

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

IN RE:

**DIANA SHERIDAN,
Debtor.**

BK. NO. 91-23392

DECISION AND ORDER

BACKGROUND

On December 4, 1991 the debtor, Diana Sheridan (the "Debtor"), filed a petition initiating a Chapter 13 case. The Debtor's schedules indicate that she is an unemployed student with two young daughters whose income of \$967.66 per month is derived from unemployment, child support and food stamps. It was not until April 23, 1992 that the Debtor filed an unsigned Chapter 13 plan which provided for the payment of \$75.00 per month to the Trustee for a period of 60 months. Thereafter the Debtor agreed with the Chapter 13 Trustee to modify her plan to provide for the payment of \$100 per month, an amount which exceeds the Debtor's disposable income as shown on her budget filed with her schedules, over a period of 60 months and sought confirmation of the modified plan at a hearing held by the Court on November 20, 1992. The confirmation hearing was adjourned to December 18, 1992. At that time, it was indicated that the Debtor, rather than seeking full time employment which might be available to her, wished to continue her education to further her long range ability to be financially self-sufficient for her benefit and also her family's. The plan as modified would pay only: (1) the secured automobile lien on the Debtor's car as finally allowed at \$3,000 (less than the creditor's claim), together with interest at 9%; (2) a secured real estate tax lien in the amount of \$1,000 on the Debtor's real property, which the Debtor is purchasing by a land contract (the payments on which are current), together with interest at 9% (less than the statutory rate) and the Chapter 13 Trustee's fees. After these payments, no amounts would be available to pay the Debtor's unsecured creditors who have claims of in excess of \$16,000.

On December 18, 1992 the Court denied confirmation of the Debtor's plan, and the Chapter 13 Trustee requested that the Court issue a written decision.

DISCUSSION

Because this Debtor's Chapter 13 plan (the "Plan") proposes to pay only her secured creditors over a five-year term and nothing to unsecured creditors and there are not the compelling and unusual circumstances present that would warrant it, the Plan will not be confirmed, both for cause and because it has not been proposed in good faith within the meaning of 11 U.S.C. §1325(a)(3).

Prior to the 1984 Amendments to the Bankruptcy Code there were numerous decisions holding that Chapter 13 plans which provide for no payments to unsecured creditors, often termed "zero payment plans," should not be confirmed because, as Judge Howard Schwartzberg stated, "the entire statutory scheme and the legislative history with respect to Chapter 13 reflect an intention to encourage more debtors to repay their debts over an extended period, a zero payment must be regarded as inconsistent with such statutory design." In re Seman, 4 B.R. 568, 572 (Bankr. S.D.N.Y. 1980). See also In re Hobday, 4 B.R. 417, 419 (Bankr. N.D. Ohio 1980).

However, the legislative history to the 1984 Amendments to Section 1325 indicates that Congress felt that in compelling and unusual circumstances zero payment plans could be confirmed by the Bankruptcy Court and still further the underlying policies of Chapter 13.

The purpose of the "good-faith effort" test of sub-section 1325(a)(3) is to prevent the use of Chapter 13 composition plans by debtors having a demonstrated ability, but not the willingness, to make whatever payments their particular circumstances reasonably permit over and above their primary obligations to support themselves and their dependents during the extension period. Under these criteria, the circumstances of a given case may require that the court confirm a Chapter 13 plan which proposes no dividend whatever to holders of allowed unsecured claims or that the Court deny confirmation of a plan proposing a 95% dividend to the holders of such claims.

H.R. Rep. No. 1195, 96th Cong., 2d Sess. 25 (1980).

Congress has afforded eligible debtors a fresh start in the scheme which it has provided in a Chapter 7 case. Debtors have the ability to: (1) obtain a discharge of their debts (Section 727), with a few important exceptions; (2) reaffirm certain debts (Section 524), often secured debts on property whether real or personal which is important and even necessary to the debtor's well being, when to do so is in the debtor's best interests and will not impose an undue hardship; and (3) even redeem certain exempt personal property from all liens securing the property (Section 722).

Beyond this comprehensive scheme which enables debtors to obtain a fresh start in a Chapter 7 case, Congress has also afforded certain individual debtors an alternative scheme to obtain a fresh start which has important additional advantages and benefits which some debtors may wish to take advantage of. These additional advantages and benefits include the ability to: (1) cure mortgages; (2) cram down secured property to a fair market value and then pay that fair market value over time; and (3) obtain a "Super Discharge." However, this Court believes that Congress clearly contemplated that in all but the most rare of cases, where there might be compelling and unusual circumstances, there would be trade-offs to be able to obtain these additional advantages and benefits and to be able to avoid some of the disadvantages of a Chapter 7 liquidation. The principal trade-off contemplated was that debtors would make every reasonable and possible effort to repay a greater proportion of their debts, including those due to unsecured creditors.

In the absence of compelling and unusual circumstances which make it clear that a debtor simply can not, under any reasonable set of circumstances, pay anything to unsecured creditors within a five-year period, confirming a plan which proposes to pay only allowed secured claims over time with less than the applicable contract or statutory rate of interest¹ and affording the debtor the additional advantages and benefits of Chapter 13 would not further the fundamental policies of Chapter 13.

¹In this case the plan is arguably only for the benefit of the debtor since these claims should otherwise be paid in full if the case were a Chapter 7 case.

This particular Debtor's Plan requires a full five-year term in order to be able to pay allowed secured debt which is all due and payable. This is clearly the only purpose of this plan. For such a plan to be confirmed it requires the Court, pursuant to Section 1322(c), to make an affirmative finding that there is cause to approve the plan which extends longer than three years. This Court does not believe that cause exists to extend a plan beyond three years which does not provide for any payment to unsecured creditors in the absence of the required showing of unusual and compelling circumstances. Therefore, in this case confirmation is also denied since the plan can not be performed without a Section 1322(c) extension for cause and the Court does not believe such cause exists.

CONCLUSION

Confirmation of the Debtor's Plan is denied.

IT IS SO ORDERED.

/s/

HON. JOHN C. NINFO, II
UNITED STATES BANKRUPTCY JUDGE

Dated: March 23, 1993