

Chapter 13 confirmation
Tax refunds
Vehicle ownership expense
Projected disposable income

Carl and Shelley Christianson, Case No. 15-60288-fra13

8/12/2015 FRA Unpub (2015 WL 4761265)

The Chapter 13 Trustee objected to two aspects of the proposed chapter 13 plan involving retention of tax refunds and the proper vehicle expense for determining projected disposable income.

A. Tax Refunds

The bankruptcy petition was filed in January 2015. Debtors treated their net income tax refund relating to the 2014 tax year as a prepetition asset not subject to turnover to the Trustee. The Trustee was concerned that if treated in the way Debtors propose, the tax refund relating to the final year of their 60-month plan would not be received until after their plan had been completed, thus shortchanging the estate one year's net tax refund.

The court agreed with the Debtors that the 2014 tax refund is a prepetition asset. In order to address the Trustee's concern, Debtors would be required to turn over to the Trustee their net 2019 tax refund when received. A discharge will not be entered until the Trustee either receives the refund or has determined that no refund is due. The court attached conditions to this requirement to reduce the possibility of manipulation of tax withholding by Debtors.

B. Vehicle Ownership Expense:

Trustee argued that in computing projected disposable income on Form 22C-2 (the Means Test), Debtors should be required to use their actual monthly car payment of \$54.38 rather than the amount prescribed in the National and Local Standards of \$517. He argued that a couple of relatively recent Supreme Court cases, *Hamilton v. Lanning*, 560 U.S. 505 (2010), and *Ransom v. FIA Card Svcs, N.A.*, 562 U.S. 61 (2011), together abrogate an opinion from this District, *In re Cummings*, 2007 WL 6362250 (Bankr. D.Or. 2007), which held that a debtor is entitled to use the Vehicle Ownership Expense from the National and Local Standards.

The court determined that the holdings of the two Supreme Court cases did not affect the holding in *Cummings*, and that *Cummings* was correctly decided. However, because the Debtors' car would be paid off in less than two years time, projected disposable income would need to be adjusted pursuant to *Hamilton v. Lanning's* holding that post-confirmation changes in a debtor's income or expenses may be taken into account in computing projected disposable income, if they are known or virtually certain at the time of confirmation.

Confirmation was denied and Debtors' were given additional time to file an amended plan consistent with the court's ruling.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
) No. 15-60288-fra13
CARL JAMES CHRISTIANSON and)
SHELLEY RAE CHRISTIANSON,)
)
)
Debtor(s).) MEMORANDUM OPINION

Debtors filed a bankruptcy petition and Chapter 13 Plan of Reorganization on January 31, 2015. The Trustee objected to two aspects of the Plan, involving retention of tax refunds and the allowable amount of a vehicle expense for purposes of computing projected disposable income. The issues were well argued in submissions by the Trustee and by Debtors' attorney prior to the confirmation hearing held on July 28, at the conclusion of which the matter was taken under advisement. Having read the submissions of the parties and reviewed the record of the case, I am prepared to rule.

DISCUSSION

A. Tax Refunds:

The proposed Chapter 13 Plan provides at ¶ 10 that Debtors' tax refunds attributable to 2014 were scheduled as a prepetition asset and would not be turned over to the Trustee for distribution through the Plan. The net amount of such refunds is \$876.46. The Trustee's objection is that the Debtors' 60-month plan term will expire in January 2020, and the Debtors will not receive their 2019 tax refunds until after the Plan is

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1 complete. If the Debtors are not required to turn over their 2014 tax refunds to the Trustee, they would only
2 be devoting four years of tax refunds to the five-year Plan.

3 A tax refund is created when more tax is withheld from an employee's pay than he owes in tax at the
4 end of the year. In essence, the taxing authorities retain some of the taxpayer's money as it is earned, and
5 return it to the taxpayer when a tax return is filed. Because the Debtors filed their bankruptcy petition in
6 January 2015, the entire tax refund attributable to 2014 is a return of a pre-petition asset, received post-
7 petition. If the Debtors do not wish to devote this tax refund to the Plan, then the tax refund to be received in
8 2020, attributable to the final year of the plan term in 2019, must be turned over to the Trustee for
9 distribution to creditors.

10 Accordingly, the Debtors must file their 2019 tax returns promptly once all necessary financial
11 information has been received¹, and signed copies of the returns must be provided to the Trustee. If the
12 returns show no net refund², the Trustee may then file his Final Report, if all other required conditions have
13 been met. If a net refund is due, the Trustee will not file his Final Report, and the Debtors' discharge of
14 debts will not be entered, until the refunds have been turned over to the Trustee. If the refund is not paid to
15 the Trustee within 14 days of its receipt, the case may be dismissed without entry of discharge.

16 B. Vehicle Ownership Expense: Form 22C-2, line 13:

17 Debtors own a 2008 Dodge Avenger which they propose to retain and pay for through the Plan.
18 There is a loan outstanding to Santander Consumer USA in the amount of \$3,061.54³ as of the petition date,
19 payable at 16.24% interest and secured by the vehicle. Santander asserts that the value of its collateral is
20 \$8,250, making Santander's loan fully secured. From the monthly plan payment of \$350, Debtors propose to
21 pay the secured claim in full at \$100 per month until Debtors' attorney fees are paid, then \$315 per month
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23 ¹ And, in any event, no later than April 1, 2020.

24 ² The Debtors may not adjust their tax withholding to eliminate or reduce an expected refund without
25 first informing the Trustee of their intent to do so, and obtaining his consent.

26 ³ Proof of Claim #3.

1 thereafter. Nonpriority unsecured creditors will receive approximately 25% of their claims over the life of
2 the Plan.

3 As above median income debtors, Debtors were required to complete Form 22C-2 (the “means test”)
4 to calculate their monthly disposable income.⁴ In calculating monthly disposable income of \$162.31, the
5 Debtors, pursuant to the requirements of the Form, subtracted from income a Vehicle Ownership Expense of
6 \$517, derived from the National and Local Standards. The Trustee argues that the Debtors should have used
7 the actual amount of the car payment to Santander of \$54.38, despite the fact that a bankruptcy opinion from
8 this district, *In re Cummings*, 2007 WL 6362250 (Bankr. D.Or. 2007), holds that the amount from the
9 National or Local Standards should be used.⁵ The Trustee counters that *Cummings* has been superceded by
10 two opinions from the Supreme Court which together, he argues, abrogate the holding in *Cummings*: (1)
11 *Hamilton v. Lanning*, 560 U.S. 505 (2010), and (2) *Ransom v. FIA Card Svcs, N.A.*, 562 U.S. 61 (2011).

12 *Hamilton v. Lanning* held that “when a bankruptcy court calculates a debtor’s projected disposable
13 income, the court may account for changes in the debtor’s income or expenses that are known or virtually
14 certain at the time of confirmation.” *Hamilton v. Lanning* at 524. The Trustee argues that it is known at the
15 time of confirmation that the actual car payment is less than \$517 and the court should therefore take that
16 into account in calculating the amount of projected disposable income. To do this, however, would be
17 counter to a plain reading of the text of Code § 707(b)(2)(A)(ii)(I): “The debtor’s monthly expenses *shall be*
18 the debtor’s applicable monthly expense amounts specified under the National Standards and Local
19 Standards.” (emphasis added). One begins by calculating *disposable income* pursuant to the requirements of

21 ⁴ 11 U.S.C. § 1325(b)(3) provides that for debtors who are above median income, expenses used for
22 calculating “disposable income” shall be “determined in accordance with subparagraphs (A) and (B) of
23 section 707(b)(2).” Subpart (A) of § 707(b)(2) provides, in part: “(ii)(I) The debtor’s monthly expenses shall
24 be the debtor’s applicable monthly expense amounts specified under the National Standards and Local
25 Standards”

26 ⁵ *Cummings* at 6 (“where an expense provided for under the National or Local Standards is
‘applicable’ to a debtor, that is, the debtor has an expense of that nature, the debtor is entitled to deduct the
full amount of the National and Local Standards for purposes of determining disposable income, regardless
of the amount of the debtor’s actual expense for that item.”)

1 the Bankruptcy Code. *Hamilton v. Lanning* at 519 (citing the Tenth Circuit in the underlying case on appeal].
2 It is only then, in computing *projected* disposable income, that changes in income or expense may be taken
3 into account. *Id.* at 519-20. If the Trustee’s interpretation were adopted, it would in effect be adding to the
4 end of § 707(b)(2)(A)(ii)(I) the words: “or the actual expenses, if lower.”⁶ Congress could have added that
5 provision if that was its intent, but did not do so. The holding in *Hamilton v. Lanning* must therefore be
6 limited to *changes* in the debtor’s income or expenses occurring *after* the period for calculating disposable
7 income that are known or virtually certain at the time of confirmation.

8 The Supreme Court in *Ransom* involved a debtor who owned a car, but did not have any car
9 payments. The issue was whether he could nonetheless claim the Vehicle Ownership Expense of \$471. The
10 Supreme Court held that he could not:

11 The key word in this provision [§ 707(b)(2)(A)(ii)(I)] is “applicable”: A debtor may claim
12 not all but only “applicable” expense amounts listed in the Standards. Whether [the debtor]
13 may claim the \$471 car-ownership deduction accordingly turns on whether that expense
amount is “applicable” to him. . . . A debtor may claim a deduction from a National or Local
Standard table . . . only if the debtor will incur that kind of expense during the life of the plan.

14 *Ransom* at 69-70. *Ransom* merely holds that if a debtor is going to claim an expense from the National or
15 Local Standards in calculating disposable income, the debtor must actually incur that type of expense during
16 the life of the plan.

17 Neither *Hamilton v. Lanning* nor *Ransom* require the court to find that the holding in *Cummings* is no
18 longer good law. I find that the *Cummings* opinion was correctly decided based on a plain reading of the
19 relevant provisions of the Bankruptcy Code.

20 C. Post-Confirmation Changes:

21 As discussed above, the Supreme Court in *Hamilton v. Lanning*, 560 U.S. 505, held that the
22 bankruptcy court may account for changes in the debtor’s income or expenses that are known or virtually
23 certain at the time of confirmation in calculating the amount of projected disposable income. According to

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25 ⁶ The Trustee argues that the IRS Guidelines require that this approach be taken. However, *Ransom*
26 made clear that the guidelines would have no effect if they were at odds with the statute’s language. *Ransom*
at 72.

1 the court's calculations, the secured creditor Santander will be paid in full through the Plan in less than two
2 years. After that, the Debtors will no longer have a vehicle expense and, under *Ransom v. FIA Card Svcs,*
3 *N.A.*, 562 U.S. 61, would no longer have any basis for claiming the \$517 deduction. Accordingly, the Plan
4 payment must be computed to account for the fact that the vehicle ownership expense will end prior to the
5 end of the Plan term.

6 CONCLUSION

7 An order will be entered by the Court denying confirmation and allowing time for Debtors to file an
8 amended chapter 13 plan.

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11 FRANK R. ALLEY, III
12 Chief Bankruptcy Judge
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