

11 U.S.C. § 707(b)(2)(A)(iii)
Form B22C
Disposable Income
"Scheduled as Contractually Due"

Michael T. Oliver and Carol S. Oliver, Case No. 06-30076-rld13

06/29/2006 RLD

Unpub

In calculating their disposable income using Form B22C, debtors deducted average secured payment obligations for six secured obligations on the basis the payment obligations were "scheduled as contractually due," even though those payments would not be made post-petition either because debtors would be surrendering the collateral for the secured obligation or because debtors intended to avoid the liens as impairing exemptions. Trustee objected. Agreeing with the analysis set forth in Matter of Walker, 2006 WL 1314125 (Bankr. N.D. Ga. May 1, 2006), the court ruled that the plain language of 11 U.S.C. § 707(b)(2)(A)(iii) allowed debtors to make the deductions on Form B22C. However, the court noted that Form B22C is only a first step in calculating the amount debtors would need to pay under their proposed plan, and that further proceedings were necessary to determine that issue.

P06(6)-7

NOT FOR PUBLICATION

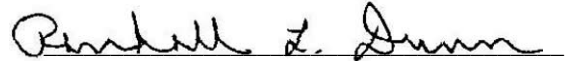
U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

FILED

June 29, 2006

Clerk, U.S. Bankruptcy Court

Below is an Order of the Court.



RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:)	Bankruptcy Case
)	No. 06-30076-rld13
MICHAEL T. OLIVER and CAROL S.)	
OLIVER,)	MEMORANDUM OPINION
)	
Debtors.)	

The issue before me requires that I interpret the disposable income provisions under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 ("BAPCPA"). Specifically, in completing Form B22C, is a debtor entitled to deduct from Current Monthly Income, payments owed on secured debt even though the debtor has declared an intent to surrender the collateral or avoid the lien securing the debt, so that the subject secured debt payments will not be made under the debtor's proposed plan in chapter 13? Resolution of this issue turns on the language of 11 U.S.C. § 707(b)(2)(A)(iii).

This dispute arises in the context of an objection by the chapter 13 trustee ("Trustee") to confirmation of debtors' proposed

1 chapter 13 plan, a matter that constitutes a core proceeding under 28
2 U.S.C. § 157(b)(2)(L), over which I have jurisdiction pursuant to 28
3 U.S.C. §§ 1334(b), 157(a), and 157(b)(1).

4 BACKGROUND

5 On January 17, 2006, debtors filed a voluntary chapter 13 case.
6 Consistent with 11 U.S.C. § 521 and Fed. R. Bankr. P. 1007(b)(6)
7 [Interim], the debtors completed and filed their "Statement of Current
8 Monthly Income and Calculation of Commitment Period and Disposable
9 Income" ("Form B22C"). Based on the debtors' calculations, Part V of
10 Form B22C established the debtors' monthly disposable income under 11
11 U.S.C. § 1325(b)(2) as \$363.87. Multiplying this number by 60 months,
12 the § 1325(b)(4) "applicable commitment period" as set forth in Part II,
13 paragraph 17 of Form B22C, results in an aggregate disposable income over
14 the life of the plan in the amount of \$21,832.20. The Trustee objected
15 ("Trustee's Objection") to confirmation of the debtors' plan on the basis
16 that the plan was not feasible where it would "require approximately 68
17 months to completely pay the general unsecured creditors and attorney
18 fees the required amount of \$21,840.00." Supplemental Trustee's
19 Objection to Confirmation; and Motion(s) Thereon. Thereafter, on March
20 13, 2006, debtors filed their "Amended Statement of Current Monthly
21 Income and Calculation of Commitment Period and Disposable Income"
22 ("Amended Form B22C"). The net result of Amended Form B22C was to reduce
23 debtors' monthly disposable income from \$363.87 to -\$34.40, thereby
24 eliminating any required distribution to unsecured creditors over the
25 applicable commitment period.

26 The underlying calculations in Amended Form B22C differ from

1 Form B22C as follows:

2 In paragraph 38 of Amended Form B22C, "Total Expenses Allowed
3 under IRS Standards" were reduced by \$44.40 (from \$4,248.15 to \$4,203.75)
4 to reflect that debtors had added as a transportation expense the average
5 monthly payment for debts secured by their second vehicle.

6 In paragraph 51 of Amended Form B22C, "Total Deductions for
7 Debt Payment" were increased by \$442.67 (from \$508.98 to \$951.65) to
8 reflect that debtors had added secured payment obligations with respect
9 to the following six creditors:

10	<u>Creditor</u>	<u>Property Securing the Debt</u>	<u>60-Month Average Paym't</u>
11	American General Finance	Non-PMSI Household Goods	\$166.83
12	Continental Loan	Two Non-PMSI Household Goods	36.00
	Household Finance	Non-PMSI Household Goods	98.93
13	Midtown Credit	Two Non-PMSI Household Goods	36.00
	Reliable Credit	1989 Chev S-10 - not running	44.40
14	Sun Credit	Two Non-PMSI Household Goods	30.00

15 See Paragraph 47, Amended Form B22C.

16 These additional payments total \$412.16 of the increase in
17 paragraph 51; the remaining \$30.51 increase to paragraph 51 is reflected
18 by an increase in paragraph 49 "Payments on priority claims" from \$219.13
19 in Form B22C to \$249.64 in Amended Form B22C.

20 Debtors do not intend to make any payments on the above secured
21 payment obligations during the life of their plan. With respect to the
22 Reliable Credit obligation, paragraph 2(b)(5) of debtors' proposed plan
23 provides for the surrender of the motor vehicle collateral. With respect
24 to the obligations to American General Finance, Continental Loan,
25 Household Finance, Midtown Credit, and Sun Credit, paragraph 6(b) of
26 debtors' proposed plan seeks to avoid each of their non-purchase money

1 security interests in household goods on the basis that they impair
2 debtors' exemptions. The Trustee asserts that debtors should not be able
3 to include in paragraph 47 of Amended Form B22C obligations which they in
4 fact will not be paying. If those secured payment obligations are
5 removed from the "Total Deductions for Debt Payment," debtors' monthly
6 disposable income is \$377.76, which over the applicable 60-month
7 commitment period, would result in a minimum dividend to the unsecured
8 creditors of \$22,665.60.

9 DISCUSSION

10 As relevant to this matter, section 1325(b) provides:

11 (2) For purposes of this subsection, the term "disposable
12 income" means current monthly income received by the
debtor...less amounts reasonably necessary to be expended -

13 (A)(I) for the maintenance or support of the debtor or a
14 dependent of the debtor, or for a domestic support
obligation, that first becomes payable after the date the
petition is filed;

15 ...

16 (3) Amounts reasonably necessary to be expended under
17 paragraph (2) shall be determined in accordance with
subparagraphs (A) and (B) of section 707(b)(2), if the debtor
has current monthly income, when multiplied by 12, greater
than-

18 ...

19 (B) in the case of a debtor in a household of 2, 3, or 4
20 individuals, the highest median family income of the
applicable State for a family of the same number or fewer
individuals....

21 ...

22 Because debtors have a current monthly income greater than the
23 median family income for the applicable state and family size, the
24 calculation of their disposable income is to be made in accordance with
25 11 U.S.C. § 1325(b)(3). See Fed. R. Bankr. P. 1007(b)(6) [Interim].
26 Section 1325(b)(3) incorporates the formula in § 1325(b)(2) for

1 determining disposable income, and that formula relies on the provisions
2 of § 707(b)(2)(A) as the guide for determining which reasonably necessary
3 expenses may be deducted from debtor's current monthly income for
4 purposes of arriving at debtor's disposable income.

5 As relevant to the issue before me, section 707(b)(2)(A)(iii)
6 provides:

7 The debtor's average monthly payments on account of secured
8 debts shall be calculated as the sum of --
9 (I) the total of all amounts scheduled as contractually
due to secured creditors in each month of the 60 months
following the date of the petition....

10 The court in Matter of Walker, 2006 WL 1314125 (Bankr. N.D. Ga.
11 May 1, 2006), in a thorough analysis of section 707(b)(2)(A)(iii), and
12 specifically the plain meaning of the phrase "scheduled as contractually
13 due," concluded that in completing Form B22C, debtors are entitled to
14 deduct from current monthly income the average payments on debts secured
15 by collateral with respect to which they have expressed an intent to
16 surrender. I agree with the Walker court's analysis, and find that it
17 extends to average payments on debts secured by collateral as to which
18 debtors have moved to avoid the applicable liens postpetition.

19 The Trustee asserts that because the statutory scheme of BAPCPA
20 is "replete with references that deductions to the 'disposable income'
21 requirement are to be made by actual future payments necessary to the
22 maintenance or support of the debtors or their dependents," as a matter
23 of statutory construction, I should refer to this general statutory
24 scheme to clarify an alleged ambiguity regarding the deductibility of
25 secured debt payments debtors do not propose to make in their proposed
26 plan. "This argument ignores a basic principle of statutory

1 construction, namely that the specific prevails over the general."
2 Bonneville Power Administration v. Federal Energy Regulatory Commission,
3 422 F.3d 908, 916 (9th Cir. 2005).

4 Section 707(a)(2)(A)(iii) addresses secured debt payments,
5 specifically, rather than expenses generally. In interpreting that
6 provision, I am guided by its specific language and cannot incorporate
7 concepts or language from section 707(b)(2)(A) or elsewhere where
8 Congress itself did not incorporate those concepts or language. If
9 Congress intended to limit secured debt payments contractually due from
10 debtors on the petition date to those where actual future payments will
11 be made in Form B22C calculations, it knew how to do so, as reflected,
12 for example, by the inclusion of the terms "actual monthly expenses" and
13 "actual expenses" elsewhere within section 707(b)(2)(A)(ii)(I) and (II).

14 My decision in this matter is limited to the issue of whether
15 the debtors can include in paragraph 47 of Form B22C average payments on
16 secured debts even where those payments, in fact, will not be made under
17 the chapter 13 plan as proposed. However, debtors themselves concede
18 "Form B22C is only a first step to calculate the amount to be paid under
19 debtor's [sic] proposed plan." A further confirmation hearing will be
20 held July 6, 2006, at 1:30 p.m., to address additional issues with
21 respect to confirmation of debtors' proposed plan.

22 # # #

23 cc: Alan R. Unkeles
24 Brian D. Lynch, Trustee
25
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