UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

STANLEY R. WILLS
DENISE L. WILLS   Case No. 95-10142 K

Debtors

ORDER AND MEMORANDUM OF DECISION

The objection to confirmation filed by Buffalo Fire Department Federal Credit Union, and joined in by the Niagara Falls Policemen's Federal Credit Union in open court, is sustained. The Debtor shall have 20 days in which to file and serve a modified Chapter 13 plan that meets the requirements of 11 U.S.C. § 1325(a)(3), as described below:

11 U.S.C. § 1325(a)(3) requires that the Court confirm a Chapter 13 plan if "the plan has been proposed in good faith," among other things. This Judge has often stated on the record that "good faith" means "fundamental fairness." In Court, Debtors' counsel argued that even though the Debtors here propose to pay only 2% to their unsecured creditors, the "good faith" requirement is met because the Debtors are committing all of their projected disposable income for three years, as is required (when a creditor so demands in the form of an objection) by 11 U.S.C. § 1325(b)(1)(B). But there is no basis in law to so link the "good faith requirement" with the "projected disposable income requirement." It is as incorrect to insist that all such

thirty-six month plans are good faith plans, as it is to insist that no such plan can ever be a good faith plan.

Indeed, that mechanical, arithmetic approach to the proposal of Chapter 13 plans is an obstacle to proper understanding of the good faith requirement. A showing of good faith is qualitative, not quantitative. Good faith, or lack thereof, is found in the spirit of a debtor's negotiations in response to the legitimate concerns of creditors and the Chapter 13 Trustee. One may only judge the good faith of the numbers proposed against the background of the totality of circumstances in each case.

It is not good faith for a Chapter 13 debtor, particularly in the face of opposition from creditors or the Chapter 13 Trustee, to say, "I'm proposing as little as I can possibly get away with," instead of saying, "I will pay my creditors what can fairly be asked of me in exchange for the benefits I am receiving." The good faith approach to these matters does not yield a magic formula for computing a required payout amount. Good faith does not necessarily require a debtor's "best effort" or even a "meaningful" or "substantial" payment, although a debtor's best effort will probably be a good faith effort, and in many cases (but not all) a meaningful or substantial repayment will result from a good faith plan.

Just as Chapter 11 contemplates negotiation between the debtor and its creditors in the formulation of a plan of reorganization, Chapter 13 commands such interchange if creditors or the Chapter 13 Trustee seek it. Against the totality of a debtor's circumstances, negotiations may result in a "range of reasonableness" in terms of percentage payout, duration of plan, surrender of collateral that might otherwise be retained at unsecured creditors' expense (as explained below), or other terms or circumstances within which range any particular mix selected by the debtor would constitute a good faith plan. Never would this Court rule that a plan lacks good faith for want of a single percentage point. For example, the Court would not rule that a 10% payout to unsecured creditors is "good faith," but a 9% payout is not.

The mechanical practice of filling out the worksheets that are necessary to compute the requirements of the Chapter 7 test, the projected disposable income test, the valuation of secured claims, and the like, is important and must continue. But filling out those sheets and proposing a plan that conforms with those numbers does not, of itself, render the plan a good faith plan. The numbers yielded by that approach are merely a starting point. Fundamental fairness - good faith - considers those numbers in the context of numerous circumstances.

The projected disposable income test is far less precise than the Chapter 7 test, and requires greater reference to the separate requirement of good faith. Every dollar that a debtor proposes to devote to such monthly expenses as housing, food, entertainment, recreation, car, boat or R.V. payments, insurance, medical or dental needs, curing mortgage arrears, property taxes, education of a child, assistance for elderly parents or for grandnieces or nephews, student loan obligations, alimony, maintenance or support obligations, savings for a wedding or bar mitzvah or a "rainy day," or countless other life-style choices, is a dollar less projected disposal income that that debtor is proposing to pay his or her unsecured creditors for the duration of the plan. Who may question the good faith of one who forgoes what others treat as necessities in order to help a family member, to provide recreation for his or her child, or to participate more fully in church or community? Within the bounds of a reasonable expense level for a debtor of a given means, he or she may make such choices. But when the choices result in a fundamentally unfair reduction of the projected disposable income committed to creditors, it is an absence of good faith that is at issue.

To argue these choices in the context of what is disposable income rather than in the context of good faith is to ask the Court, in thousands of Chapter 13 cases each year, to decide such questions as who may have cable TV for their children, how old a car they should drive, where they should live, whether they may maintain their cultural ties.

The good faith requirement is the anvil upon which is hammered a reconciliation of such choices and the "fresh start" policy with the rights of creditors. Debtors' counsel here must not sell Chapter 13 as a commodity, but must respect it as a process. The worksheets merely yield a number. At the § 341 meeting, that number must be tested against such considerations as the value of a debtor's home, vehicles, and other assets (though they be incumbered), the magnitude and nature of the debts to be discharged, the purpose of the filing (to save a home, to discharge substantial unsecured debt, to address recent severe misfortune, or to simply obtain a more complete relief than a debtor could obtain in a Chapter 7 case, e.g.), the number and needs of a debtor's dependents, the reasonableness of the debtor's ongoing expenses (for example, are unsecured creditors being asked to finance a debtor's extravagances, or past foibles or errors), a debtor's health, age, and prospects, and other factors.

When a debtor seeks to extract every possible advantage out of each provision of Chapter 13, such as strip down, stretch out, rejection or assumption of executory contracts, cure-and-assure, and superdischarge, and then in the face of objection insist that he or she has a right to those benefits in exchange for a commitment of projected disposable income for exactly thirty-six months, with a total payout to unsecured creditors of 1% or 2%, that is not good faith. That appears to be the fact pattern before the Court in the case at bar.[1]

The Debtors here are stripping down their car from approximately $9,000 to approximately $7,000. They are curing mortgage arrears and stretching them out over a period of three years. Although the Debtors are of moderate income (approximately $36,000 combined family income per year), and their monthly expenditures are not unreasonable for a family of four, they are discharging an amount of retail, unsecured debt that is massive for persons of their means -- over $52,000 of unsecured debt, nearly all of which is retail credit card debt, bank card debt, and credit union debt incurred over a number of years. They bought the car that they are now stripping down less than a year before the filing of the Chapter 13 petition. The Court is aware of no particular adversity that might have caused them their plight. Although there are no allegations before the Court that any of the debts being discharged would be non-dischargeable in a Chapter 7 case on grounds of false financial statements or fraud, it is possible that the decision to file the Chapter 13 rather than Chapter 7 was made not with any rehabilitative purpose in mind (in light of the relatively small

[1]The Court has not been advised of whether any good faith negotiations did in fact occur at the § 341 meeting. In open court, the issue was presented as a matter of law: Did the Plan satisfy the "good faith" requirement by virtue of the fact that it satisfied the projected disposable income test. The Court will herein provide the Debtors with an opportunity to reopen negotiations.

amount of mortgage arrearage debt to be cured and in light of the fact that the Debtors have no non-exempt equity in the real estate that would cause the loss of the real estate in a Chapter 7 case), but solely to avoid questions of dischargeability while also obtaining the benefit of strip down of the motor vehicle. (In Chapter 7, the Debtors would have to negotiate with the creditor a reaffirmation of the car loan in order to keep the car.)

The Debtors are not aged or infirm, and they readily agreed, upon questioning by the Court, that they could make payments for a longer period of time than three years, based upon what they now know and what they currently project.

In the face of the objection raising issue of good faith, their insistence that Congress has required nothing more of them than the commitment of projected disposable income for the minimum time prescribed by law (which will here yield 2%, or approximately $1,000 of the $52,000 of unsecured debt) will not prevail. They must negotiate a fair plan.

A secondary issue is presented as to the value of a second automobile. The Court finds that the creditor's appraisal is not at all inconsistent with the Debtors' appraisal in light of the qualifications that the creditor's appraiser forthrightly acknowledged. The Camaro is valued at $1,800.00.

It must be emphasized that this holding does not bar 1% or 2% or 5% plans, or require that all plans exceed thirty-six months. Rather, it requires that the quality that is "good faith" be observed in the interchange that occurs between a debtor and his or her creditors and trustee regarding the numbers that the worksheets yield. Chapter 13 debtors should be advised that that process yields no formalistic, pat result.

The confirmation of the Plan is denied. The Debtors will have twenty days in which to file, and to serve upon the Trustee and the objectors, a modified plan consistent with this decision, or they may within that time elect to appear at a further hearing under § 341 on April 20, 1995 in order to enter good faith negotiations with their creditors. If they make no election, a Motion to Dismiss will lie.

SO ORDERED.

Dated: Buffalo, New York
March 21, 1995

/s/Michael J. Kaplan
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U.S.B.J.