

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

LUIS R. OTERO and
LILIANA M. OTERO,

Case No. 6:11-bk-04347-ABB
Chapter 13

Debtors.

ORDER

This matter came before the Court on: (i) Confirmation of the Debtors' First Amended Chapter 13 Plan (Doc. No. 24) and the objections to confirmation filed by JP Morgan Chase Bank ("Chase") and Seterus, Inc. ("Seterus") (Doc. Nos. 25, 28); (ii) the Debtors' Motion to Value Chase's secured claim (Doc. No. 30) and Chase's response thereto (Doc. No. 38); and (iii) the Debtors' Motion to Value Seterus' secured claim (Doc. No. 31) and Seterus' response thereto (Doc. No. 32). An evidentiary hearing was held on November 8, 2011 at which the Debtors, their counsel, the Chapter 13 Trustee, counsel for Chase, and counsel for Seterus appeared.

The Debtors have failed to present a confirmable plan. They did not file a plan in good faith. Confirmation is due to be denied pursuant to 11 U.S.C. Section 1325. The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

FINDINGS OF FACT

Real Property

The Debtors filed this joint Chapter 13 bankruptcy case on March 29, 2011 (“Petition Date”). They are represented by counsel who is an experienced bankruptcy attorney and has practiced before this Court for many years. The Debtors listed secured debts of \$394,000.00 in Schedule D, no priority unsecured debts in Schedule E, and general unsecured debts of \$81,142.00 in Schedule F, which total is exclusive of the \$159,000.00 unsecured portion of the secured debts in Schedule D.¹ The Schedule F debts consist primarily of a line of credit, a personal loan, and credit card debts. The timely filed general unsecured claims total \$78,710.16. The deadline to file claims was July 27, 2011.

The Debtors listed two “investment” properties in Schedule A as their sole real property: (i) a single family residence located at 12045 Blackheath Circle, Orlando, Florida 32837 valued by the Debtors at \$124,000.00 (the “Blackheath Property”); and (ii) a single family residence located at 32 Windrose Drive, Orlando, Florida 328247 valued by the Debtors at \$111,000.00 (the “Windrose Property”). The Debtors’ valuations are based upon appraisals conducted by Willard M. Anderson, Jr. prepetition on March 3, 2011.²

The Debtors lived at the Blackheath Property for almost ten years—from July, 1991 until March 26, 2011. They, just three days prior to the Petition Date, changed their residence to 11824 Whispering Tree Avenue, Orlando, Florida 32837.³ The Debtors did

¹ Doc. No. 1, p. 19.

² Doc. Nos. 30, 31.

³ Doc. No. 1, p. 19.

not claim a homestead exemption on Schedule C.⁴ The Debtors provided no information disclosing whether they are renting the Whispering Tree property. Schedule G lists no executory contracts or unexpired leases.

The Blackheath Property is encumbered by a first-priority mortgage held by Seterus, as the servicer for Fannie Mae, in the amount of \$212,225.61, as set forth in Seterus' amended secured proof of claim, Claim No. 7-2.⁵ Seterus' claim arises from a Note in the amount of \$225,000.00 and a Mortgage executed by Liliana Maria Otero ("Mrs. Otero") and Luis Otero ("Mr. Otero") in 2007.

The Windrose Property is encumbered by a first-priority mortgage held by Chase in the amount of \$189,792.06, as set forth in Chase's secured proof of claim, Claim No. 6-1.⁶ Chase's claim arises from a Note in the amount of \$215,700.00 executed by Mrs. Otero and a Mortgage executed by Mrs. Otero, Mr. Otero, and Luz A. Calderon in 2005. There is no equity in either the Blackheath Property or the Windrose Property based upon the Debtors' appraisals.

First Amended Plan⁷ and Motions to Value

The Debtors propose in their First Amended Plan to pay the Chapter 13 Trustee projected disposable income of \$1,726.00 per month for sixty months.⁸ Chapter 13 Trustee fees and the Debtors' attorney's fees of \$5,700.00 are to be paid as priority administrative expenses. The Debtors, regarding the mortgage claims, propose to: (i) value Seterus' secured claim at \$124,000.00 with interest to accrue at the rate of 6.50

⁴ *Id.* at p. 15.

⁵ Claim No. 7-2.

⁶ Claim No. 6-1.

⁷ The Debtors filed their original Chapter 13 Plan on April 12, 2011 (Doc. No. 13). Chase objected to the Plan on various grounds (Doc. No. 20) and the Debtors filed their First Amended Plan on July 18, 2011 (Doc. No. 24).

