

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

In re:

DEBORAH S. CRUMPLER,

Case No.: 3:11-bk-421-JAF
Chapter 13

Debtor.

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**ORDER SUSTAINING CHAPTER 13 TRUSTEE’S OBJECTION TO CONFIRMATION
OF DEBTOR’S CHAPTER 13 PLAN**

This case came before the Court for a confirmation hearing on the Debtor’s Chapter 13 Plan and the Chapter 13 Trustee’s amended objection thereto (Docs. 39, 43; *see also* Doc. 5, the “Chapter 13 Plan”). The Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A). At the hearing, counsel for the parties argued their respective positions (*see* Doc. 42, “Minutes”). At the conclusion of the hearing, the Court took the matter under advisement.

Subsequent to the hearing, the Debtor filed a brief in support of plan confirmation (Doc. 44). In addition, the Debtor filed a motion to permit the admission of additional evidence (Doc. 45); specifically, the Debtor’s 2011 personal and business tax returns. The Court granted the motion by Order dated May 29, 2012 (Doc. 46). In accordance therewith, the Debtor submitted to the Court her 2011 tax returns (Doc. 49). The Chapter 13 Trustee was permitted to, and did, file a supplemental brief in support of his objection to confirmation, which takes into account the information contained in Debtor’s 2011 tax returns (Doc. 48).

For the reasons stated below, the Court finds the objection is due to be sustained to the extent provided herein.

I. Background

On January 24, 2011, the Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code (Doc. 1). Along with the Petition, the Debtor filed Schedules A through J, a Statement of Financial Affairs, and a Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Monthly Income (“Form B22C”). According to the Form B22C filed by the Debtor, the applicable plan commitment period is 60 months (Doc. 1 at 36, Line 17).¹ After deducting the non-filing spouse’s marital adjustment, the Debtor’s current monthly income was reported as being below the median for a family of four (the Debtor’s family size) (Doc. 1 at 36-37, Lines 19, 21).² As filed, the Debtor was therefore not required to list her household expenses under what is commonly referred to as the “Means Test” (*i.e.*, parts IV, V, and VI of Form B22C), leaving Debtor’s Schedule J expenses as the means by which to determine the projected disposable income necessary to fund her Chapter 13 plan.³

Based on the filed Schedule I, the Debtor reported a monthly household income of \$6,575.83 (Doc. 1 at 22, Line 16). A notation at the bottom of Schedule I provides that the income listed under the debtor column includes the combined income of the Debtor and her non-

¹ The Debtor’s Chapter 13 Plan proposes a commitment period of 36 months (Doc. 5 at 1).

² After subtracting a marital adjustment of \$3,500.00, the Debtor reported current monthly income of \$4,800.00, which annualized to \$57,600.00 (the applicable median family income being \$64,084.00) (*id.* at 37, Line 20).

³ The term “projected disposable income” is not defined in the Bankruptcy Code. Under section 1325(b), however, a debtor’s “disposable income” is his or her current monthly income, less expenses that are “reasonably necessary to be expended” for maintenance and support. 11 U.S.C. § 1325(b). The section implicates the Means Test because § 1325(b)(3) provides that expenses “shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)” if the Chapter 13 debtor’s “current monthly income” exceeds the median. As will be explained more comprehensively below, the Debtor may be an above-median debtor and, therefore, may be required to complete the Means Test portion of Form B22C (*i.e.*, parts IV, V, and VI).

filing spouse (*id.* at 22, Line 17).⁴ On the filed Schedule J, the Debtor reports monthly household expenses of \$7,279.00 (*id.* at 23, Line 18). By subtracting the monthly household expenses (reported on Schedule J) from the monthly household income (reported on Schedule I), the Debtor has a monthly net income of \$-703.17 (*see id.* at 22-23). The plan filed by the Debtor proposes to pay \$400.00 per month for a period of 36 months (Doc. 5). The Trustee maintains that, as filed, the plan will pay nine percent of unsecured claims (Doc. 43 at 2).

On March 9, 2011, the Trustee filed an objection to confirmation of the Debtor's Chapter 13 Plan (Doc. 14), arguing the Debtor had not provided the Trustee with complete financial information. In or around April 2011, the Debtor provided the Trustee with a copy of her 2010 federal income tax return, which was filed jointly with her husband (Trustee's Ex. 5). On the 2010 tax return, Line 22 reveals an annual household income of \$151,862.00 (*id.* at 1).⁵

Also, in or around April 2011, the Debtor provided the Trustee a copy of the 2010 federal income tax return for the Debtor's S Corporation, The Bridal Shop at the Avenues, Inc. (Trustee's Ex. 6). Line 21 of the return reveals ordinary business income of \$26,796.00 (*id.* at 1). At that time, the Debtor also provided the Trustee a copy of the 2010 federal income tax return for the Debtor's non-filing spouse's business, an S Corporation by the name of the Law Offices of Michael C. Crumpler (Trustee's Ex. 7). Line 21 of the return shows ordinary business income of \$20,263.00 (*id.* at 1).

⁴ The Court would note that Schedule I requires that "[t]he column labeled 'Spouse' must be completed . . . by every married debtor, whether or not a joint petition is filed . . ." (*id.*).

⁵ This figure includes, *inter alia*, \$117,103.00 in wages, salaries, tips, *etc.*, and \$33,708.00 in ordinary business income (*id.*).

After reviewing the Debtor's 2010 tax returns, the Trustee filed an Amended Objection to Confirmation (Doc. 39) and memorandum brief in support (Doc. 43), arguing the Debtor's net monthly income is substantially understated on Schedule I. Based on the Debtor's 2010 tax returns, the Trustee calculates the Debtor as having a monthly household income of \$11,497.17 (Doc. 43 at 3). When subtracting the expenses listed on the Debtor's Schedule J, the Trustee calculates a net monthly disposable income of \$4,218.17 (*id.*).⁶

In the Trustee's supplemental brief in support of his objection to confirmation (Doc. 48), filed in response to the Debtor being granted permission to admit her 2011 tax returns into evidence (which reveals an annual household income of \$122,552.00), the Trustee calculates the Debtor as having a monthly household income of \$8,632.98 (Doc. 48 at 2; *see also* Doc. 49 at 2, Line 22). When subtracting the expenses listed on the Debtor's Schedule J, the Trustee calculates a net monthly disposable income of \$1,353.98 (Doc. 48 at 2).⁷

II. Discussion

The Trustee objects to confirmation, arguing the Debtor is not contributing all of her disposable income to the Chapter 13 plan. In support, the Trustee asserts the Debtor has substantially understated her income on the schedules (Doc. 43 at 3; Doc. 48 at 2-3). For her part, the Debtor argues her 2010 income tax returns do not accurately reflect her current income, as she suffered a downturn in her bridal shop business during the later part of the 2010 calendar year (Doc. 44 at 1). The Debtor additionally states that she has submitted a 60 month plan which will provide her unsecured creditors a larger distribution than a 36 or 48 month plan (*id.* at 2).

⁶ It appears this figure does not take into account the \$3,500.00 per month marital adjustment claimed by the Debtor on behalf of her non-filing spouse (*see* Doc. 1 at 37). If the marital adjustment is considered, based on the Trustee's calculations, *supra*, the Debtor would have monthly disposable income of approximately \$718.17.

⁷ Again, it appears this figure does not take into account any marital adjustment (*see, e.g.*, Doc. 1 at 37).

The Court would note, however, that the Debtor's Chapter 13 Plan has not been amended to reflect a 60 month plan, and no other proposed plan has been filed by the Debtor.

Pursuant to 11 U.S.C. §1325(b)(1), a court may not confirm a proposed Chapter 13 plan if a trustee or an unsecured creditor objects to confirmation, unless the debtor is committing all of his or her "projected disposable income" to the plan payments.

With respect to calculating a debtor's projected disposable income in a Chapter 13 case, this Court has adopted a forward-looking approach. *In re Raulerson*, 395 B.R. 157, 160-61 (Bankr. M.D. Fla. 2008). In general, the Court starts with the debtor's current monthly income as provided on Form B22C, which is the debtor's average (gross) monthly income for the previous six months, plus amounts others (such as a debtor's non-filing spouse) regularly contribute to the household expenses of the debtor or the debtor's dependants. This amount is then reduced by, *inter alia*: (1) income not "received" by the debtor; and (2) amounts "reasonably necessary to be expended" by the debtor. 11 U.S.C. § 1325(b)(2) and (3).

Amounts not "received" by a debtor include monies not regularly expended by the debtor's non-filing spouse on household expenses (*e.g.*, amounts excluded by the marital adjustment). If the debtor is a below-median debtor, amounts "reasonably necessary to be expended" by the debtor are determined by the expenses listed on Schedule J. *In re Raulerson*, 395 B.R. at 161. If, on the other hand, the debtor is an above-median debtor, such amounts are to be determined by way of the Means Test (*i.e.*, parts IV, V, and VI of Form B22C). *Id.*

The Court will use [Form] B22C as a starting point in determining the income component of a debtor's 'projected disposable income.' A debtor who seeks to deviate therefrom on the basis that the B22C does not form a reasonable basis for projecting income forward must produce evidence to that effect.

Id. at 160-61.

Here, the Debtor's monthly income, as reported on the schedules, appears to be understated. For instance, Form B22C requires the Debtor to report average monthly income derived during the six calendar months preceding the filing of the case. On Form B22C, the Debtor reported an average monthly household income of \$8,300.00 (\$3,300.00 per month attributable to herself and \$5,000.00 per month attributable to her non-filing spouse) (Doc. 1 at 35, Line 11). In this regard, the Debtor reported annualized current monthly income of \$99,600.00 (*id.* at Line 15). The Debtor's 2010 tax returns, however, reveal an annual income of \$151,862.00 (Trustee's Ex. 5 at 1, Line 22). The Court acknowledges the Debtor's average monthly income derived during the six calendar months preceding the filing of the case might not be reflected accurately by simply dividing the Debtor's total annual income for the 2010 tax year by twelve; however, a \$52,262.00 annual income discrepancy between the Debtor's schedules and her 2010 tax return is significant.

Further, Schedule I requires the Debtor to report "projected monthly income" at the time the case is filed (Doc. 1 at 22). Schedule I additionally requires that the Debtor delineate her projected monthly income in a separate column from that of her non-filing spouse (*id.*). The Debtor, however, combined her projected monthly income with that of her husband (*id.*). The Court is now left to guess which portion of the Debtor's projected monthly income is attributable to the Debtor's non-filing spouse. This omission is significant because the Debtor seeks a \$3,500.00 per month marital adjustment on behalf of her non-filing spouse (*see* Doc. 1 at 37, Line 19).

Moreover, as with the current income figures presented on Form B22C, *supra*, the Debtor appears to have understated her projected monthly income. To illustrate, the Debtor reports a

total net monthly income of \$6,575.83 for herself and her husband combined (*id.* at 22, Line 6). The Debtor presumably attributes the lower projected monthly income (*i.e.*, \$1,724.17 lower than the \$8,300.00 per month reported on Form B22C) to a downturn in her bridal shop business (*see* Doc. 44 at 1). Although the Debtor's 2011 tax returns reveal a lower household income for 2011 than for 2010, the Debtor's household income does not appear to be as low as the Debtor projects on Schedule I (*see* Doc. 1 at 22).

Specifically, the Debtor and her non-filing spouse's projected monthly income, as listed on Schedule J, annualizes to \$78,909.96 (*see* Doc. 1 at 22, Line 15). The Debtor's 2011 tax return reveals a total household income of \$122,552.00 (Doc. 49 at 2, Line 22). Again, while there may be an explanation for the discrepancy, a difference of \$43,642.04 is significant (especially when considered in conjunction with the above noted \$52,262.00 annual income discrepancy between the Debtor's schedules and her 2010 tax return).

Both the Debtor's current monthly income (as reported on Form B22C) and her projected monthly income (as reported on Schedule I) do not appear to comport with the income reflected on the Debtor's 2010 and 2011 tax returns. Based on the foregoing, the Debtor may have annual income above the applicable median. Moreover, due to the manner in which the Debtor reported her income and that of her non-filing spouse on Schedule J (*i.e.*, collectively), the Court is unable to determine which portion of the projected monthly income is attributable to the Debtor's non-filing spouse. Further, the Court is unable to determine to what extent the Debtor's lower household income for the 2011 tax year impacts the non-filing spouse's marital adjustment.⁸

⁸ The Debtor's husband's 2011 W2 indicates his income may have been reduced during 2011 (although the Court is not certain as his 2010 W2 is not in evidence) (*see* Debtor's Ex. 1). If the Debtor's husband earned less money during 2011, presumably his marital adjustment would be lower as a result.

III. Conclusion

The Debtor's schedules do not appear to be accurate, especially when juxtaposed against her 2010 and 2011 tax returns. Even if the Debtor's schedules are accurate, however, by combining her and her non-filing spouse's projected monthly income, the Debtor's true financial picture is not clear. Moreover, the commitment period of 36 months, as proposed by the Debtor's Chapter 13 Plan, neither comports with the 60 month period provided for in her schedules (Doc. 1 at 36, Line 17), nor does it comport with the 60 month period mentioned in her brief in support of plan confirmation (Doc. 44 at 2). In sum, the Court lacks adequate information upon which to confirm the Debtor's proposed Chapter 13 Plan.

For the reasons stated herein, the Trustee's objection to confirmation is sustained. Accordingly, it is **ORDERED**:

1. The Chapter 13 Trustee's amended objection to the Debtor's proposed Chapter 13 Plan (Doc. 39) is sustained.
2. The Debtor has 30 days from the date of this Order within which to amend her schedules and file an amended Chapter 13 Plan.
3. If the Debtor's amended schedules indicate she is an above-median debtor, the Debtor must complete parts IV, V, and VI of Form B22C.
4. A status conference is scheduled for Tuesday, November 6, 2012 at 3:00 p.m. in Courtroom 4D, 300 N. Hogan St., Jacksonville, Florida 32202.

DATED this 18th day of September, 2012 in Jacksonville, Florida.

/s/ Jerry A. Funk
JERRY A. FUNK
United States Bankruptcy Judge

Copies to:

Todd W. Henry, Counsel for the Debtor
Douglas W. Neway, Chapter 13 Trustee
The United States Trustee