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IN RE:**

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

C/A No. 97-08824-W

JUDGMENT

Chapter 13

Elizabeth Greta Stamper Williams,

Debtor.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the objection by Gordon E. Mann to the Debtor's Chapter 13 plan is sustained and confirmation is denied.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
January 13, 1998.

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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

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**L.A.B.
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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90 JAN 13 PM 2:14
U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Elizabeth Greta Stamper Williams,

Debtor.

C/A No. 97-08824-W

ORDER

Chapter 13

THIS MATTER comes before the Court upon the objection to confirmation of the Chapter 13 Plan of Elizabeth Greta Stamper Williams ("Debtor" or "Mrs. Williams"), dated October 17, 1997 ("Chapter 13 Plan") filed by the creditor, Gordon E. Mann ("Mr. Mann").¹ Mr. Mann is a creditor of the Debtor by virtue of a bond for title for the purchase of real property. Mr. Mann objects to the Debtor's Chapter 13 Plan on three grounds; 1) unreasonable length of time for repayment of the contract arrearage, 2) breach of contract for reasons other than nonpayment, and 3) lack of feasibility.

At the confirmation hearing, arguments were initially presented by counsel on the creditor's second objection regarding the nature of the contract between the parties as either an executory contract or an equitable mortgage and the effect of any pre-petition breach thereof. However, after discussion by counsel, Mr. Mann stipulated that the contract could be treated as an equitable mortgage with the allowed pre-petition arrearage subject to cure through the Debtor's Chapter 13 Plan.² No discussion or argument was presented as to the length of time for

¹ There was also an objection to confirmation filed by the Chapter 13 Trustee and creditor Wayman Miller however these objections were resolved prior to the confirmation hearing.

² Despite the stipulation, in this District there is authority that a land sale contract is not an equitable mortgage but is an executory contract. In re Jones, 89-01489 (Bkrtcy.D.S.C.)

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repayment of said arrearage and, therefore, the Court finds that this objection is abandoned. Therefore the sole remaining issue is whether the Debtor's plan is feasible pursuant to 11 U.S.C. §1325(a)(6). Based upon the evidence and testimony presented, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Mr. Maurice Williams ("Mr. Williams"), the Debtor's non-filing husband, testified that the sole source of the family's household income is from To The Uttermost Ministry ("the Ministry"), run from the family's home which is the subject of the bond for title. Mr. Williams testified that he as an ordained Minister counsels the needy, homeless, and downtrodden on behalf of numerous churches and other benevolent organizations. In return, To The Uttermost Ministry receives contributions from those organizations and various individuals. Mrs. Williams, the Debtor, primarily remains at home to administer the daily activities as the Director of To The Uttermost Ministry. Mr. Williams testified that all net income generated by the Ministry was split 50/50 with his wife.

The schedules reflect that Mr. Williams was self employed as a minister for 1995 and 1996 with gross income each year being \$12,000. The Debtor did not receive income during those years. In 1997, the Williams apparently organized To The Uttermost Ministry. At the confirmation hearing, the Debtor introduced 1997 receipts generated by the Ministry and signed

8/8/89)(WTB), aff'd C.A. 8:89-2593-3 (D.S.C. 2/7/90). However, the Court will rely upon stipulation of the parties in this case that the land sale contract within is an equitable mortgage subject to cure through a Chapter 13 plan. This opinion is limited to the facts of the within case, is based upon the stipulation of the parties, and shall not be intended to overrule or distinguish prior rulings.

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by Mr. Williams which indicated an amount received from certain donors, and in some cases, amounts pledged for 1998. No other evidence or testimony was introduced indicating the likelihood of the completion of pledges or of sources of other donations for 1998 and future years.

As to the expenses of the Ministry, Mr. Williams testified that they are minimal; however apart from this testimony, there was no evidence presented as to these amounts. Schedule J reflects no business expenses, however the summary of expenses shows a projected total of \$1,042.22 per month. Mr. Williams testified that he would give small sums of cash to individuals whom he happens upon in his missions but he could not quantify the total of these gifts except to state that the amounts vary in amount and the number of gifts varies each month. He also stated that he pays all family expenses from the funds generated by the Ministry and that the Debtor's filed Schedule J correctly discloses necessary living expenses of \$882.22 per month. The Court notes that Schedule J indicates \$398 in disposable income, however, the plan proposes payments of \$425 per month (raised to \$460 per agreement with the Trustee) for 60 months.

As to the income of the Ministry, Mr. Williams testified that he received "love offerings" or donations from individuals, churches, civic groups and other ministries but also could not give an exact monthly amount or average of income. While it appears that the Ministry only began receiving contributions within the last two years, Mr. Williams testified that from January through November 1997 the Ministry received total contributions of \$28,775.00. This total represents an average of \$2,615.91 of monthly revenue to the Ministry. Out of this revenue, Mr. Williams testified that he reserves roughly 28 % for income taxes, leaving the balance for donations to various individuals that he happens across in his missions with the remainder

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applied toward the family's living expenses.

