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

IN RE:	)	
	)	
MAE LIZZIE MAJOR,	)	Case No. 20-11723
	)	
Debtor.	)	

ORDER SUSTAINING OBJECTION IN PART

This chapter 13 case came before the court on the objection to confirmation (doc. 16) filed by Republic Finance, LLC ("Republic"). The court held a telephonic hearing on November 9, 2020. The court heard testimony from two Republic representatives and from the debtor. The court also admitted Republic's exhibits 1, 2, and 3 without objection.

Republic filed a secured proof of claim for $3,587.82 and objected to confirmation of the debtor's chapter 13 plan because the debtor had not included Republic as a secured creditor in the plan. The debtor then amended the plan to include Republic and valued the collateral securing Republic's claim at $210. Republic objected to the amended plan and argued that the debtor had undervalued its collateral and that the debtor had not filed her plan in good faith.

The debtor signed a loan agreement with Republic on September 20, 2019 that provides for a security interest in a variety of items, including a "10 x 16 aluminum utility shed with window 2018." (*See* Republic exs. 1, 2, 3). The loan agreement was a refinance of an earlier signature loan.

Under Bankruptcy Code § 506(a)(2), the value of personal property securing an allowed claim is determined based on the replacement value as of the petition date, meaning the price a retail merchant would charge considering its age and condition. The court finds credible the debtor's testimony about the conditions and corresponding values of the items that she still has or that she voluntarily gave away and thus values those items as follows: 55-inch Toshiba

television that stopped working and that the debtor put out in the trash ($0); 19-inch Toshiba television ($25); broken Sony DVD player with a DVD stuck in it ($0); RCA CD player ($25); Sony Surround Sound System that the debtor voluntarily gave to her son (the debtor did not assign a specific value but the court sets it at $100); 2013 Craftsman lawnmower that stopped working and that the debtor gave away for parts ($200); Walmart treadmill that is approximately ten years old ($25); 10-foot aluminum ladder that is approximately ten years old ($15); and an inoperable Black & Decker pressure washer ($25). The total value of these items is therefore $415.

The main item of contention between the parties is the utility shed listed on the Republic loan documents. There is no dispute that the debtor does not currently own a shed, but the parties vehemently dispute whether the debtor represented to Republic that she owned a shed and put it up as additional collateral when she took out the final refinanced loan. The debtor testified that she has never owned a shed, that she never told Republic that she owned a shed, and that she signed the loan documents without reading them. The Republic loan specialist who assisted the debtor with the loan testified that the debtor told Republic that she owned the items listed on the loan documents, including the shed. The loan specialist further testified that the debtor provided the values for the collateral securing the loan (*see* Republic exs. 2, 3), including a value of $2,300 for the shed.

Republic argues that the debtor's plan was not proposed in good faith under Bankruptcy Code § 1325(a)(3). That section provides that "the court shall confirm a plan if . . . the plan has been proposed in good faith and not by any means forbidden by law . . . ." 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). Those factors are:

> (1) the amount of the debtor's income from all sources; (2) the living expenses of the debtor and his dependents; (3) the amount of attorney's fees; (4) the probable or expected duration of the debtor's [c]hapter 13 plan; (5) the motivations of the debtor and his sincerity in seeking relief under the provisions of [c]hapter 13; (6) the debtor's degree of effort; (7) the debtor's ability to earn and the likelihood of fluctuation in his earnings; (8) special circumstances such as inordinate medical expense; (9) the frequency with which the debtor has sought [bankruptcy] relief . . . ; (10) the circumstances under which the debtor has contracted his debts and his demonstrated bona fides, or lack of same, in dealings with his creditors; (11) the burden which the plan's administration would place on the trustee; (12) the extent to which claims are modified and the extent of preferential treatment among classes of creditors; (13) substantiality of the repayment to the unsecured creditors; and (14) other factors or exceptional circumstances.

Id. (citation and quotation marks omitted).

The court determines good faith on a case by case basis using a "totality of the circumstances" approach; no one factor is dispositive. *See, e.g., id.* Such determination is "within the [c]ourt's discretion and denial of confirmation for bad faith occurs in extreme situations." *In re Brown*, 402 B.R. 19, 37 (Bankr. M.D. Fla. 2008). The Eleventh Circuit has recognized that even "egregious pre-petition conduct by a debtor, such as embezzlement of funds from an employer," will not necessarily bar confirmation. *See id.*

Here, Republic did not contest the debtor's eligibility for a discharge under Bankruptcy Code § 523(a)(2) based on a loan obtained by misrepresentation or fraud, which would have required Republic to bear the burden of proof. Instead, Republic focuses on only one of the factor of the § 1325(a) good faith analysis – dealings with creditors. Based on the court's review of the record in this case, the applicable *Kitchens* factors, and the totality of the circumstance, however, the court finds that the debtor's plan was proposed in good faith.

The court is not deciding the issue of whether the debtor knowingly represented to Republic that she owned a shed and was putting it up as collateral. But other factors contribute to the court's conclusion that denial of confirmation for bad faith is unwarranted. The court has reviewed the debtor's schedules and other filings and finds that the other relevant *Kitchens*

factors weigh in favor of good faith and confirmation. And the evidence regarding the shed collateral is not clear cut to this court. The Republic loan was a refinance of a signature loan for which the debtor had not originally given any collateral. The debtor received only $1,001.27 in "new" money from the final $3,725.54 loan. The September 2019 loan was the first one listing the shed as collateral. The collateral description for the shed is oddly specific, yet there was no evidence that Republic tried to verify that the debtor owned the shed before extending additional credit.[1] The debtor did not list a shed as collateral with any of the other creditors who filed proofs of claim in this case, such as Tower Loan.

Finally, the court is reluctant to allow a § 523(a)(2) claim of a single creditor to proceed under the disguise of a § 1325(a)(3) objection to confirmation. If the court were to rule in Republic's favor in this respect, it would essentially be allowing Republic a secured claim of $3,587.82 based on collateral (a shed) that no one disputes does not exist for an extension of credit of $1,001.27.

The court thus sustains Republic objection in part: the court finds that Republic's proof of claim is secured in the amount of $415 and the remainder of the claim is unsecured. The debtor can address this change in the final plan summary, so the court is not requiring an amended plan. The court otherwise overrules Republic's objection.

Dated: November 23, 2020

HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE

[1] For example, Republic did not present evidence that it sent someone to the debtor's property who asked to take pictures of the shed or that anyone at Republic requested documentation from the debtor that she owned the shed before Republic extended the additional credit.