

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 13
)
DEBRA LYNN LAVARNWAY,) CASE NO. 08-60454-MHM
)
Debtor.)

**ORDER DENYING DEBTOR'S OBJECTION TO CLAIM
AND DIRECTING DEBTOR TO AMEND THE SCHEDULES AND PLAN**

On July 24, 2009, Debtor filed an objection to the claim of the Education Resources Institute ("ERI") (Claim No. 12) [Doc. No. 67]. Hearing was scheduled for August 27, 2009. Attorneys for Debtor and for the Chapter 13 Trustee appeared at the hearing but no one appeared on behalf of ERI.

The only ground for objection to ERI's claim asserted by Debtor was that ERI's claim arises from a student loan, which is non-dischargeable under §523(a)(8), and that the claim should be paid directly by Debtor and not through Debtor's Chapter 13 plan. That argument, however, does not state adequate legal grounds under §502 to disallow ERI's claim.

A review of Debtor's file shows that ERI was not listed in Debtor's Schedules¹ as a creditor. Pursuant to 11 U.S.C. §521 and Bankruptcy Rule 1007, a debtor must file Schedules disclosing financial information fully, completely, accurately and honestly. A debtor may not pick and choose which assets and liabilities to disclose. "Once a person elects to avail himself

¹ Section 521(a) and Bankruptcy Rule 1007(b) require 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").

of the benefits of the federal bankruptcy laws by the filing of a petition, [s]he can no longer expect to have any financial secrets." *In re Trout*, 108 B.R. 235 (Bankr. D. N.D. 1989).

Debtor's Chapter 13 plan was confirmed March 20, 2008, but the plan does not provide for direct payment of ERI. Absent a modification of the plan or disallowance of ERI's claim, ERI's claim would be paid its *pro rata* share of the funds designated for unsecured creditors. Because Debtor failed to state adequate grounds to disallow ERI's claim, the objection cannot be sustained. Debtor should instead amend the schedules and the plan to provide for ERI's claim, one option for which is to pay the claim directly.

Accordingly, it is hereby

ORDERED that Debtor's objection to ERI's claim is *overruled*. It is further

ORDERED that the Chapter 13 Trustee shall suspend any payment to ERI under Debtor's Chapter 13 plan for 30 days, during which time Debtor must file amended Schedules and an amended plan. If no such amended Schedules and plan are filed, Debtor may be required to show cause why this case should not be dismissed as not filed in good faith.

The Clerk is directed to serve a copy of this order upon Debtor, counsel for Debtor, ERI, and upon the Chapter 13 Trustee.

IT IS SO ORDERED, this the 17th day of September, 2009.


MARGARETH MURPHY
UNITED STATES BANKRUPTCY JUDGE