

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
RONALD ORENDER,) CASE NO. BK00-41506
)
Debtor(s).) CH. 13

MEMORANDUM

Hearing was held in Lincoln, Nebraska, on October 24, 2001, on Albion National Bank's Objection to Confirmation of Debtor's Chapter 13 Plan (Fil. #87). Bert Blackwell appeared for the debtor, and Stephen Nelsen appeared for Albion National Bank. This memorandum contains findings of fact and conclusions of law required by Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(L).

The objection is overruled.

Albion National Bank ("the Bank") objects to confirmation of debtor's plan on the grounds that certain of the debtor's monthly expenses are unnecessary. Eliminating the expenditures objected to by the Bank would result in an additional \$1,177.67 in disposable income each month, according to the Bank.

The Bank complains specifically about debtor's housing and transportation costs, asserting that debtor could and should sell his combination commercial building and apartment in Burwell, for which he spends \$837.67 on mortgage and utility payments. The Bank suggests that debtor could live full-time with his mother in Albion, to whom he pays \$175 each month in rent to reside there part-time.

Regarding transportation expenses, the Bank asserts that \$240 per month, as set forth in the plan, is not reasonably necessary in light of the fact that debtor drives a company vehicle in connection with his employment.

The Bank also suggests that the administrative expense of approximately \$3,300 in attorney's fees should not be allowed because the majority of the fees were incurred in connection with debtor's Chapter 7 case.

The Bank cites case law upholding the proposition that confirmation should be denied when a debtor attempts to pay for non-essential assets to the detriment of unsecured creditors. In

re Kasun, 186 B.R. 62 (Bankr. E.D. Va. 1995); In re Hedges, 68 B.R. 18 (Bankr. E.D. Va. 1986). However, the evidence submitted by the debtor indicates that none of the complained-of expenses are for luxury or non-essential items.

The plan indicates that debtor is surrendering all but one of his vehicles to the Bank. The debtor intends to keep the newest vehicle, a 1991 Chevrolet Suburban, valued at \$5,000, to use for his personal transportation. He will pay the Bank directly in accordance with the terms of the four-year note on the vehicle.

The debtor's evidence also establishes that his living expenses are necessary and reasonable. His work assignment covers several counties in central Nebraska. Albion, where his mother lives, is in the eastern part of his territory. Burwell, where his own residence is located, is in the western part of his territory. Because of his mother's advanced age and poor health, debtor visits her regularly to check on her. It is convenient for him to stay in her home when he is working in the area, rather than driving 65 miles each way to and from his apartment in Burwell. Conversely, it is more convenient for him to stay in Burwell when working in the western part of his region instead of driving to and from Albion each day.

The evidence regarding the Burwell building describes a commercial structure with a modest living area. The debtor's affidavit describes his intention to use the non-residential sections of the building, comprised of two undeveloped but insulated storage areas totaling 2,400 square feet, for a boat-repair business after he retires.

Whether various expenditures are "reasonably necessary" for the debtor's maintenance and support is open to interpretation. In re Gleason, 267 B.R. 630 633 (Bankr. N.D. Iowa 2001).

Chapter 13 debtors are not required to adopt a totally spartan existence; neither are they permitted to continue an extravagant lifestyle at the expense of creditors. In re Webb, 262 B.R. 685, 692 (Bankr. E.D. Tex. 2001); Bottelberghe, 253 B.R. at 263. Courts apply § 1325(b) to allow debtors to maintain a reasonable lifestyle while simultaneously insuring they make a serious effort to pay creditors by eliminating unnecessary and unreasonable expenses. In re Zaleski, 216 B.R. 425, 431 (Bankr. D.N.D. 1997). This section contemplates some sacrifices or alteration in prepetition consumption levels by Chapter 13 debtors,

while allowing them to sustain basic needs not related to their former lifestyles. Webb, 262 B.R. at 692; In re Jones, 55 B.R. 462, 467 (Bankr. D. Minn. 1985).

Gleason, 267 B.R. at 633.

The Gleason court discussed the various types of expenses that are liable to raise red flags and therefore are subject to close scrutiny when the issue of "reasonable and necessary" comes up.

Discretionary expenses identified by courts include charitable contributions, gifts, recreation, private school tuition, payments for boats, campers and other luxuries, health club and country club dues, and newspapers and magazines. Courts also scrutinize cable TV services, veterinary expenses, cell phones, unspecified home repairs, and deductions for voluntary retirement funds.

Id. at 634 (citing 2 Keith M. Lundin, Chapter 13 Bankruptcy § 165.1 (3d ed. 2000) and In re Attanasio, 218 B.R. 180, 201-10 (Bankr. N.D. Ala. 1998)).

Mr. Orender has demonstrated that his expenditures are reasonable. He has surrendered his boats and accessories, and all but one vehicle. As shown by his monthly expenses, he proposes to live a rather frugal lifestyle.

As to Mr. Blackwell's fees, he is entitled to reasonable compensation for services necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a bankruptcy case. 11 U.S.C. § 330(a)(3)(C). Compensation and reimbursement awarded under § 330(a) are entitled to administrative expense priority. § 503(b)(2). Mr. Blackwell's fee application (Fil. #68) has not yet been approved, although no objections to that application have been filed.

IT IS ORDERED Albion National Bank's Objection to Confirmation of Debtor's Chapter 13 Plan (Fil. #87) is overruled. The debtor shall submit a confirmation order within 20 days hereof.

Separate journal entry will be filed.

DATED: November 30, 2001

BY THE COURT:

/s/Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

*Bert Blackwell, Atty. for Debtor, 308/345-5645

Stephen Nelsen, Atty. for Albion National Bank, 402/474-5393

Copies mailed by the Court to:

United States Trustee

Kathleen Laughlin, Chap. 13 Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties not listed above if required by rule or statute.

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RONALD ORENDER,) CASE NO. BK00-41506
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JOURNAL ENTRY

IT IS ORDERED Albion National Bank's Objection to Confirmation (Fil. #87) is overruled. A proposed confirmation order shall be submitted within 20 days.

See Memorandum filed this date.

DATED: November 30, 2001

BY THE COURT:

/s/Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

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