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JUDGE: M. A. Mahoney

PARTIES: James Augusta Hall, Luck Chambers, Chapter 13 Trustee

CHAPTER: 13

ATTORNEYS: J. J. Hartley, H. D. Padgett

DATE: 8/2/00

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

JAMES AUGUSTA HALL

Case No. 98-12573-MAM-13

Debtor.

In Re

LUCK CHAMBERS

Case No. 00-10454-MAM-13

Debtor.

EN BANC ORDER ON TRUSTEE'S MOTION FOR INSTRUCTIONS
REQUIRING CHAPTER 13 PLANS WITH PRIORITY DEBTS TO PAY
100% OF PRIORITY DEBTS PROSPECTIVELY ONLY

John C. McAleer, III, Chapter 13 Trustee
Jeffery J. Hartley, Attorney for the Chapter 13 Trustee
Herman D. Padgett, Attorney for Debtors

These cases are before the Court on the Motion of the Chapter 13 Trustee for Instructions on the treatment of priority debts in previously filed cases with confirmed chapter 13 plans. This Court has jurisdiction to hear these matters pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. These matters are core proceedings pursuant to 28 U.S.C. § 157(b)(2) and we have the authority to enter final orders. For the reasons indicated below, the Court is instructing the trustee to leave undisturbed the confirmation orders previously entered and now final in cases in these courts even though priority claims may not be paid in full during the lives of those plans and to apply the law stated in this opinion prospectively only.

FACTS

The cases of James Hall and Luck Chambers are just two of over 400 chapter 13 cases in this Court which bear the same general fact pattern. Messrs. Hall and Chambers each owed at filing a debt for support payments for a child or a former spouse. Their chapter 13 plans provided for less than full payment of those debts over the life of the plan. The support debt is being paid together with and in the same percentage amount as other unsecured claimants who may or may not also be priority creditors as a support claimant is pursuant to 11 U.S.C. § 507. No one objected to the treatment of the support debt as provided for in the plan. The confirmation order is a final nonappealable order.

LAW

The trustee seeks instructions as to how to treat these cases in light of a recent ruling by Judge Mahoney in regard to the appropriate treatment of priority creditors in chapter 13 plans.¹ In that case, *In re Kenneth Randy Spivey*, Case No. 99-12990 (S.D. Ala. May 18, 2000), Judge Mahoney ruled that a chapter 13 plan must provide for the payment of all priority claims in full during the life of the plan as required in 11 U.S.C. § 1322(a)(2) (unless the creditor consents to other treatment). If it does not, then the plan could not be confirmed.

Judge Mahoney has recently, in other oral rulings, refined this ruling to require that a chapter 13 plan must pay 100% of priority claims during the life of the plan before any other unsecured debts could be paid. However, if a debtor is unable to pay even the full amount of the priority debts, a chapter 13 plan could still be confirmed if all excess funds over preference payments were dedicated to payment of the maximum amount of priority debt possible. This type of plan will still fulfill the requirements of §§ 1322 and 1325 of the Bankruptcy Code, at

¹Priority creditors include attorneys' and trustees' fees, administrative expenses, support debts and taxes. (The Court has only listed those most likely to appear in a chapter 13 case.)

least as long as the priority creditor does not object to its treatment under the plan. If such plans were not allowed, persons with very large tax or support claims would really have no ability to file any type of bankruptcy case except a chapter 7 case and the chapter 7 case would not discharge the priority debt. Chapter 11 would only give some of the debtors an extra year to pay the priority tax claims, and require agreement with the creditor as to support claims. Chapter 11 would be too expensive and complicated for most chapter 13 debtors' situations. Therefore, if the debtor proposes a plan to pay 100% or less of the priority debts, and provides no payment to nonpriority unsecured creditors, and if the debtor is dedicating all of his excess income to the plan, then the plan will likely be confirmed.²

The question then arises for the trustee as to the applicability of *Spivey* and its refinements to previously confirmed cases. Should he file motions to increase the payments in every confirmed case in which the priority debts are being paid less than in full and at the same percentage rate as nonpriority unsecured claims?

The judges have concluded that cases with final nonappealable confirmation orders should not be subject to motions to increase. The *Spivey* ruling will not be applied retroactively, only prospectively. Where the creditors have by their failure to object or appeal at least tacitly accepted the distribution plan previously followed by the chapter 13 trustee, then the Court will not disturb those cases unless a party objects or the debtor makes a motion to modify the plan. The support or tax creditor usually has a nondischargeable debt which will not be affected by a discharge in the case.

The Court will require that the chapter 13 trustee send a letter to counsel for each debtor with such a case or to the debtor, if pro se, attaching this ruling. The present system of

²This assumes that all of the debtor's preference payments are necessary and appropriate as well.

distributions will leave the affected debtors with some amount of unpaid priority debt which is nondischargeable at the conclusion of his or her case. The debtors need to be aware of this and be given the opportunity to modify their plans if desired. The Court will also require that the ruling be sent to the Alabama Department of Human Resources and the United States of America.

The Court has tried to balance the competing concerns of the finality of orders and expectations of creditors and debtors in reaching this result.

IT IS ORDERED that the motion of the trustee for instructions is GRANTED as follows:

1. No cases with final nonappealable confirmation orders will be reviewed by the chapter 13 trustee for the necessity for an increase in payments based upon the *Spivey* ruling; and
2. The chapter 13 trustee shall send to all debtors' counsel in affected cases (or the debtor if pro se) a copy of this order.
3. The chapter 13 trustee also shall send to the Alabama Department of Human Resources and to the United States Attorney a copy of this order.

Dated: August 2, 2000

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE