

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:

JEFFREY EARL LASSITER,

CASE NO. 19-12705-JCO
Chapter 13

Debtor.

ORDER OVERRULING OBJECTION TO CONFIRMATION

This matter came before the Court for confirmation of the Debtor's Amended Chapter 13 Plan (Doc.32) and the Amended Objection thereto (Doc.60) filed by America's First Federal Credit Union ("AFFCU"). Attorney Michael A. Harrison appeared as counsel for AFFCU and Attorney Lacy Robertson appeared as counsel for the Debtor, Jeffrey Earl Lassiter. Counsel jointly indicated to the Court that they have set out their positions through their previously filed pleadings and exhibits, do not deem an evidentiary hearing necessary and consent to a ruling by the Court based upon the documents submitted in the case. Accordingly, upon consideration of the ECF filings in this matter including: the Debtor's Schedules and Amendments (Docs. 1, 24, 57), the Chapter 13 Plan and Amendment (Docs. 3, 32), the Creditor's Objections (Docs. 13, 38) and the Debtor's Sworn Written Statement. (Doc. 41) as well as the Trustee's records and the arguments of Counsel for the Parties, the Court finds that AFFCU's Objection to Confirmation is due to be and is hereby OVERRULED for the following reasons:

The evidence before the Court does not demonstrate that the Debtor's filing of the instant bankruptcy was in bad faith. Upon assessment the factors enumerated in *In re Kitchens*, 702 F.2d 885 (11th Cir. 1983) the Court notes that: (1) the Debtor listed his income and expenses in his

schedules and amended the schedules upon a change in employment and there has not been any evidence put forth to contest or otherwise challenge the veracity or appropriateness thereof; (2) the Debtor's attorney's fee is consistent with this Court's Administrative Order 2019-3; (3) the Debtor is proposing a 60 month plan; (4) no evidence has been presented of any improper motive on the part of the Debtor in the filing of the bankruptcy petition; (5) the Debtor has expended reasonable efforts in filing his schedules, timely proposing a plan and instituting a wage order (Doc. 51); (6) the Debtor is employed as an electrician and has the ability to earn income sufficient to fund the plan; (7) the Debtor's schedules reflect various debts for medical services; (8) the Debtor has not previously sought bankruptcy relief; (9) there is no evidence before the Court to deduce that the Debtor has contracted his debts in a dishonest, illegal or improper manner; and (10) the Chapter 13 Trustee does not have a pending objection to confirmation and has not asserted that administration of this case would be burdensome. Hence, an analysis of the applicable *Kitchen* factors favors the Debtor.

Although AFFCU asserts that the plan was not filed in good faith and the Debtor is proposing to keep non-essential property, the mere assertion of bad faith is not sufficient to establish grounds to deny confirmation. Even though AFFCU's Objection does not specify which property it contends is non-essential, the Court has noted that the Debtor's plan provides that no less than \$2930.00 shall go to unsecured creditors to accommodate for the Debtor's retention of a non-essential asset. Additionally, Debtor's contribution of all his disposable income for the sixty-month plan duration will yield a dividend to unsecured creditors in excess thereof. Hence, the Court is satisfied that unsecured creditors will not be prejudiced and the Debtor's proposal to keep the non-essential asset in this case does not constitute bad faith.

Further, AFFCU's position that confirmation should be denied because it obtained a state court judgment and the Debtor has not tendered collateral, is likewise untenable. AFFCU's proof of claim reflects: (1) on or about March 26, 2015, the Debtor obtained a loan from AFFCU in the amount of \$16,299.00 to purchase a 2015 Honda SSXS700, 4-wheeler (the "ATV"); (2) the last monthly contractual payment was received on January 25, 2016; (3) AFFCU obtained a state court monetary judgment against the Debtor October 13, 2017; and (4) AFFCU collected approximately \$8495.67 from the Debtor post judgment. (ECF Claim 5-1). The Debtor has consistently maintained that he used the ATV on different jobsites, left it in a metal building where it was stored for business use and understood that a person he worked with, Tanner Volking, intended to keep it and make the payments. (Doc. 41). Further, the Debtor's sworn statement avers that he tried to locate the ATV and was unsuccessful. (Doc 41).

Although the Debtor's actions with regard to the ATV, in hindsight, appear to be improvident and have yielded an unfortunate result, AFFCU has not put forth evidence sufficient to establish bad faith in the filing of this bankruptcy. For instance, there is no sworn evidence to refute the Debtor's statement or otherwise tip any of the *In re Kitchens* factors in AFFCU's favor. The Court has duly noted AFFCU's purported evidence in the form of a summons reflecting that Tanner Volking told a deputy sheriff that he did not purchase the ATV and does not own an ATV. However, such evidence constitutes inadmissible hearsay and secondly even if considered, it does not directly contradict the Debtor's sworn statement. Accordingly, the Court finds AFFCU has not presented any substantive evidence of sufficient weight or quality to establish that the instant bankruptcy was filed in bad faith.

Based upon the forgoing, the Court hereby OVERRULES the Objection to Confirmation of America's First Federal Credit Union. (Doc. 60).

Dated: August 5, 2020



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