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PARTIES: Cheryl Stringer
CHAPTER: 13
ATTORNEYS: H. D. Padgett
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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE

CHERYL STRINGER
Debtor

CASE NO. 94-12572

O R D E R

At Mobile in said District on the 13th day of February, 1995, before Gordon B. Kahn, Chief Bankruptcy Judge:

This matter having come on for hearing upon confirmation of the debtor's Chapter 13 Plan; due notice of said hearing having been given; the debtor having appeared with her attorney, Herman D. Padgett, there being no other appearances; and testimony having been taken and the matter having been taken under submission, the Court now finds, concludes, and orders as follows:

FINDINGS OF FACT

1. The debtor filed her bankruptcy petition under Chapter 13 of Title 11 of the United States Code on December 8, 1994.

2. The debtor's amended plan filed in open court on January 19, 1995, provides for repayment of her student loan incurred in 1989 at a rate of 100% and all other unsecured creditors to be paid at a rate of 1% over a period of 60 months; the debtor has no secured debts.

CONCLUSIONS OF LAW

The debtor's plan separately classifies a student loan obligation which is nondischargeable in bankruptcy pursuant to 11 U.S.C. § 1328(a)(2) and proposes to pay it in full while paying one percent on other unsecured creditors' claims which presumably are dischargeable. The Bankruptcy Code allows a debtor to designate a class or classes of unsecured claims provided that the plan of repayment does "not discriminate unfairly against any class so designated." 11 U.S.C. § 1322(b)(1). By providing that creditors holding unsecured claims be paid 1% but that the student loan shall be

paid 100%, the debtor here clearly discriminates among her unsecured creditors. Her only basis for doing so appears to rest on the nondischargeability of the student loan. The debtor's plan basically shifts the student loan nondischargeability burden from herself to her general unsecured creditors. This is not a reasonable basis for such discriminatory treatment in a Chapter 13 plan. Other courts have agreed with the concept that the non-dischargeability of student loans in a Chapter 13 case is an insufficient basis in and of itself to warrant discrimination in favor of those creditors. See, e.g., McCullough v. Brown, 162 B.R. 506 (N.D.Ill.1993)(100% to student loans, 10% to other unsecureds); In re Christophe, 151 B.R. 475 (Bankr.N.D.Ill.1993)(100% to student loans, 32% to other unsecureds); In re Tucker, 150 B.R. 203 (Bankr.N.D.Ohio1992)(100% to student loans, 5% to other unsecureds); In re Saulter, 133 B.R. 148 (Bankr.W.D.Mo.1991)(100% to student loans, 10% to other unsecureds); In re Scheiber, 129 B.R. 604 (Bankr.D.Minn.1991)(100% to student loans, 3.5% to other unsecureds). Accordingly, confirmation of the debtor's Amended Chapter 13 Plan is due to be denied. The debtor shall have 15 days from the date of this Order to further amend her Chapter 13 plan or suffer automatic dismissal of her case. Now, therefore, it is

ORDER

ORDERED, that the confirmation of the debtor's Amended Chapter 13 Plan filed on January 19, 1995 be, and it hereby is, DENIED; and it is further

ORDERED, that the debtor shall file a new Amended Chapter 13 Plan within 15 days of the date of this Order or suffer automatic dismissal of her case.

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CHIEF U.S. BANKRUPTCY JUDGE