While Mr. Wayman Miller and the Chapter 13 Trustee have resolved their objections to the Debtor's plan, Mr. Mann has objected to the Debtor's plan based upon the alleged failure of the Debtor to present sufficient income to satisfy the proposed plan of reorganization.

CONCLUSIONS OF LAW

Section 1325(a)(6) of the Bankruptcy Code provides, as one of the elements of Chapter 13 confirmation, that the Debtor propose a plan which is feasible in such a form that "the debtor will be able to make all payments under the plan and to comply with the plan."

Courts have held that where a debtor does not have sufficient income to pay his reasonable expenses and the proposed plan payment, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6), and confirmation must be denied.

In re Smith, 91-03821 (Bkrtcy. D.S.C. 10/9/91). The Debtor has the burden of proving that the plan is feasible. In re Endicott, 157 B.R. 255, 263 (Bkrtcy. W.D.Va. 1993).

A number of bankruptcy courts have held that unsubstantiated expectations of financial contributions from family members or other third parties are not sufficient to meet feasibility requirements. In re Felberman, 678 B.R. 678 (Bkrtcy. S.D.N.Y. 1995), In re Lyons, 193 B.R. 637 (Bkrtcy. D.Mass. 1996) (if gifts are not legally enforceable, they cannot be considered the source of payment for proposed Chapter 13 plan); In re Crowder, 179 B.R. 571 (Bkrtcy. E.D.Ark. 1995) (without a showing of specific amounts or assistance which is committed for the duration of the plan, payments are not sufficiently stable or regular to support plan); and In re Norwood, 178 B.R. 683 (Bkrtcy. E.D.Pa. 1995).

In the Smith opinion cited above, this Court held that gratuitous contributions of a



debtor's roommate did not fit the regular income requirement of § 109(e) and therefore the debtor did not meet his burden of showing the plan was feasible under § 1325(a)(6).

In this case, the Debtor's Chapter 13 Plan totally depends upon gratuitous contributions from third parties. It must also be remembered that the Debtor within is not Mr. Williams, it is Mrs. Williams. It is clear that the Ministry's income upon which Ms. Williams is totally dependent, is itself to a great extent dependent upon Mr. Williams' efforts and travels as a minister. Other than the title of Director, there was no showing of the specific services performed by Ms. Williams from which she derives her income; likewise, there was no showing of her formal or legal entitlement to share in the contributions to the Ministry. While all ministries may ultimately depend upon income from donations, it is undisputed that To The Uttermost Ministry is a new organization with little track record of regular support or consistency. There is no evidence before the Court which indicates that there are sufficient dependable pledges to fund the Chapter 13 Plan for 60 months. There is also little credible evidence before the Court which shows how Ministry donations are expended for the benefit of others or to what extent they will need to be expended in the future. Other than to pay for the time and expenses of the Williams, there is no evidence which indicates how much expense is incurred in conducting the business of the Ministry, such as for travel, telephone, mailings, etc.

The Court is mindful that to qualify for Chapter 13 relief, the Debtor's income must be "regular" and that has been defined to mean stable.

11 U.S.C. § 109(e) states that "[o]nly an individual with regular income...may be a debtor under Chapter 13 of this title." 11 U.S.C. § 101(30) states that "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under



Chapter 13 of this title.” Emphasis added.

In re Smith, 91-03821 (Bkrcty. D.S.C. 10/9/91).

While there may be certain circumstances under which the funding of a Chapter 13 plan solely from the gratuitous contributions from others may meet the feasibility requirements, based upon the circumstances in this case, including the fact that Mr. Williams is not a debtor, the Court does not believe that the Debtor has shown a stable and regular income. It has been held that a plan is not feasible where income generated by a nonbankrupt spouse is essential to the plan and that spouse is not a party to the petition. In re OLP, 29 B.R. 932, (Bkrcty.E.D. Wis. 1983).

Tillman v. Lombard, 156 B.R. 156 (Bkrcty.E.D.Va.1993) provides that the bankruptcy court “...must scrutinize every proposed plan, regardless of whether someone objects. Thus, in ascertaining whether a Chapter 13 plan warrants confirmation, the bankruptcy court will always and necessarily turn to the debtor proposing the plan.” See In re Wallace, 95-70780 (Bkrcty. D.S.C. 6/22/95) and In re Brunner, 92-71010 (Bkrcty. D.S.C. 6/10/92) (WTB). Just as the Debtor has the burden of proof to show that his plan is proposed in good faith as decided in In re Thomas, 118 B.R. 421 (Bkrcty. D.S.C. 1990), the burden of proof with regard to the issue of feasibility lies with the Debtor. In this case, the Debtor has failed to meet her burden.

Considering that the Debtor’s sole income is dependent upon the revenues of the Ministry and the amount of the Debtor’s proposed plan payments of \$460 per month, as agreed upon with the Chapter 13 Trustee at hearing, the Court finds the Debtor has failed in her burden of proof as to the feasibility of her proposed plan in compliance with § 1325(a)(6).

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For the reasons stated within, it is therefore,

ORDERED, that the objection to confirmation of Gordon E. Mann is sustained and confirmation is denied.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
January 13, 1998.

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