

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

CASE NO. 03-21873

BRENDA LEE TAYLOR,

Debtor.

DECISION & ORDER

BACKGROUND

On May 12, 2003, Brenda Lee Taylor (the "Debtor") filed a petition initiating a Chapter 7 case. On the Schedules and Statements required to be filed by Section 521 and Rule 1007 the Debtor indicated that: (1) she had unsecured, non-priority debt of \$27,672.91; (2) she had a gross annual income of \$32,000.00, but a negative monthly disposable income of approximately \$198.00; (3) she was the fee owner of 341 William Street, Geneva, New York (the "Geneva Property"), an unencumbered rental property in which her mother retained a life estate; (4) the Geneva Property had an appraised value of \$60,000.00; and (5) the Debtor had determined that her mother's life estate interest had a value of \$57,600.00, so that her fee interest had a value of \$2,400.00.

On September 23, 2003, the Debtor filed a Motion to Convert her case to a Chapter 13 case (the "Motion to Convert").

On September 24, 2003, Warren H. Heilbronner, Esq., the Debtor's Chapter 7 Trustee (the "Trustee"), interposed Opposition

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to the Motion to Convert which asserted that: (1) the Debtor's mother was seventy-seven years old; (2) utilizing the Internal Revenue Service regulations and related tables for the valuation of a life estate interest for estate and gift tax purposes¹, he had determined that the mother's life estate interest in the Geneva Property had a value of \$17,000.00 and the Debtor's remainder interest had a value of \$43,000.00; (3) because of the Debtor's \$43,000.00 equity interest in the Geneva Property, in order to meet the requirements of Section 1325(a)(4)², any Chapter 13 plan proposed by the Debtor would have to provide for the payment of her unsecured, non-priority creditors in full; (4) the Debtor's Schedules indicated that she had negative monthly disposable income, so that she could not fund the required one hundred percent (100%) plan; and (5) for the foregoing reasons, the Court should deny the Motion to Convert.

¹ These can currently be found at 26 C.F.R. § 20.2031-7.

² Section 1325(a)(4) provides that:

(a) Except as provided in subsection (b), the court shall confirm a plan if -

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date[.]

11 U.S.C. § 1325 (2003).

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On October 7, 2003, the Debtor's counsel interposed a Response to the Trustee's Opposition, which: (1) included proposed amended Schedules I and J that showed a net monthly disposable income of \$237.82 because the Debtor was now receiving a \$322.50 monthly child support payment from her ex-spouse; (2) included a proposed Chapter 13 plan, which: (a) proposed to pay her \$272.82 monthly disposable income to the Trustee for sixty (60) months; (b) provided for the payment of all priority, secured and administrative costs; and (c) proposed to pay \$4,392.64 to her unsecured, non-priority creditors, representing a fourteen percent (14%) dividend; (3) proposed the following formula to the Court for the valuation of the Debtor's remainder interest in the Geneva Property: (a) deduct the age of the holder of the life estate from that individual's life expectancy; (b) convert that number of years to months; (c) multiply that figure by the monthly rent due for the rental property; and (d) deduct that amount from the estimated market value of the rental property; and (4) asserted that the proposed formula would result in a \$2,400.00 value for the Debtor's remainder interest in the Geneva Property.

At the return date of the Motion to Convert: (1) the Chapter 13 Trustee indicated that he also used the Internal Revenue Service regulations and tables in order to determine the values of life estate and remainder interests in real property for purposes of

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Chapter 13 plans and the requirements of Section 1325(a)(4); (2) the Court rejected the Debtor's proposed formula for determining the value of the Debtor's remainder interest in the Geneva Property and accepted the Trustee's method and calculation to determine the value of the Debtor's remainder interest; (3) determined that the Debtor's proposed Chapter 13 plan that utilized all of her updated monthly disposable income, would not meet the requirements of Section 1325(a)(4), which would require her to pay all of her unsecured, non-priority creditors in full; (4) the Court noted that the Debtor had not produced any credible and convincing evidence as to the life expectancy of her mother which would refute the valuation of her life estate interest as determined by the Internal Revenue Service regulations and tables; and (5) based upon the foregoing, the Court denied the Motion to Convert, and, at the request of the attorney for the Debtor, agreed to issue a written decision so that other Chapter 13 debtor's attorneys could be aware of the Court's determination.

DISCUSSION

For purposes of Chapter 13 plans and the requirements of Section 1325(a)(4), this Court will use the Internal Revenue Service regulations and tables to determine the values of life estate and remainder interests unless there is credible and

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persuasive evidence presented at the date of the valuation that indicates that the life by which the interests are measured has an expectation longer or shorter than indicated by the regulations and tables.³

In this case: (1) the Debtor did not present any credible and persuasive evidence that would indicate that her mother's life expectancy was different from that set forth in the Internal Revenue Service regulations and tables; and (2) the \$43,000.00 value of the Debtor's remainder interest would require her to pay her unsecured, non-priority creditors in full in order for the Court to confirm a Chapter 13 plan as having complied with the requirements of Section 1325(a)(4).

Because the Debtor did not have the net monthly disposable income necessary to pay her unsecured, non-priority creditors in full over a sixty (60) month period, the Court found that she was not capable of proposing a plan that could be confirmed. Therefore, there was no cause or good reason to permit her to convert her case to a Chapter 13 case.

³ See *Matter of Reardon*, 10 B.R. 697 (Bankr. Conn. 1981) (J. Krechevsky, noting that the values of life estates and remainder interests for gift and estate tax purposes are computed according to the actuarial tables employed by the Internal Revenue Service.)

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CONCLUSION

The Debtor's Motion to Convert is in all respects denied.

IT IS SO ORDERED.

_____/s/_____
HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE

Dated: December 3, 2003