

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

IN RE:

CEDRICK L. ABRAMS,

DEBTOR.

CASE NO.: 19-10892 -JCO
CHAPTER 13

MEMORADUM OPINION AND ORDER

This matter came before the Court for hearing on the Trustee’s Motion to Increase Plan Payments (“Motion”)(doc.43), Trustee’s Notice to Increase Percentage to Unsecured Creditors (“Notice”)(doc.44); and the Debtor’s Responses objecting thereto (“Responses”) (docs.45,46). Appearances were noted by Attorney Jonathan Alex Johnson as counsel for the Debtor, Attorney Jeffery J. Hartley as counsel for the Chapter 13 Trustee and Daniel B. O’Brien, Chapter 13 Trustee. Upon consideration of the Motion, the Responses, the Record, and the arguments of counsel, the Court determines that the Motion and Notice are due to be DENIED for the following reasons:

JURISDICTION

This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157, and the Order of Reference of the District Court dated August 25, 2015.

FINDINGS OF FACT

The Debtor, Cedrick Abrams, (“Abrams”) filed the instant bankruptcy case on May 2, 2019. The bankruptcy schedules reflect that Abrams is a below median income debtor having \$494.00 in non-exempt assets. Abrams proposed a forty-two (42) month plan which included payments on a secured debt to J & J Furniture (“J&J”) in the amount of \$1000.00 with 6% interest.

The Confirmation Order (doc. 40) required monthly plan payments of \$621.00 to pay the secured debts provided for in the plan and yield approximately 36.56% (\$3226.49) to allowed non-priority, unsecured creditors. The Motion seeks to increase the plan payment from \$621.00 to \$693.00 per month due to plan payment delinquency and the Notice seeks to increase the percentage to unsecured creditors from 36.56% to 56.56% as the result of J&J failing to file a proof of claim¹. The increase requested by the Trustee would require the Debtor to pay approximately \$1764.04 more to unsecured creditors than required by the Confirmed Plan.

ANALYSIS

Section 1329 of the Bankruptcy Code governs the modification of a plan after confirmation and provides in part:

- (a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to
 - (1) increase or reduce the amount of the payments on claims of a particular class provided for by the plan;
 - (2) extend or reduce the time for such payments;
 - (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan . . .
- (b)(1) Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

11 U.S.C §1329

The confirmation requirements applicable in this case include that: (1) the property to be distributed under the plan on account of each allowed unsecured claim shall not be less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 (“Liquidation Analysis”); and (2) all of the debtor’s projected disposable income to be received in the applicable commitment period will be applied to make payments to unsecured creditors

under the plan (“Disposable Income Test”)ⁱⁱ. 11 U.S.C. §§1325(a)(4);1325(b)(1)(B) [by application of §1325(a)(1)]. Additionally, as the language of Section 1329(a) is drafted in permissive language and does not explicitly state what justifies a modification, the bankruptcy court has discretion to determine whether a proposed modification is appropriate. *See In re Nachon-Torres*, 520 B.R. 306 (Bankr. S.D. Fla. 2014); *In re McAllister*, 510 B.R. 409 (Bankr. N.D. Ga. 2014); *In re Arnold*, 869 F.2d 240, 241 (4th Cir.1989).

The plan modifications sought by the Trustee are not warranted. Although Abrams fell behind about \$1200.00 on his chapter 13 payments, the amount of the payment increase requested by the Trustee is unnecessary to yield the 36.56% percentage to unsecured creditors per the Confirmation Order. Further, J&J’s failure to file a proof of claim for the \$1000.00 secured debt which Abrams proposed to pay with interest through the plan does not justify increasing the percentage to the unsecured creditors. An increase in the percentage to unsecured creditors will require the Debtor not only to pay more than set out in the Confirmation Order but also more than required under the Bankruptcy Code. Abrams, as a below income median debtor, need only commit his disposable income to the plan for thirty-six (36) months. Since he proposed a forty-two (42) month plan and his delinquency approximates two payments, he can still meet the Disposable Income Test. Additionally, as Abrams only has non-exempt assets of \$494.00, his plan will still yield more to unsecured creditors than the Liquidation Analysis requires.

Although the Trustee asserts that the failure of a J&J to file a claim should inure to the benefit of the unsecured creditors, the Court’s evaluation of the equities in this particular instance dictates otherwise. Requiring a debtor to pay more to unsecured creditors than would have been required if a secured debt was not listed in the plan, essentially penalizes the Debtor for seeking to address all his debts at the onset of the case. As the Court determines that Abrams can still comply

with Liquidation Analysis and the Disposable Income Test, the increases sought by the Trustee are unnecessary.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that the Trustee's Motion and Notice are DENIED.

Dated: August 24, 2021



JERRY C. OLDSHUE, JR.
U.S. BANKRUPTCY JUDGE

i The deadline for filing proof of claims in this case was May 28, 2019.

ii In performing the Disposable Income Test, the "applicable commitment period" for below median income debtors is three (3) years. 11 U.S.C. §1325 (b)(4)(a)(i).