⁸ Doc. No. 24 at p. 1.

percent; (ii) pay Seterus \$553.40 per month for the first six months of the Plan period and \$809.37 per month for the remainder of the Plan period, for a total distribution of \$47,025.87; (iii) value Chase's secured claim at \$111,000.00 with interest to accrue at the rate of 6.125 percent; and (iv) pay Chase \$500.00 per month for the first six months and \$693.84 per month for the remainder of the Plan period, for a total distribution of \$40,466.87. The Debtors state the balances of Chase's and Seterus' secured claims will be paid through balloon payments obtained from the refinancing or sale of the collateral.⁹

The unsecured balances of Seterus' and Chase's claims, \$85,147.00 and \$73,853.00, respectively, are to be treated as general unsecured claims. The First Amended Plan sets forth general unsecured creditors will be paid on a pro rata basis should there be any funds to distribute after payment of the Trustee's fees, Debtors' attorney's fees, and the allowed secured mortgage claims. The First Amended Plan does not disclose whether there will be any funds to distribute to general unsecured creditors.

Seterus filed an Objection to the First Amended Plan setting forth a multitude of objections, including: (i) the Debtors failed to file the appropriate motions to value the secured mortgage claims pursuant to 11 U.S.C. Section 506(a); (ii) the Debtors are prevented from modifying the Blackheath Property mortgage pursuant to 11 U.S.C. Section 1322(b)(2) because the property is the Debtors' principal residence; (iii) the Debtors' attempts to cramdown the mortgage claims are made in bad faith; (iv) the Plan violates 11 U.S.C. Section 1325(a)(3) because the totality of the circumstances establishes the Plan was not proposed in good faith; (v) the Plan violates 11 U.S.C. Section 1325(a)(5)(B) because it does not provide for payment in full of the present value of Seterus' allowed secured claim; (vi) the balloon payment violates 11 U.S.C. Section

⁹ Id. at p. 2.

1325(a)(5)(B)(II)(iii)(I); and (v) the Plan is not feasible.¹⁰ Seterus requests denial of confirmation, or, in the alternative, dismissal of the case pursuant to 11 U.S.C. Section 1307(c)(5).

The Debtors, after Seterus filed its Objection to the First Amended Plan, filed Motions to Value the secured claims of Chase and Seterus pursuant to 11 U.S.C. Section 506(a).¹¹ The Debtors seek to cramdown the mortgage claims to the value of the underlying collateral, with the resulting unsecured claim balances to be treated as general unsecured claims. The Motions to Value are based upon the appraisals obtained by the Debtors prepetition and were filed almost five months after the Petition Date. The Motions to Value were not timely filed. The Debtors, pursuant to the practice procedures of this Court, were required to file their valuation motions early in the case.¹²

Chase and Seterus object to the Motions to Value on various grounds.¹³ Seterus' primary objection is that the Blackheath Property is the Debtors' principal residence and 11 U.S.C. Section 1322(b) prevents the Debtors from valuing such property.

¹⁰ Doc. No. 28.

¹¹ Doc. Nos. 30, 31.

¹² The determination of the secured status of a claim, typically a mortgage claim, is a cornerstone issue in a Chapter 13 case. The structuring and confirmation of the plan turns upon such determination. A debtor is expected to file any motions to determine the secured status of claims early in his case, otherwise the confirmation process cannot proceed. If a plan proposes to cramdown or strip off a secured claim, the Trustee, at the Section 341 meeting of creditors, reminds the debtor and debtor's counsel motions to value need to be filed as soon as the secured creditor files a claim. The Chapter 13 Trustee routinely seeks the disgorgement or denial of attorney's fees where the debtor's counsel failed to timely file motions to value.

The Debtors' original Plan filed on April 12, 2011 proposed to cramdown the secured claims of Chase and Seterus. Chase and Seterus filed their claims prior to the claims bar date of July 27, 2011: Chase filed its claim on May 18, 2011 and Seterus filed its claim on July 14, 2011. The Debtors should have filed their motions to value immediately after Chase and Seterus filed their respective claims. The Debtors did not file their Motions to Value until August 16, 2011—two months after Chase had filed its claim and after Chase and Seterus had objected to the Debtors' Plan and First Amended Plan.

¹³ Doc. Nos. 32, 37, 38.

