

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:17-bk-01169-FMD
Chapter 13

Nicholas Joseph Cheatham,

Debtor.

**ORDER SUSTAINING TRUSTEE'S
UNFAVORABLE RECOMMENDATION AND
OBJECTIONS TO CONFIRMATION OF THE
PLAN AND CONTINUING HEARING ON
CONFIRMATION OF THE PLAN**

THIS CASE came on for hearing on November 16, 2017, on confirmation of Debtor's Plan (Doc. No. 2) (the "Plan") and Trustee's Unfavorable Recommendation and Objections to Confirmation of the Plan (Doc. No. 12).

The Plan proposes for Debtor to make plan payments of \$603.00 per month for 60 months, with the Trustee to disburse to Debtor's counsel administrative attorney's fees and to pay the filed claims of unsecured creditors. Debtor and the Trustee calculate that the \$603.00 Plan payment will be sufficient to pay the unsecured creditors in full. However, Debtor's Schedule J states that Debtor's net disposable income is \$2,322.45 per month. The Trustee objects to confirmation of the Plan under 11 U.S.C. § 1325(b)(1).

Section 1325(b)(1) states:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under

the plan will be applied to make payments to unsecured creditors under the plan.

Some bankruptcy courts have interpreted § 1325(b)(1) as requiring debtors who do not commit all of their projected disposable income to the plan to satisfy subsection (A) by paying interest to unsecured creditors. In other words, debtors have a choice: either commit all projected disposable income to the plan under subsection (B) or pay the present value of unsecured claims in compliance with subsection (A)'s requirement that "the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim."¹

In the absence of guidance from the Eleventh Circuit Court of Appeals, or any other circuit court of appeals, the Court concurs with the interpretation of § 1325(b)(1) found in *In re Hight-Goodspeed*² and *In re McKenzie*.³

[I]n cases where the trustee or an unsecured creditor objects, § 1325(b)(1) allows the debtor to choose subsection (B) and devote all of his projected disposable income to the plan or, if the debtor wishes to devote less of his income to the plan, he may chose subsection (A). The price for doing so, however, is that unsecured claims must be paid in full with interest.⁴

Accordingly, it is

ORDERED:

1. The Trustee's Unfavorable Recommendation and Objections to Confirmation of the Plan is SUSTAINED.

2. The confirmation hearing is continued to December 14, 2017, at 1:35 p.m.

DATED: November 20, 2017.

/s/ Caryl E. Delano

Caryl E. Delano
United States Bankruptcy Judge

¹ *In re Hight-Goodspeed*, 486 B.R. 462 (Bankr. N.D. Ind. 2012); *In re McKenzie*, 516 B.R. 661 (Bankr. M.D. Ga. 2014). *But see In re Richall*, 470 B.R. 245, 249 (Bankr. D. N.H. 2012), *In re Stewart-Harrel*, 443 B.R. 219, 222 (Bankr. N.D. Ga. 2011), and *In re Ross*, 375 B.R. 437, 444 (Bankr. N. D. Ill. 2007).

² 486 B.R. 462 (Bankr. N.D. Ind. 2012).

³ 516 B.R. 661 (Bankr. M.D. Ga. 2014). *But see In re Richall*, 470 B.R. 245, 249 (Bankr. D. N.H. 2012), *In re Stewart-Harrel*, 443 B.R. 219, 222 (Bankr. N.D. Ga. 2011), and *In re Ross*, 375 B.R. 437, 444 (Bankr. N. D. Ill. 2007).

⁴ *In re McKenzie*, 516 B.R. at 663-664.