel his monthly surplus into funding his Amended Chapter 13 Plan with the majority of each payment paid to Lenora. Finally, the signed Stipulation Denying Discharge and William's apparent inclination to continue in the Chapter 13 case severely lessens the weight given to any factor suggesting the plan was not proposed in good faith.

The evidence of record, when examined under the totality of the circumstances, shows the Amended Chapter 13 Plan proposed by William satisfies the basic purpose undergirding Chapter 13 – to provide a debtor with a flexible means for repaying creditors that is consistent with available resources. *Matter of Aberegg*, 961 F.2d 1307, 1309 (7th Cir. 1992). Further, William has stipulated that the scheduled debts will not be subject to discharge at the conclusion of the term of his Plan.

Based on the forgoing, IT IS HEREBY ORDERED the objection to confirmation filed by Lenora Hammond, creditor and ex-wife of debtor William Hammond, is OVERRULED.

IT IS FURTHER ORDERED Chapter 13 Trustee Beverly Burden shall file a notice continuing the confirmation hearing in this matter to the next available hearing date and serve all parties as required by Local Rules.

Copies to:  
Robert F. Ristaneo, Esq.  
Elaina L. Holmes, Esq.  
Beverly M. Burden, Esq., Chapter 13 Trustee

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Joseph M. Scott, Jr.**  
**Bankruptcy Judge**  
**Dated: Thursday, September 15, 2011**  
**(jms)**