The original confirmation hearing was set for and held on October 11, 2011. Chase and Seterus appeared and objected to confirmation and to the cramdown motions. The Court continued the confirmation hearing to November 8, 2011. The Debtors—six days prior to the continued confirmation hearing—filed Amended Schedules I and J a Second Amended Plan.¹⁴

Second Amended Plan

The Debtors propose in their Second Amended Plan to pay the Trustee projected disposable income of \$1,726.00 per month for six months, and then \$1,960.00 for months seven through sixty. Their treatment of the secured creditors' claims is similar to the treatment in the First Amended Plan with two exceptions: (i) the monthly payment to Seterus will increase in month seven from \$809.37 to \$833.95; and (ii) Seterus' claim is valued at \$127,500.00 instead of \$124,000.00. Seterus will receive a total distribution of \$48,353.70 on the secured portion of its claim and Chase will receive a total distribution of \$40,467.36 on its allowed secured claim.

The Debtors' general unsecured creditors, including the unsecured portions of Chase's and Seterus' claims, will receive approximately a five percent (5%) payment on their claims.¹⁵ All other terms of the First Amended Plan are reiterated in the Second Amended Plan.

Schedules I and J

The Debtors' Schedules set forth they are married, employed in the banquet service industry in Orlando, and have no dependents.

¹⁴ Doc. Nos. 40, 41.

¹⁵ General unsecured claims would increase to approximately \$245,000, including Chase's and Seterus' projected general unsecured claims, if the Debtors' Motions to Value were granted pursuant to 11 U.S.C. Section 506(a) resulting in the bifurcation of the mortgage claims into allowed secured claims and general unsecured claims.

Original Schedules: Original Schedules I and J disclose the Debtors have combined average monthly income of \$5,479.05 and average monthly expenses of \$5,478.67, resulting in monthly net disposable income of \$0.38 (as set forth at Line 20 of Schedule J).

The Debtors' monthly income consists of \$3,777.10 in net monthly wages from their banquet services employment, \$501.95 in additional monthly wages from an unspecified second job, and \$1,200.00 in rental income from the Windrose Property. No rental property leases are listed in Schedule G as executory contracts and no leases were presented regarding the Windrose Property, or any other property.

The Debtors' expenses include an unspecified rent or home mortgage payment of \$600.00, \$100.00 for cigarettes, \$100.00 for alcoholic beverages, \$40.00 for lawn services, \$160.00 for outside meals and physical fitness, HOD (which is undefined, but may be short for "home owners dues") of \$498.00, \$60.00 for haircuts and cosmetics, and \$50.00 as a reserve for "contingencies."

Amended Schedules: The Debtors filed Amended Schedules I and J, which contain substantive amendments. Their monthly net disposable income in Line 20 of Schedule J increased by only a *de minimis* amount—\$1.00. Amended Schedule I sets forth combined average monthly income for the Debtors of \$6,279.05 and Amended Schedule J sets forth average monthly expenses of \$6,277.67, resulting in monthly net disposable income of \$1.38.

Amended Schedule I differs from original Schedule I in that it contains monthly income of \$800.00 for rent for the Blackheath Property. No executory contracts are listed in Schedule G and no leases were presented regarding the rental of the Blackheath

Property. Amended Schedule J differs from original Schedule J in that the haircut expense and contingency reserve were reduced by \$35.00 and a reserve for taxes and insurance of \$600.00 was added. The \$600.00 taxes and insurance reserve is without explanation and unsubstantiated.

Line 20: Neither the Debtors' original Schedules nor their Amended Schedules reflect an ability to fund a plan. The Debtors listed monthly disposable income of \$.38 in Line 20 of original Schedule J and \$1.38 in Line 20 of Amended Schedule J. These amounts do not coincide with the proposed payment amounts contained in the Debtors' First and Second Amended Plans.

An inspection of the attachments to Schedule J reveals the Debtors did not correctly complete their Schedules. The Debtors included a proposed plan payment as a monthly expense in Schedules J: (i) original Schedule J includes a monthly Chapter 13 plan payment of \$1,726.00; and (ii) Amended Schedule J includes a monthly Chapter 13 plan payment of \$1,960.00. Proposed plan payments are not to be included in Schedule J. Schedule J requires disclosure of enumerated monthly expenses of the debtor and his family as of the petition date. Line 20 of Schedule J provides the calculation for determining monthly net income, which constitutes the debtor's disposal monthly income for funding a plan. The Debtors' monthly net income calculations in Line 20 are inaccurate and understated because the Debtors included a proposed plan payment as a Schedule J expense.

The disclosures required in Schedules I and J are intended to provide a clear, transparent picture of a debtor's financial standing as of the petition date. Line 20 of Schedule J should set forth an accurate and exact calculation of the debtor's disposable

income. Schedule I and J are central in evaluating a debtor's plan and determining whether the plan is feasible and fair.

The Debtors' Schedules lack transparency and do not provide a clear picture of their financial situation. To understand the Debtors' income and expenses, what their disposable income is, and how their income is being used in the Plan, takes considerable effort because Schedules I and J were not correctly completed. The amounts contained in the Schedules do not comport with the Second Amended Plan. There is no corresponding information in Schedule G disclosing the Debtors' executory contracts, which should include, based upon Schedules I and J, leases for the Blackheath, Windrose, and Whispering Tree Properties.

Objections to Confirmation

The Trustee did not file an objection to confirmation, but presented an *ore tenus* objection at the November 8, 2011 hearing. She objects to confirmation of both the First Amended and the Second Amended Plans on the basis the Blackheath and Windrose Properties are not necessary for an effective reorganization. The Debtors do not generate any net income from the Properties. The Debtors are using their income to fund the costs of retaining their investment properties, at the expense of their unsecured creditors.

Seterus asserts the Plans were not proposed in good faith. The Blackheath Property was the Debtors' homestead and principal residence until three days before the Petition Date. The Debtors moved out of the Blackheath Property to endeavor to use the cramdown provisions of 11 U.S.C. Section 506 in their favor, which allow modifications of secured claims as long as the underlying collateral is not the debtor's principal residence. The Blackheath Property is not necessary for purposes of reorganization.

Seterus objects to the balloon payment provision proposing to liquidate its claim through refinancing or sale of the property since Debtors failed to establish the feasibility of this proposal.

Chase objects to confirmation on the grounds: (i) the balloon payment provision does not establish a specific time period where the payment will occur; (ii) the plan must provide to pay Chase's claim in full in equal monthly installments; and (iii) no provision is made for the payment post-petition of real estate taxes and insurance.

The Debtors stated at the confirmation hearing they desire to retain the investment properties on the basis they believe their value will increase in the future. They explained that is the reason they elected to file a Chapter 13 case instead of a Chapter 7 case.

Analysis

The Debtors' course of conduct demonstrates they are attempting to reap the benefits of cramdown at the expense of their unsecured creditors. They obtained appraisals of their two properties prepetition and moved out of the Blackheath Property on March 26, 2011. They filed for bankruptcy protection three days later on March 29, 2011. The Debtors categorize the Blackheath and Windrose Properties as investment properties. Those properties generate negative net monthly income and have no equity, yet the Debtors intend to keep them.

The Debtors' admitted purpose in filing their Chapter 13 bankruptcy case is to retain the investment properties and modify the encumbering mortgage liens pursuant to 11 U.S.C. Section 506. They seek to cramdown the secured claims to the appraised values of the investment properties. They intend to keep the investment properties until

the real estate market hopefully recovers and the investment properties increase in value. They propose to make a meager distribution to their unsecured creditors.

The investment properties are not necessary for an effective reorganization. The monthly expenses for the Properties, according to Schedule J and the Debtors' Second Amended Plan, exceed the monthly rental income, resulting in a net monthly operating loss for the Debtors. Amended Schedule I sets forth the Properties generate monthly income of \$2,000.00 (rent of \$1,200.00 for the Windrose Property and rent of \$800.00 for the Blackheath Property). It is difficult to ascertain from the Debtors' filings exact monthly expenses for the Properties. Amended Schedule J and the Second Amended Plan indicate the Debtors spend \$2,191.40 to maintain the Properties including lawn service, homeowner association dues, real estate taxes, insurance, and proposed monthly mortgage payments.

The Debtors, beginning in month seven of the Plan period, will spend \$2,665.79 to maintain the Properties. The Debtors will incur a net operating loss of \$191.40 per month for the Properties in the first six months of the Plan period and a monthly net operating loss of \$665.79 for the remainder of the Plan period. The Debtors intend to pay these carrying costs for the investment properties while they make only a *de minimis* payment to unsecured creditors—a 5% distribution at best.

The Debtors' Plans do not meet the threshold requirement that all Chapter 13 plans must meet to be confirmable—good faith. The Debtors are asking for extraordinary relief that will benefit them personally at the expense of their unsecured creditors.

