

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

IN RE: )  
 )  
CORAHOLIFIELD, ) Case No. 20-12097  
 )  
Debtor. )

ORDER SUSTAINING OBJECTIONS TO CONFIRMATION,  
ORDERING DEBTOR TO FILE AN AMENDED PLAN WITHIN 14 DAYS,  
AND RESETTING CONFIRMATION HEARING

This chapter 13 case came before the court on December 3, 2020 on the objections to confirmation filed by Navigator Credit Union (doc. 39) and the chapter 13 trustee (doc. 45). The court limited the hearing to the threshold issue of the debtor’s proposal to keep two vehicles and pay those vehicles through his chapter 13 plan. The court conducted a telephonic evidentiary hearing and heard testimony from the debtor. Having reviewed the evidence and the applicable law, the court sustains the objection and orders the debtor to file an amended plan within 14 days.

Background

In the debtor’s chapter 13 plan (doc. 2), he proposes to retain and pay for two vehicles, both financed through Navigator Credit Union: a 2012 Jeep Wrangler for \$26,095.96 with 6.0% interest and a 2014 Jeep Wrangler for \$26,797.15 with 6.0% interest. The debtor valued the 2012 Jeep at \$16,125 in his sworn schedules and the 2014 Jeep at \$19,850. Both vehicles are thus substantially “upside-down,” that is, the debt on each vehicle is more than its value. However, since the credit union’s purchase money loans for the vehicles were made within 910 days of the bankruptcy, the debtor must pay the full amounts owed pursuant to Bankruptcy Code § 1325(a)(5)’s “hanging paragraph.”

The debtor is self-employed and owns a trailer from which he sells food at various businesses, such as chemical plants, in the Mobile, Alabama area. The debtor uses one of the vehicles to pull the trailer. He testified that his girlfriend and 22-year-old daughter share the other vehicle; that he sometimes needs his girlfriend to go get supplies for his food business and she uses the second vehicle to do so; and that his daughter uses the vehicle to drive back and forth from her college classes.

### Analysis

The debtor's plan is not confirmable on multiple grounds: (1) the expense of the second vehicle is not reasonably necessary for the maintenance and support of a dependent of the debtor; (2) the expense is not reasonably necessary for the maintenance and support of the debtor; and (3) regardless, the plan was not proposed in good faith.

The debtor is a below-median income debtor and is not proposing to pay 100% on unsecured claims. As a result, the debtor must pay all of his projected disposable income into the plan for the applicable commitment period under Bankruptcy Code § 1325(b)(1). In calculating a below-median debtor's disposable income, Code § 1325(b)(2) allows the deduction of "amounts reasonably necessary to be expended for the maintenance and support of the debtor or a dependent of the debtor . . . ." The debtor "bears the burden of proving that an expense is reasonably necessary." *See In re Stacks*, 588 B.R. 263, 266 (Bankr. N.D. Ga. 2018).

The debtor filed this case on August 28, 2020. His sworn schedules do not list any dependents, and he did not amend his sworn schedules at any point prior to the hearing to list any dependents. The cost of the second vehicle thus does not qualify as an amount reasonably necessary to be expended for the maintenance and support of a dependent under § 1325(b)(2).

The debtor also has not proven that the expense of the second vehicle, at least with as much secured debt as the vehicles here, is reasonably necessary for his own maintenance and support. Setting aside the cost of the first vehicle (an issue currently not before the court), the court finds that the debtor does need one vehicle that can tow his trailer in order to conduct his business. But the court is not persuaded by the debtor's testimony that his second relatively expensive vehicle is reasonably necessary for his girlfriend to get supplies for the business. The debtor did not prove to the court's satisfaction why he could not plan better and ensure he has enough supplies beforehand. Further, there was no evidence that the debtor had attempted to obtain a cheaper second vehicle or that his girlfriend (or anyone) could not get supplies for the food business in a cheaper vehicle.

The court also cannot confirm a plan if it has not been proposed in "good faith" under Code § 1325(a)(3). *See, e.g., In re Jackson*, No. 11-42528-JJR-13, 2012 WL 909782, at \*2 (Bankr. N.D. Ala. Mar. 16, 2012). 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, e.g., id.* The debtor bears the burden to show that the "plan was proposed in good faith." *See, e.g., In re Jackson*, 2012 WL 909782, at \*2.

Having reviewed the *Kitchens* factors and the totality of the circumstances here, the court finds that the debtor has failed to meet his burden to show that the plan was proposed in good faith. Again, there was no evidence that the debtor has tried to get a less expensive vehicle instead of retaining two relatively expensive, "upside-down" vehicles which would cost over \$52,000 total over the life of the plan. *See, generally, e.g., In re Hicks*, No. 10-41855-JJR-13,

2011 WL 2414419 (Bankr. N.D. Ala. 2011) (finding lack of good faith in chapter 13 plan that, among other things, paid for unnecessary vehicles). In addition, although the percentage to unsecured creditors has not yet been determined, it does not appear that much, if anything, will be paid on unsecured claims.

Conclusion

For the reasons discussed herein, the court sustains the objections to confirmation (doc. 39, 45) and orders that the debtor file an amended plan and serve it on all creditors within 14 days of the date of this order. The amended plan must, at a minimum, provide for surrender of the 2012 Jeep Wrangler.<sup>1</sup> The case is reset for confirmation on February 25, 2021 at 1:30 p.m., Courtroom 2 West, 113 St. Joseph Street, Mobile, AL 36602. Any objections to confirmation of the amended plan must be filed at least 7 days prior to the reset confirmation hearing.

The court cautions the debtor that failure to file an amended plan within 14 days of the date of this order may result in immediate dismissal of this case, possibly with an injunction against refiling.

Dated: December 11, 2020

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE

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<sup>1</sup> The court asked which vehicle the debtor would prefer to give up if the court ruled against him, and he testified that he would give up the 2012 Jeep. By separate order, the court will grant the motion for relief from stay (doc. 32) filed by Navigator Credit Union as it relates to the 2012 Jeep only .