

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

IN RE:)
)
Melissa Sircoria Castophney,) Case No. 23-12755
)
Debtor.)

ORDER OVERRULING OBJECTION TO CONFIRMATION (DOC. 35)

This chapter 13 case is before the court on the trustee’s objection to the debtor’s chapter 13 plan. The court overrules the objection because it finds that the debtor proposed her plan in good faith and she otherwise meets the requirements of Bankruptcy Code § 1325.

According to proof of claim 12 and her testimony, debtor Melissa Castophney borrowed \$12,425 from Gulf Winds Credit Union in January 2021 to purchase a 2008 GMC Yukon. She testified that her father Morse Castophney signed the note as a co-borrower because he had better credit. Although she listed her ownership in the vehicle as only a half interest when she filed bankruptcy, the certificate of title attached to Gulf Winds’ proof of claim shows the debtor as the sole owner; this discrepancy does not affect the court’s decision.

The debtor filed bankruptcy in November 2023. She valued the 2008 Yukon in its entirety at \$4,090 in her Schedule B. But she proposes to pay Gulf Winds’ claim of \$9,381.93 in full as secured at the contract rate of 10.49% (doc. 25). The trustee argues that debtor should “cram down” the secured claim to the value of debtor’s interest in the vehicle, which is less than the amount owed on the debt regardless of whether that interest is half or whole. Doing so would increase the amount paid through the plan to unsecured creditors, but the debtor would still owe about \$5,000 on the vehicle at the end of the case, even assuming she is the sole owner.

The debtor does not want to take this step for two reasons. First, it would leave her father as co-borrower on the hook for the portion of the debt not paid through her plan. And second, she would not receive title to the vehicle at the end of her case because the portion of the loan not paid through the bankruptcy would still be owed by her father. The debtor testified that the Yukon is the vehicle that she

drives every day, that she makes all the payments, and that she could not make a \$5,000 lump sum payment at the end of the case to obtain title to the vehicle.

The trustee has cited no code section in support of his objection. The plan complies with Bankruptcy Code § 1325(a)(5)(A) because Gulf Winds has accepted the plan by not objecting. The court also finds that the plan complies with Code § 1325(a)(5)(B), in that the value is actually in excess of the allowed amount of the secured claim (although there has been no specific determination). The loan occurred more than 910 days before the bankruptcy, so the “hanging paragraph” of Code § 1325(a)(5) is not applicable and would be met in any case. The trustee does not contend that the debtor is not paying all of her projected disposable income, so she meets the requirements of Code § 1325(b).

The only code section that the court thinks may relate to the trustee’s objection is the “good faith” requirement of Code § 1325(a)(3). 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.*

If the debtor amends her plan to “cram down” the vehicle to the value of her alleged interest (half or whole as the case may be), then Gulf Winds will have an unsecured claim for the remaining portion of the debt. The court does not know at this point what percentage payment that potential unsecured claim would receive, but it would certainly be without interest. If Gulf Winds’ hypothetical unsecured claim is treated as a general unsecured claim, there will thus be some balance owed at the end of the case on which the debtor’s father would be liable and which must be paid before the debtor could receive title to the vehicle.

The code allows a debtor to provide more favorable treatment to co-borrower unsecured debt at the expense of other unsecured creditors. Code § 1322(b)(1) states that a plan “may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims” So the debtor could protect her father by treating the unsecured portion of the debt on which he is jointly liable differently from other unsecured debt and paying the hypothetical

unsecured portion of the Gulf Winds claim in full at the contractual interest rate through the plan. The debtor's proposed plan basically does just that. The only difference is that the debt is being paid in full as secured as opposed to a portion being paid in full as unsecured. The end result is the same.

Of course, any such proposal must still meet the good faith requirement of Code § 1325(a)(3). Having carefully reviewed the *Kitchens* factors and the totality of the circumstances in this case, the court finds that the debtor has proposed her plan in good faith by seeking to pay Gulf Winds the full amount of its claim. The debtor – not her father – drives the Yukon, and the court finds that the vehicle is necessary for an effective reorganization. Obtaining good title at the end of the case will promote the “fresh start” purpose of bankruptcy. *See, e.g., In re Roby*, 649 B.R. 583, 594 (Bankr. M.D. Ala. 2023). And both the secured claim (\$9,381) and proposed plan payment (\$280) are well below the amounts the court would approve (generally \$21,500 and \$550, respectively) if the debtor surrendered the vehicle and filed a motion to borrow to obtain another. The court thus overrules the trustee's objection.

Dated: April 22, 2024


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE