

11 U.S.C. § 1325(b)
11 U.S.C. § 1322(b)(1)
Student Loans
Classification

In re Iles Case No. 389-34393-H13

1/25/90 HLH Unpublished

The court refused confirmation of a 36-month chapter 13 plan because it provided a higher dividend on student loan debts than on other unsecured claims. Nothing in chapter 13 of the Code contemplates priority treatment for student loan debts, and the debtors failed to assert any reason justifying separate classification.

The plan also proposed payment of \$214 per month for the purchase of a recreational boat. It was not appropriate that the debtors acquire equity in the boat, a non-essential recreational item, at the expense of the unsecured creditors. The existence of a codebtor on such an obligation did not justify payment of the debt where the boat could be surrendered or sold and the debt thereby fully satisfied.

The court indicated that it would approve a plan which called for payments on the boat only if the debtors extended the length of the plan to provide a dividend equal to that which would be received under a 36-month plan which excluded payments on the boat.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

Re)
) Case No. 389-34393-H
JEFFREY REED ILES)
LENA MARIE ILES) OPINION
)
Debtors)

At the confirmation hearing on November 30, 1989 objection was made to the debtors' plan dated September 5, 1989 on the grounds (1) that it unfairly discriminates against a class of unsecured creditors by providing priority for student loan debts and (2) by providing for improper payments on a boat. On December 15, 1989 an order was entered denying confirmation upon these two grounds. The debtors have now filed a motion for reconsideration based upon an amended plan dated January 10, 1990 and the argument that the provision of paragraph 4 thereof which provides that the debt owing to Pendleton Federal Credit Union shall be paid outside the plan is appropriate to protect co-debtors. The motion for reconsideration does not address the matter of providing priority for the student loan debts.

The amended plan cannot be confirmed for several reasons.

The Chapter 13 Statement shows a debt owing to Pendleton Federal Credit Union of approximately \$5,300 which is secured by a 1970 Lastron Boat with 140 outboard motor having a value of \$6,000. The debtors claim an exemption thereon of \$700 but do not state under what section of Oregon Revised Statutes the debtors would be entitled to such an exemption. The budget shows estimated net monthly income of \$1,750, monthly expenses of \$1,680, and a surplus of \$70. The Chapter 13 plan calls for payments to the trustee of \$70 per month. Included in the expenses are monthly payments on the boat of \$214. If the debtors were to sell the boat and apply the proceeds on the debt or surrender the boat to the creditor so that it could be applied on the debt the monthly payments of \$214 could be added to the payments to the trustee of \$70 for a total of \$284 per month. The co-debtors' liability would be extinguished by application of the payment received on sale of the boat whether by the debtor or by the creditor. The boat is not an item essential to the well being of the debtors but is a purely recreational item. It is not appropriate that \$214 be paid by the debtors to acquire an equity in a non-essential recreational item instead of using such sum to pay unsecured creditors.

Providing priority treatment for student loan debts is an unfair classification of claims. There is nothing in the statutes which provides for priority treatment and the debtors

have not asserted an reason for such treatment.

The debtors' net disposable income is \$284 (\$70 plus \$214). For the plan to be in good faith the debtors must commit their net disposable earnings for not less than 36 months to the funding of the plan. 11 U.S.C. §1325(b). This would make total payments of \$10,224. If the debtors wished to do so that sum could be stretched over a 60 month period by paying \$170.40 each month for 60 months.

An order will be entered denying the motion for reconsideration and the debtors will be granted 30 days in which to file a further amended plan conforming to the provisions of this opinion.

DATED _____.

Henry L. Hess, Jr.
Bankruptcy Judge

cc: Robert E. Ridgway
Robert N. Ehmann

3-OPINION