



SO ORDERED.

SIGNED this 26 day of June, 2009.

Janice Miller Karlin

JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)
)
BARBARA LYNN HORN,) Case No. 08-41727-13
)
Debtor.)
_____)

In re:)
)
BILLIE LEROY JONES,) Case No. 09-40015-13
)
Debtor.)
_____)

In re:)
)
CODY LYNN MOORE,) Case No. 09-40128-13
)
Debtor.)
_____)

ORDER SUSTAINING TRUSTEE’S OBJECTIONS TO CONFIRMATION

The issue in each of these cases is whether the Court can confirm these plans, each of which call for the Debtor to obtain a discharge, after completion of a plan calling for payment of

less than the full amount of the pre-petition arrearage they owe on domestic support obligations (“DSO”). In other words, none of the plans propose to repay 100% of the amount they owe on their DSO as of the date of filing, either through the plan, or otherwise, even though they admit they owe, respectively, \$25,000, \$36,000 and \$17,750, to DSO recipients. They nevertheless seek to discharge all other debts so long as they make what they contend is their best effort to repay the pre-petition DSO while the case is pending.

After review of all the briefs filed (by the Trustee and by two of the three Debtors), the Court announced its decision on the Trustee’s Objections to Confirmation¹ at a hearing conducted June 24, 2009. For the reasons stated on the record, which are incorporated herein by reference, the Court sustains the Trustee’s objection in each case. The result is mandated by a review of 11 U.S.C. § 1322(a)(2), which provides that a “plan shall — (2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim,”² coupled with a review of §§1322(a)(4),³ 507(a)(1),⁴ and 1328(a).⁵ The objections are sustained

¹Docs. 18, 14, and 17, respectively,

²Emphasis added.

³Section 1322(a)(4) provides that “a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under § 507(a)(1)(B) only if the plan provides that all of the debtor’s projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.” As an aside, below median income debtors need to clarify in their schedules or plan whether the DSO is a § 507(a)(1)(A) or a § 507(a)(1)(B) obligation so the Trustee and creditors will know whether the plan needs to be a five year plan. Above median income debtors are already required to remain in a plan for 5 years.

⁴Section 507(a)(1)(A) provides a first priority claim for allowed unsecured claims for a DSO that is owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child’s parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or a governmental unit on behalf of the person. Section 507(a)(1)(B) provides a second priority claim for the same DSO obligations that are assigned to a governmental unit (unless assigned for the purpose of allowing that unit to collect the debt) or are owed directly to or recoverable by a governmental unit under non-bankruptcy law.

⁵Section 1328(a) provides that a debtor required to pay a DSO has to certify that all amounts due before or after the petition is filed must be paid “but only to the extent provided for by the plan.”

not because, conceptually, a debtor with a pre-petition DSO cannot provide for lesser treatment in certain circumstances, but because each of the plans fails to do so in a clear and concise manner under all the circumstances. As explained on the record, more times than not, the DSO recipient will be a less-than-sophisticated creditor, oftentimes without counsel. In light of the Code's clear preference for DSO recipients to receive full payment before a debtor can receive a discharge, that recipient deserves to be clearly informed that his or her rights are being modified, and how the claim will be treated.

The Court will not dismiss these cases, for unreasonable delay, but will instead allow the Debtors to amend their plans (consistent with the typeface requirements found in D. Kan. LBR 9004.1(a)(1)) to provide the kind of clear and consistent language, with adequate disclosure, orally outlined by the Court. Amended plans shall be filed by **July 8, 2009** and shall be noticed for confirmation on **July 29, 2009 at 1:30 p.m.** with an objection deadline of July 25, 2009. The objection deadline is shortened, but is deemed adequate notice if the plans are filed within the time ordered.

Although the Court does not mandate particular "clear and consistent language," leaving that for the lawyers to craft, the Court will provide, in attached Exhibit A, some language that may be helpful and compliant.

IT IS, THEREFORE, ORDERED, that the Trustee's Objection to Confirmation is sustained in each case, that Debtors have until **July 8, 2009** to amend their plans consistent with this opinion, and if the plans are duly served with a notice of objection deadline of July 25, 2009, such notice will be deemed adequate. Confirmation is continued to July 29, 2009 at 1:30 p.m.

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EXHIBIT A

[Possible Compliant Language providing
lesser treatment of Domestic Support Obligations]

DOMESTIC SUPPORT OBLIGATIONS (for example, child support or alimony): Debtor owes the following estimated amount(s), as of the date of the filing, to the following persons or entities:

Creditor	Amount (est.)
Jane Doe	\$100.00

Debtor was making regular payments on this pre-petition support obligation when the bankruptcy was filed, and will continue making payments directly on this debt rather than paying the debt through the Chapter 13 plan. Debtor will also continue to pay any ongoing support obligation outside the plan. If the Debtor continues to make direct regular payments on the pre-petition arrearage, and also pays in full any post-petition support obligations, Debtor shall be deemed “current” on all support payments, for the purpose of being eligible for discharge, upon completion of the plan. Any amount of domestic support obligations that remains unpaid following the completion of the Chapter 13 plan will not be discharged, but will remain outstanding and collectible.

OR

Debtor will pay the full amount owed on this pre-petition support obligation through the Chapter 13 plan. Debtor will also continue to pay any ongoing support obligation outside the plan. If the Debtor pays in full all support obligations, Debtor shall be deemed “current” on all support payments, for the purpose of being eligible for discharge, upon completion of the plan. Any amount of domestic support obligations that remains unpaid following the completion of the Chapter 13 plan will not be discharged, but will remain outstanding and collectible.

OR

This plan pays administrative expenses and claims, and other creditors, before any payment will go to a DSO recipient on any pre-petition support obligation. If funds remain available after paying those other claims and expenses, which are set forth in this plan, any listed DSO recipient would receive funds under this plan at that time. Debtor represents that this plan is his/her best effort to repay this pre-petition support obligation, in light of his/her financial situation. Unless specifically set forth below, however, IT IS UNLIKELY ANY DSO RECIPIENT WILL RECEIVE ANY SIGNIFICANT PAYMENT UNDER THIS PLAN ON THAT PRE-PETITION SUPPORT OBLIGATION.

If the Debtor makes the payments required by the plan, and also pays in full any ongoing support obligation outside the plan, Debtor shall be “deemed” current on all support payments, for the purpose of being eligible for discharge, upon completion of the plan. Any amount of domestic support obligations that remains unpaid following the completion of the Chapter 13

plan will not be discharged, but will remain outstanding and collectible.

Other treatment of DSO:

Pursuant to the Bankruptcy Code, 11 U.S.C. § 1328(a), before a debtor may receive a discharge, that debtor is required to pay, in full, any domestic support obligation (usually child support or alimony) owed on or before the date debtor certifies [at the end of the case] that all obligations are current (“including amounts due before the petition was filed, but only to the extent provided for by the plan”). Debtor’s Chapter 13 plan cannot be confirmed without that provision, unless the Debtor’s plan clearly proposes less than full payment of domestic support obligations during the life of the plan to the creditor, AND that creditor consents to the lesser treatment.

Unless a formal objection to this plan is filed with the Bankruptcy Court prior to confirmation of this plan, the persons or entities to whom a Domestic Support Obligation is owed will be deemed to have accepted the treatment of their claims through this plan and will be bound by the terms of the confirmed plan.