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ADV. NUMBER: None

JUDGE: M. A. Mahoney

PARTIES: Carl Emerson Brown, County of Los Angeles, California, Internal Revenue Service

CHAPTER: 13

ATTORNEYS:

DATE: 12/12/97

KEY WORDS:

PUBLISHED: No

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

CARL EMERSON BROWN

Case No. 94-11924-MAM-13

Debtor.

**ORDER DENYING COURT'S SHOW CAUSE
AND INSTRUCTING CHAPTER 13 TRUSTEE
TO DETERMINE MONTHLY PLAN PAYMENT AMOUNT**

This case is before the Court on the Court's own show cause order of April 10, 1997. At that time, it appeared that the County of Los Angeles, California ("County"), might have been overpaid on a child support debt due to it. The County had received \$2,257.89 from the Internal Revenue Service because of a levy on the Debtor's tax refund monies. The Chapter 13 Trustee had paid the County \$7,000.00. The only evidence of a claim by the County at that time was a claim filed by the Debtor on behalf of the County in the amount of \$7,000.00. Therefore, if the IRS and Chapter 13 Trustee had paid the County over \$9,200.00, it appeared that the County may have been overpaid.

The Debtor filed his Chapter 13 case on September 21, 1994. On October 14, 1997, the County filed a claim for \$16,943.02. Of this amount, \$8,512.18 was owing when the case was filed. The County has applied the monies received from the IRS and the Court first to current support, then to accrued interest, and only after all accrued interest is paid, to principal. This is done pursuant to California Code of Civil Procedure section 680.230. The issues at this point are: (1) Is there a surplusage of funds held by the County which must be refunded? (2) If not,

what is the status of the County's claim? (3) Based upon the answers to Questions No. 1 and 2, what is the status of the Debtor's case?

1.

The Debtor has not objected to Claim No. 9 of the County to date, although he has orally raised an issue as to the propriety of accrual of postpetition interest on the claim.¹ Therefore, the claim stands as allowed at present. There is no credit balance in the Debtor's account at the County and if the claim is \$16,943.02, the Court's show cause order in regard to the propriety of a refund from the County is due to be denied.

2.

There are numerous cases about how to treat nondischargeable claims and interest accruing on them in Chapter 13 cases. The vast majority hold that the nondischargeable claim of a creditor in a Chapter 13 is limited to the amount of the prepetition principal and prepetition interest on the debt. *E.g., Bruning v. U.S.*, 376 U.S. 358, 84 S. Ct. 906, 11 L. Ed. 2d 772 (1964) (pre-Bankruptcy Code case); *Leeper v. Pennsylvania Higher Education Assistance Agency*, 49 F.3d 98 (3d Cir. 1995); *Branch v. UNIPAC/NEBHELP (In re Branch)*, 175 B.R. 732 (Bankr. D. Neb. 1994); *In re Shelbayah*, 165 B.R. 332 (Bankr. N.D. Ga. 1994); contrast, *In re Wasson*, 152 B.R. 639 (Bankr. D.N.M. 1993). Under 11 U.S.C. § 502(b)(2), unmatured interest is not an allowable claim in a bankruptcy case. Thus, postpetition interest unmatured at the filing of the bankruptcy case is disallowed. *Shelbayah*, 165 B.R. at 335.

¹This issue is addressed below in No. 3.

The County's claim as of September 21, 1994, the date the Debtor filed bankruptcy, was \$8,512.18.² Therefore, the \$7,000 paid to the County by the Chapter 13 Trustee, coupled with the \$2,257.89 paid by the IRS, fully paid the claim of the County which was properly allowable in this case. In fact, the claim was overpaid by \$745.71. If an objection to the claim is filed, the Court would likely rule in this manner.³

3.

At present, the County's claim stands at \$16,943.02. If the Debtor does not object to the claim, the Trustee will calculate what payments would be necessary over the remaining life of the plan to pay out this debt. If the Debtor objects to the claim, the Court will rule on what portion is allowable and will rule consistent with what is stated in No. 2 above. The Trustee is directed to calculate the appropriate monthly payments based upon the County's claim as filed and file a motion to increase payments, if necessary.

The Debtor's dilemma as to a proper course of action is created by case law which holds that interest accrues postpetition on nondischargeable debts against a debtor personally although not against his or her estate. *Leeper, supra; Shelbayah, supra*. The Court concludes this case law is correct. Therefore, even if Mr. Brown's estate pays the prepetition debt of \$8,512.18 in full during the bankruptcy case, the County may still hold Mr. Brown liable for any interest accruing on that debt postpetition and may collect it from him after the conclusion of the Chapter 13 case. *Leeper, supra*. Therefore, Mr. Brown and his counsel will have to decide

²Claim form gives balance as of September 1, 1994.

³The "refund" would probably never leave the County's hands. It would levy on the sum to pay postpetition interest and child support.

whether payment of some of the debt in Chapter 13 while paying current child support outside of Chapter 13 is more or less desirable than paying the debt outside of Chapter 13.

THEREFORE, IT IS ORDERED:

1. The Court's show cause order is DENIED.
2. The Chapter 13 Trustee shall calculate the monthly plan payments due from the Debtor based upon the claim of Los Angeles County as presently filed.

Dated: December 12, 1997

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE