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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
MUN CHA OM)	CASE NO. 03-72513-MHM
)	
Debtor)	

OPINION REGARDING CONFIRMATION

This case is before the court for confirmation of Debtor's Chapter 13 plan. Objections to confirmation were filed by the Chapter 13 Trustee and by Olumba Ogum, a judgment creditor ("Creditor"). Following an extensive evidentiary hearing, prompted by Creditor's assertion that Debtor's Chapter 13 plan had not been proposed in good faith, the parties were accorded the opportunity to file briefs on the issue of good faith. Debtor's brief elicited a response from Creditor. The Chapter 13 Trustee filed a response to Creditor's brief and Debtor filed a response to the Chapter 13 Trustee's brief.

FACTS

This case commenced September 9, 2003. The filing of this case was apparently precipitated by the entry by DeKalb Superior Court of a default judgment against Debtor and Sulko, Inc. in favor of Creditor. The amount of the judgment was \$118,130 and arose from Creditor's allegations of personal injuries received in 1998 during a confrontation with Debtor's son, James Lewis, in the course of Mr. Lewis' employment at the motel owned by Sulko, Inc. Sulko, Inc. was owned by Debtor, who operated the motel. James

Lewis had been dismissed as a defendant in that lawsuit on the grounds of lack of service of process. Debtor sold the motel business in 1999 but did not dissolve Sulko, Inc. because of the ongoing lawsuit filed by Creditor. Debtor filed this Chapter 13 case to protect her residence, her sole asset, from Creditor's judgment lien.

Creditor is proceeding in this case *pro se*¹ and has filed numerous pleadings and three adversary proceedings.² Debtor's confirmation hearing was reset numerous times and was finally commenced January 27, 2005 and continued to September 29, 2005, during which an extensive evidentiary hearing was held, with Debtor presenting testimony from Debtor's accountant regarding the disposition of the proceeds from the sale of the motel in 1999 and about the continued existence of Sulko, Inc. Because Sulko, Inc. was a Subchapter S corporation, the sale proceeds and the taxable consequences were passed through to Debtor, who paid the appropriate income taxes and who paid business expenses from her personal bank account.

Creditor has asserted in numerous pleadings that Debtor has concealed assets from the bankruptcy court and the Chapter 13 Trustee, primarily the proceeds from the sale of Debtor's business. Creditor's allegations themselves contained little substance and the "evidence" presented by Creditor demonstrated a misunderstanding of the documents he

¹ Creditor was briefly represented by an attorney, but that attorney withdrew shortly after his employment. Even during that representation, Creditor continued to file pleadings *pro se*.

² An adversary proceeding is a lawsuit separate from the main case, initiated by a complaint, not by a motion in the main case, and proceeds to trial pursuant to rules adopted from the Federal Rules of Civil Procedure, in Bankruptcy Rule 7001 *et seq.*

relied upon and of the structure and operation of a corporation, especially a Subchapter S corporation. The information regarding Sulko, Inc. (which had not been operating for several years before Debtor's bankruptcy petition was filed) was disclosed by amendment to Debtor's Statement of Financial Affairs. Debtor's accountant clearly, completely and adequately explained the disposition of the sale proceeds at the hearing held September 29, 2005. Based upon the testimony and records of the accountant, the sale proceeds were used by Debtor primarily to pay outstanding expenses of the corporation. All the sale proceeds were accounted for and none appear to have been concealed.

Creditor also made allegations that Debtor had concealed assets by overpaying her credit card accounts, or by somehow fraudulently obtaining cash advances on her credit cards. The evidence presented by Creditor in support of his allegations was inconclusive at best and insubstantial at worst. Although Debtor is unable to present her credit card statements from the petition date and before, she did present reports from the primary credit reporting agencies that supported her contention that she had not improperly used her credit cards. The extensive information in those credit reports refutes Creditor's allegations. No credible evidence has been presented that Debtor has used any credit card to conceal assets from the bankruptcy court or the Chapter 13 Trustee.

Creditor also asserted that Debtor had improperly listed credit card accounts that had been paid in full. As correctly pointed out by the Chapter 13 Trustee, to be entitled to a distribution under Debtor's Chapter 13 plan, a creditor must file a proof of claim. It

must be assumed that, even if listed as a creditor in Debtor's schedules³, no creditor to whom nothing is owed will file a proof of claim. Debtor is not in control of a creditor's decision concerning whether to file a claim. The mere listing of the credit card accounts in her Schedules is not evidence of bad faith by Debtor.

Creditor also made allegations that Debtor's Schedules had falsely included a claim of the Internal Revenue Service ("IRS"). IRS has asserted a claim and filed a tax lien against real property owned by Debtor's former husband. Debtor's former husband, as properly disclosed in Debtor's Schedules, is joint owner and joint obligor on the residence occupied by Debtor. Therefore, it was reasonable and prudent to include IRS as a potential creditor and provide IRS with notice of Debtor's bankruptcy filing. The government deadline for filing a proof of claim in this case has passed and IRS has not filed a claim. Debtor has amended her Schedules to delete the IRS as a creditor and amended her plan to increase the distribution to unsecured creditors, including Creditor. These circumstances support a conclusion that Debtor's inclusion of the IRS as a potential creditor was neither fraudulent nor improper.

Creditor accuses Debtor of having undervalued her residence. The value placed by Debtor upon her real estate when the original petition was filed was \$100,000.

Postpetition, Debtor amended her Schedules to increase the value to \$123,000, and

³ Bankruptcy Rule 1007 requires a debtor to file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs (the "Schedules").

concomitantly increased the distribution to unsecured creditors to account for the increased equity value in her residence. Creditor presented no evidence to suggest that the fair market value of Debtor's residence is substantially more than \$123,000. The evidence does not support a conclusion that Debtor's valuation was in bad faith.

Creditor asserts that Debtor made a false claim in her Schedules regarding rental income received from her son. The evidence shows that Debtor's son, who is a student, resides with her and contributes income designated as rent. Debtor's plan provides that her plan payments will increase when Debtor's son graduates and increases his rent payments. Payment of rent need not bear a direct correlation to the mortgage payment, as many other expenses arise from home ownership. The contribution by Debtor's son appears to be neither false nor does it appear to conceal any asset of Debtor. Creditor's assertion is without merit.

Although the Chapter 13 Trustee filed objections to confirmation of Debtor's plan, he did not challenge Debtor's good faith and most of those objections were resolved prior to or as a result of the hearing held September 29, 2005. Following the hearing, the Chapter 13 Trustee asserted only three objections to confirmation: (1) Debtor's failure to disclose her interest in a life insurance policy; (2) Debtor's failure to disclose gifts and charitable contributions; and (3) Debtor was delinquent in plan payments by \$600. Each of these objections has been resolved. Debtor filed an amendment to her Statement of Financial Affairs to disclose that, during the year before her bankruptcy petition was filed,

she received the cash surrender value of the life insurance policy, \$8,435.04. Debtor also disclosed that during the year preceding the filing of her bankruptcy petition, she had made cash contributions to the Central Evangelical Church of Atlanta totaling \$1,080. Her Schedule J already included a modest amount for continuing charitable contributions. Debtor's plan payments are now current. Based upon the resolution of all his objections, the Chapter 13 Trustee recommends confirmation of Debtor's Chapter 13 plan.

Based upon the factors set forth in *Kitchens v. Georgia Railroad Bank and Trust*, 702 F. 2d 885 (11th Cir. 1983), Debtor's Chapter 13 plan was filed in good faith. Debtor, who is 67 years old, divorced, Korean with limited verbal abilities in this country's culture and predominant language, derives her income from Social Security benefits and rent paid by her son. Her living expenses border on Spartan. The prepetition retainer for her attorney was paid by a relative, and her attorney has filed no application for additional fees, despite Creditor's litigiousness, frequently bordering on frivolous. The duration of Debtor's plan is the maximum five years and the evidence shows she has maximized her plan payments. Entry of a large judgment is a common motivation for filing a bankruptcy case, as it appears to have been in this case. Debtor's plan payments have been essentially current during the preconfirmation period. Debtor has been diligent in responding to requests for information. She has increased her plan payments to provide a 28% distribution to unsecured creditors. Debtor has fully and adequately responded to extensive discovery requests by Creditor and has fully and adequately explained her past

financial transactions. Few cases could withstand the intense scrutiny to which this case has been subject. Incompleteness or minor inaccuracies in a debtor's Schedules, especially when they have little or no impact on the debtor's plan, are not an uncommon occurrence and do not, without more, establish a lack of good faith. All of the Chapter 13 Trustee's objections have been resolved and Debtor's plan has been filed in good faith.

Accordingly, Debtor has satisfied all the requirements for confirmation, including showing that the case and the plan were filed in good faith. Debtor's Chapter 13 plan will be confirmed by a separately entered order.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, the Chapter 13 Trustee, and upon Creditor Olumba Ogum.

IT IS SO ORDERED, this the 7th day of September, 2006.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE