

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
Leopoldo Rodriguez, III,) Case No. 23-12589
)
Debtor.)

ORDER SUSTAINING OBJECTION TO CONFIRMATION, ORDERING AMENDED PLAN, AND
RESETTING CONFIRMATION HEARING

The chapter 13 debtor here purchased a 2021 GMC Terrain vehicle in January 2023. He financed it with Fifth Third Bank over 75 months at an interest rate of 12.99% with monthly payments of \$793.37. According to the creditor’s proof of claim, the debtor was a month behind when he filed bankruptcy, although there is now a larger postpetition arrearage. The debtor is below-median income and thus the applicable plan period is three years under Bankruptcy Code § 1322(d) unless the court “for cause” approves a longer period. If his plan term were three years, he could “cure and maintain” the auto loan under Code § 1322(b)(5) and pay the loan directly.

But the debtor instead wants to confirm a five-year plan and shorten the term of the auto loan by paying it through the trustee. According to the debtor, this change would save him about \$7,800 but reduce the percentage paid on unsecured claims from about 7.65% (\$2,539) to zero. The auto loan is a “910 claim” under Code § 1325 and cannot be reduced to the value of the vehicle. The debtor does not have sufficient projected disposable income to pay the 910 auto claim within the statutory three years.

The chapter 13 trustee filed an objection (doc. 30) to the debtor’s chapter 13 plan as follows:

The Trustee objects to the treatment provide for Fifth Third Bank for the 2021 GMC Terrain driven by the debtor. The plan proposes to pay Fifth Third \$875 per month \$38,139.36 @ 9.25% over the life of the plan [which is proposed at five years]. The contract with Fifth Third Bank is for \$793.37 @ 12.99% over 75 months. The plan treatment accelerates the payment of Fifth Third's claim while minimizing payments to unsecured creditors.

The debtor admits that, as proposed, unsecured creditors will receive nothing under the plan and that those creditors would receive a distribution under the trustee’s approach. But he contends that the savings to him under his proposed plan outweighs the detriment to unsecured creditors. After

consideration of the parties' briefs and the applicable law, the court sustains the objection because (1) the plan was not proposed in good faith; and (2) there is no cause for extending the plan beyond the statutory three years.

Good faith

The Eleventh Circuit “has set forth a non-exhaustive list of factors relevant to whether a plan was proposed in good faith[,]” commonly referred to as the *Kitchens* factors. *See In re Brown*, 742 F.3d 1309, 1316-17 (11th Cir. 2014). The court determines good faith on a case by case basis using a “totality of the circumstances” approach. *See id.* The requirement of good faith “remains the fulcrum in assuring that a debtor receives a ‘fresh start’ but not a ‘head start’ under the Bankruptcy Code.” *See In re Pearson*, 398 B.R. 97, 101-02 (Bankr. M.D. Ga. 2008) (citation and quotation marks omitted).

Having reviewed the *Kitchens* factors and the totality of the circumstances, the court finds that current plan is not proposed in good faith. The accelerated payment on the car benefits the debtor “to the unfair detriment of [his] unsecured creditors. It gives [the debtor] a ‘head start’ rather than a ‘fresh start.’” *See In re Pearson*, 398 B.R. at 105; *see also In re Page*, 658 B.R. 178, 192-94 (Bankr. E.D. Wash. 2024); *In re Liles*, 292 B.R. 138, 140 (Bankr. E.D. Tex. 2002) (“a plan which proposes to take money from unsecured creditors in order to fund accelerated payments to a secured creditor is not proposed in ‘good faith’”).

Plan extension

“What constitutes ‘cause’ for extending a plan term [under Code § 1322(d)] and whether a debtor has shown cause are questions of fact decided by the bankruptcy court on a case by case basis.” *See Davis v. Gore*, No. 1:12-CV-2013-WMA, 2014 WL 536980, at *3 (N.D. Ala. Feb. 10, 2014). The “cause” for the requested extension here is to save the debtor money by reducing the amount paid to the fully secured creditor and eliminating any distribution to unsecured creditors. The court finds that this is not good cause for an extension and also denies confirmation on that basis.

Conclusion

To the extent the court has not specifically addressed any of the parties' arguments, it has considered them and determined that they would not alter the result. The court sustains the trustee's objection to confirmation, denies confirmation, and orders the debtor to file an amended plan within 7 days of the date of this order. The court resets the confirmation hearing to Monday, July 22, 2024, at 1:30 p.m., Courtroom 2 West, 113 St. Joseph Street, Mobile, AL 36602.

Dated: June 7, 2024


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE