UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

PHYLLIS O. SCHUMACHER Case No. 98-10070 K

Debtor

The question before the Court is why a Chapter 13 debtor must meet the requirements of both 11 U.S.C. § 1325(a)(1)-(6) *and* § 1325(b), when the statute itself does not contain such a conjunction. More specifically, the Debtor proposes a plan that would meet the "projected disposable income" test of § 1325(b),[1] but would not meet the "Chapter 7 test" of § 1325(a)(4).[2] The Debtor argues that the two provisions are alternative, not cumulative requirements for confirmation. The Chapter 13 Trustee objects to confirmation of such a plan.

Firstly, the plain language of the statute belies the Debtor's argument. When one

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[1] 11 U.S.C. § 1325(b) requires that:

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan -

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

[2] 11 U.S.C. § 1325(a) requires 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;

focuses on the operative language, the statute is clear. Under subsection (a), the court "shall confirm a plan" if six requirements are met, but that duty of the court is subordinate to subsection (b). Section (b) says that if there is an objection to confirmation of the plan "the court may not approve the plan unless" the projected disposable income test is met. As a matter of basic statutory construction, then, subsection (b) cannot form a stand-alone basis for confirmation of a plan. Rather, only (a) can support an order for confirmation, and (a) does not suffice alone, if the projected disposable income requirement of (b) is not met.

The Debtor's reading of the statute would not only read the Chapter 7 test out of the Code as long as the disposable income test was met, but it would also dispense with the need to comply with the other five requisites contained in subsection (a), such as the good faith requirement and the requirement that the debtor be able to make all payments under the plan. Obviously, such was not Congress' intention.

Even if the statute's plain language were not enough to defeat the Debtor's argument, the historical context in which § 1325(b) was enacted makes clear the proper interpretation. Section 1325 was amended in 1984 to add subsection (b). It was added in response to creditor complaints that subsection (a) did not require that a Chapter 13 plan make a "substantial repayment" or that it at least represent the debtor's "best effort." Some courts had read the good faith provisions of § 1325(a)(3) as requiring a "substantial" or "meaningful" payout to unsecured creditors, but the "projected disposable income test" was Congress' solution. *Collier on Bankruptcy* notes that "The 'good-faith effort' standard . . . presaged the "ability to pay" [or "projected disposable income"] test in the 1984 amendments as an inquiry *separate and*

distinct from the question of the debtor's good faith . . ." 8 *Collier on Bankruptcy* ¶ 1325. LH [1][b], at 1325-66 (Lawrence P. King ed. 1996) (emphasis added). *Collier* further notes that "The amount of payments required is to be determined solely based upon the dictates of sections 1322(a)(2), 1325(a)(4), (5), and (6) *and* section 1325(b), as added by the 1984 amendments," *Id.* (emphasis added). The notion that Congress, in adding subsection (b), rejected its previous, unvarying stance that no one, by electing a rehabilitative chapter, may shelter non-exempt property value that creditors would share in a Chapter 7 proceeding, cannot be ennobled in the absence of a clear legislative intent. All evidence of legislative intent here is to continue that stance, and to add yet another protection for creditors.

Indeed, even dropping back to a third layer of analysis, public policy, the Debtor's interpretation would make no sense. As to an account debtor who has substantial non-exempt assets (home equity, savings, etc.) the risk that the debtor might file a Chapter 13 case and shelter those assets would compel the filing of an involuntary Chapter 7 proceeding at the first moment that 11 U.S.C. § 303 permits. The very purpose that this Debtor argues in support of her position -- that Congress intended to let a good faith Chapter 13 debtor shelter all that she has worked for -- would be gutted if the argument were sustained. Creditors would be incited to take away those assets at every opportunity, if they could not rest assured that even in a Chapter 13, they will realize the value of those assets over the life of a 3-5 year plan.

The Court could muster a legion of other reasons why the Debtor's novel argument is utterly without foundation based on every level and axiom of statutory construction, but only one other need be stated. When dealing with debtors who are individuals, rather than

business entities, every provision of the Bankruptcy Code must be read *in para materia* with 11 U.S.C. § 522, which comprehensively addresses exempt property. The Debtor's argument here would contrive an enormous, unlimited exemption for every non-income-producing asset of a Chapter 13 debtor, regardless of asset value. If the language that Congress used had been so grossly flawed as to command such an absurd result, this Court would feel obliged to order it and leave it to Congress to remedy. But there is no flaw here. The plain language, legislative history, and policy are all clear and leave no vestige of doubt.

The proposed Plan may not be confirmed, and this constitutes an order denying confirmation for purposes of 11 U.S.C. § 1307(c)(5).

SO ORDERED.

Dated: Buffalo, New York
February 23, 1998

/s/ Michael J. Kaplan

Michael J. Kaplan, U.S.B.J.