The Debtors' Plans do not meet the more technical, numerical requirements for confirmation pursuant to 11 U.S.C. Section 1325. The Debtors' First and Second Amended Plans do not provide for the payment in full of the secured creditors' claims. The Plans fail to delineate how and when the Debtors intend to refinance or sell the Properties in order to make the balloon payments. They are hopeful the real estate market will eventually recover and the Properties will increase in value, but such hope does not fulfill the Debtors' obligation to present definite and credible evidence establishing they could obtain funds to make the proposed balloon payments to Chase and Seterus.

The Debtors are not contributing all of their disposable income to the Plan as required by 11 U.S.C. Section 1325(b), which is applicable due to the Trustee's objection to confirmation. Amended Schedule I sets forth the Debtors receive combined average monthly income of \$6,279.05. Amended Schedule J sets forth they have average monthly expenses of \$4,317.67.¹⁶ Their monthly net income, pursuant to Amended Schedules I and J, is \$1,961.38. The Second Amended Plan sets forth the Debtors propose to make monthly Plan payments of \$1,726.00 for six months. The Debtors' monthly Plan payment should be \$1,961.38. They have additional disposable income of at least \$235.38 they could be contributing to their Plan.

Some of the Debtors' monthly expenditures in Amended Schedule J are unsubstantiated or questionable. The rent or home mortgage payment of \$600.00 is unsubstantiated. Their expenses of \$100.00 for cigarettes, \$100.00 for alcoholic beverages, \$160.00 for outside meals/physical fitness, and \$50.00 for haircuts/cosmetics

¹⁶ This amount excludes the proposed Plan payment of \$1,960.00 that was incorrectly included in Amended Schedule J.

are questionable. These expenses total \$410.00. The Debtors have not established these expenses are reasonably necessary for the maintenance or support of the Debtors.

The Debtors committed many technical violations of the Bankruptcy Code and they did not fulfill their Chapter 13 obligations. Their Plans do not meet the requirements of 11 U.S.C. Section 1325. These violations are not consistent with the good faith requirement that permeates all facets of the Chapter 13 process.

At the end of the day, the most significant issue, one that cannot be reconciled through technical amendments of the Schedules or Plans, is the Debtors' purpose in filing this bankruptcy case. They filed this case with the intent to retain two investment properties that have no equity, create a net operating loss each month, and are not necessary to an effective reorganization. They intend to retain and fund those properties at the expense of and detriment to their unsecured creditors, with the hope they will benefit later from increased real estate values. They are speculating with their creditors' funds.

The totality of the circumstances establishes the Debtors did not file their Plans in good faith. Confirmation is due to be denied.

CONCLUSIONS OF LAW

Section 1325 of the Bankruptcy Code sets forth the requirements for confirmation of a Chapter 13 plan. A debtor bears the burden of establishing the confirmation requirements have been met. In re Yunker, 328 B.R. 591, 595 (Bankr. M.D. Fla. 2005). "Good faith" is the cornerstone requirement for confirmation. A Chapter 13 plan shall not be confirmed unless "the plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1325(a)(3). A debtor carries the burden of demonstrating

a plan is presented in good faith. In re Vick, 327 B.R. 477, 486 (Bankr. M.D. Fla. 2005). Section 1325(a)(3) was enacted by Congress “to provide bankruptcy courts with a discretionary means to preserve the bankruptcy process for its intended purpose.” In re Waldron, 785 F.2d 936, 940 (11th Cir. 1986).

The phrase “good faith” is not defined by the Bankruptcy Code. Whether a debtor acted with good faith involves a review of the totality of the circumstances and equitable considerations. Kitchens v. Georgia R.R. Bank and Trust Co. (In re Kitchens), 702 F.2d 885, 888 (11th Cir. 1983); In re Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.), 749 F.2d 670, 674 (11th Cir. 1984). “Broadly speaking, the basic inquiry should be whether or not under the circumstances of the case there has been an abuse of the provisions, purpose or spirit of [the Bankruptcy Code].” Kitchens, 702 F.2d at 888 (*citations omitted*). Good faith is absent where the debtor has “an intent to abuse the judicial process and the purposes of the reorganization provisions.” In re Albany Partners, Ltd., 749 F.2d at 674. A debtor’s motivations in filing for bankruptcy are relevant in a good faith determination:

[W]henever a Chapter 13 petition appears to be tainted with a questionable purpose, it is incumbent upon the bankruptcy courts to examine and question the debtor's motives . . . The cornerstone of the bankruptcy courts always been the doing of equity. The protections and forgiveness inherent in the bankruptcy laws surely require conduct consistent with the concepts of basic honesty.”

Shell Oil Co. v. Waldron (In re Waldron), 785 F.2d at 940.

The “guiding principle” in a good faith analysis “is whether the debtor’s proposed Chapter 13 plan demonstrates a sincere intent to repay his creditors to the best of his ability as opposed to instead demonstrating an attempt to defer or avoid the claims of legitimate creditors.” Fla., Dep’t of Revenue v. Talley, No. 3:07-cv-510-J16, 2008 WL

1711410, at *4 (M.D. Fla. Apr. 10, 2008). Failure to devote all disposable net income to plan payments and failure to establish the likelihood of obtaining funds necessary to make a balloon payment demonstrate bad faith. In re Hendricks, 250 B.R. 415, 421-22 (Bankr. M.D. Fla. 2000).

A Chapter 13 Plan cannot be confirmed over the objection of a Trustee or the holder of an allowed unsecured claim, unless the unsecured creditor receives payment in full or “the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period . . . will be applied to make payments to the unsecured creditors under the plan.” 11 U.S.C. § 1325(b)(1)(B). Disposable income includes “current monthly income received by the debtor . . . less amounts reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor” 11 U.S.C. § 1325(b)(2).

Totality of the Circumstances

The principal purpose of the Bankruptcy Code is to grant a “fresh start” to “the honest but unfortunate debtor.” Grogan v. Garner, 498 U.S. 279, 286-87 (1991). Good faith is the cornerstone requirement of the bankruptcy process. A petition must be presented in good faith. A plan must be presented in good faith to be confirmed pursuant to 11 U.S.C. Section 1325(a)(3). A plan must also meet all of the technical requirements of Section 1325. Where good faith is lacking, amendments to cure any technical deficiencies are futile.

The First Amended and Second Amended Plans do not meet the technical requirements of 11 U.S.C. Section 1325. The Plans fail the disposable income test of Section 1325(b)(1). The Debtors are not committing all of their disposable income to the

Plan. Schedules I and J reflect, after expending considerable effort in examining these documents, the Debtors have more disposable income available to repay their unsecured creditors than what has been offered in their Plans.

The Debtors are using disposable income that would otherwise be applied to unsecured debt to retain investment properties that are not necessary for a reorganization. The Debtors, with secured creditor payments, property taxes, insurance, homeowner dues, and repair and upkeep expenses, propose to spend over \$2,191.40 every month for the first six months of their Plan period, and then \$2,665.79 for the remainder of the Plan period, to retain investment property that produces \$2,000.00 in alleged rental income.

The expenses related to the Properties are not necessary expenses for the support of the Debtors. 11 U.S.C. § 1325(b)(2); In re Lindsey, 122 B.R. 157, 158 (Bankr. M.D. Fla. 1991). The Debtors presented no definite and credible evidence establishing they could obtain funds to make the proposed balloon payments to Chase and Seterus. The Debtors have not established their monthly expenses for cigarettes, alcohol, dining out/physical fitness, and cosmetics totaling \$410.00 are reasonably necessary expenses for the support of the Debtors and their dependents.

The Debtors' failures to meet the technical confirmation requirements of 11 U.S.C. Section 1325 and to properly complete their Schedules may seem inconsequential when viewed individually. These failures taken together are significant. They reflect the Debtors' inability to present a confirmable plan and their lack of good faith in filing the Plans.

The Debtors' lack of good faith is most clearly demonstrated by their admitted intention in filing for Chapter 13 protection. The Debtors' primary purpose for filing this

case is to retain two investment properties while cramming down the mortgage liens and making a minimal effort to pay unsecured creditors in order to receive the benefit of a discharge. The Debtors admit they intend to retain the Properties because they believe their value will increase over time.

The Plans do not comply with the requirements of Sections 1325(a) and (b) and cannot be confirmed. The Plans were not proposed in good faith. The Debtors intend to retain two investment properties, with the hope the properties will increase in value, while paying their unsecured creditors a pittance. Such intent is contrary to the purposes of Chapter 13 and constitutes bad faith. The Plans are not confirmable.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the written and *ore tenus* Objections to confirmations are hereby **SUSTAINED** and confirmation of the Debtors' First Amended Plan and Second Amended Plan is hereby **DENIED** pursuant to 11 U.S.C. Sections 1325(a) and 1325(b); and it is further

ORDERED, ADJUDGED and DECREED that if the Debtors, within fourteen (14) days of the entry of this Order, do not file and serve a confirmable Chapter 13 plan or convert this case to Chapter 7, this case will be dismissed pursuant to 11 U.S.C. Sections 1307(c) and 105(a).

Dated this 5th day of December, 2011.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge