

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

James Edwin Ollis,

Debtor(s).

C/A No. 20-02775-HB

Chapter 12

**ORDER OVERRULING
OBJECTIONS AND FINDING
CHAPTER 12 PLAN SHOULD BE
CONFIRMED**

THIS MATTER came before the Court to consider confirmation of the Modified Chapter 12 Plan filed by Debtor James Edwin Ollis.¹ Creditors Anthony Brad Thompson, Pedro Arguedas, Daniel Chapman, Jeff Verkon, and William Lee Thompson (collectively, “Objecting Creditors”) filed similar objections and shared counsel.² Present at the hearing were J. Kershaw Spong, Chapter 12 Trustee; counsel for Ollis, Alecia Compton; counsel for the Objecting Creditors, Robert Cooper; and counsel for various other creditors. Testimony was provided by Ollis, Anthony Brad Thompson, William Lee Thompson, and Jeff Verkon. After careful consideration of the testimony, documents, and evidence presented, as well as the parties’ arguments and applicable law, the Court overrules the objections finds the plan should be confirmed.

FACTS

Ollis previously filed a petition for Chapter 12 relief on September 4, 2018.³ Some progress was made in that case and he and the Trustee worked together to sell two properties. However, plan confirmation was ultimately denied because it was not feasible and not filed in good faith and Ollis did not qualify for Chapter 12 relief.⁴ In addition to other factors discussed

¹ ECF No. 129, filed Dec. 18, 2020.

² ECF Nos. 131-135, filed Dec. 27, 2020.

³ C/A No. 18-04549-HB.

⁴ ECF No. 248, filed Mar. 13, 2019 (C/A No. 18-04549-HB).

in that order, the Court found Ollis exceeded the Chapter 12 debt limit. After confirmation was denied, the case was dismissed on March 28, 2019.⁵

The evidence indicates subsequent events have improved Ollis' chances of reorganizing. Ollis was hospitalized for approximately three weeks at the end of the prior case and continues to suffer from depression. However, that condition is being addressed with medication and Ollis secured Social Security disability payments. Additionally, Ollis testified he was previously indicted on two criminal charges, but those matters have been resolved with probation terminated and no restitution ordered. The Court also acknowledges the significant change since dismissal of the prior case due to the effects of the COVID-19 pandemic.

Ollis filed the above-captioned individual case and a Chapter 12 companion case for J. Ollis Farms, LLC ("Ollis Farms case") on July 2, 2020.⁶ Spong serves as the Trustee in both cases. At the time of filing, Ollis was engaged in farming operations, including the sale of quail and hay. In this case, Ollis scheduled nine parcels of real property, including two houses – one in Ware Shoals, South Carolina where the farm operates, and another in Greenville County, South Carolina where Ollis and his family live – and two parcels the Trustee seeks to sell if the plan is confirmed.⁷ Ollis and his wife own the Greenville house so his children can attend school within Greenville County. The evidence indicates the combined expenses for the two homes are not extravagant. Ollis is willing to rent the Ware Shoals house to lower expenses and improve the feasibility of his plan and to sell the Greenville house when his youngest child, aged 13, graduates from high school. He testified there may be a small amount of equity in the two properties.

⁵ ECF No. 275 (C/A No. 18-04549-HB).

⁶ C/A No. 20-02776-HB. Ollis the sole managing member of J. Ollis Farms, LLC. The Chapter 12 plan filed in the Ollis Farms case was confirmed without objection. The Objecting Creditors are also creditors in that case.

⁷ ECF Nos. 36 & 37, filed Oct. 7, 2020. A hearing on these Motions was held along with the confirmation hearing, where the parties agreed the sales are appropriate if the plan is confirmed.

Ollis' plan proposes monthly and quarterly payments to the Trustee and some directly to creditors. The plan proposes Ollis' wife will pay certain claims directly. The Trustee advised that Ollis has made two monthly payments and the first quarterly payment thus far, and he is holding funds for disbursement. The plan avoids Objecting Creditors' judicial liens pursuant to 11 U.S.C. § 522(f) and designates those claims as unsecured. In his plan, Ollis agrees that all of his disposable income will be paid to the Trustee for unsecured creditors. Currently, the plan proposes at least a 1% distribution to allowed general unsecured claims.

In this case, Ollis' Amended Schedules appear complete and substantially accurate. The evidence indicates general unsecured creditors would not receive a greater distribution in a Chapter 7 liquidation than under the plan. Ollis' schedules project sufficient income to fund the plan through farm income, Social Security income, rental income, and his wife's salary as a pharmacist. While Ollis testified he is not currently engaged in significant farming, he will resume if the plan is confirmed. Ollis testified that he and his wife's sources of income will continue, and he expects his farm income to increase when he is able to expand operations.

Ollis testified that he borrowed money from the Objecting Creditors for farming operations prior to the first case. He stated he used the money to buy cattle and cattle inputs, such as food and medical supplies, to then sell the cattle for a profit. However, Ollis testified he lost a great deal of money, did not repay these creditors, and did not honor various terms of their agreements. The Objecting Creditors are owed more than \$2,500,000.00 combined and testified regarding the circumstances surrounding their dealings with Ollis. In essence, the Objecting Creditors allege Ollis borrowed money from one person and would repay that person with funds borrowed from another, labeling it a "Ponzi scheme." In support of these allegations, the Objecting Creditors called the Court's attention to over \$5,000,000.00 deposited into two Ollis Farms bank accounts

in 2016 and 2017, while Ollis reported a gross income for that time of only approximately \$1,500,000.00. However, the evidence presented was piecemeal and inconclusive. Further, the Objecting Creditors filed adversary proceedings in this case against Ollis to except from his discharge the amounts owed to them pursuant to § 523(a).⁸ Each filed substantively identical complaints, arguing the debts owed by Ollis are non-dischargeable because he incurred these obligations through fraud. These proceedings are still pending.

The Trustee recommended confirmation of the plan, noting Ollis is committed to liquidating some assets to generate more for unsecured creditors, citing the pending motions to sell property as examples. The Trustee based his recommendation on changed circumstances since the previous case because the Chapter 12 debt limit has increased and Ollis' criminal charges have been resolved. The Trustee represented to the Court that he has seen no evidence of hidden assets. The Trustee and Ollis' counsel also welcomed ongoing review of disposable income as the case progresses to ensure Ollis is making adequate distributions to unsecured creditors.

APPLICABLE AUTHORITIES

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L) and this Court may enter a final order.

Congress enacted Chapter 12 to allow family farmers with regular annual income to adjust their debts. *Hall v. U.S.*, 566 U.S. 506, 509 (2012). “Only a family farmer . . . with regular annual income may be a debtor under chapter 12.” 11 U.S.C. § 109(f). A debtor who files for Chapter 12 relief bears the ultimate burden of proving eligibility. *In re Tim Wargo & Sons, Inc.*, 869 F.2d

⁸ *Thompson v. Ollis*, Adv. Pro. No. 20-80075-HB; *Verkon v. Ollis*, Adv. Pro. No. 20-80076-HB; *Arguedas v. Ollis*, Adv. Pro. No. 20-80077-HB; *Chapman v. Ollis*, Adv. Pro. No. 20-80078-HB; and *Thompson v. Ollis*, Adv. Pro. No. 20-80079-HB.

1128, 1130 (8th Cir. 1989). A Chapter 12 debtor must be engaged in farming at the time of filing, but may stop farming post-petition as long as he intends to begin farming again when he is able to do so. *In re Nelson*, 291 B.R. 861, 871 (Bankr. D. Idaho 2003). The Chapter 12 debt limit recently increased to \$10,000,000.00 by the Family Farmer Relief Act of 2019 (H.R. 2336, Aug. 23, 2019).

Section 1225(a) provides, in relevant part, that the Court shall confirm a plan if:

- (3) the plan has been proposed in good faith and not by any means forbidden by law;
- (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;
- (5) with respect to each allowed secured claim provided for by the plan—
 - (A) the holder of such claim has accepted the plan;
 - (B)
 - (i) the plan provides that the holder of such claim retain the lien securing such claim; and
 - (ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or
 - (C) the debtor surrenders the property securing such claim to such holder;
- (6) the debtor will be able to make all payments under the plan and to comply with the plan[.]

11 U.S.C. § 1225(a). The debtor has the burden of proof by a preponderance of the evidence to show that the plan should be confirmed. *In re Pressley*, 502 B.R. 196, 202 (Bankr. D.S.C. 2013).

Because the term “good faith” is not defined by the Bankruptcy Code, the Court must examine the totality of the circumstances surrounding the plan and the bankruptcy filing to determine whether it meets the requirement of § 1225(a)(3).

The court must focus on factors such as whether the debtor has stated debts and expenses accurately; whether the debtor has made any fraudulent misrepresentation to mislead the bankruptcy court; or whether the debtor has unfairly manipulated the Bankruptcy Code. Pre-filing conduct is not determinative of the good faith issue, but it is nonetheless relevant. In essence, the good faith inquiry looks at the debtor’s fairness in dealing with creditors.

In re Barger, 233 B.R. 80, 83-84 (B.A.P. 8th Cir. 1999) (citations omitted). “‘Good faith’ requires honesty of intention in the debtor’s conduct in the submission, approval and implementation of their plan. It requires a determination by the Court that the debtors have not misrepresented facts in their plan, unfairly manipulated the Bankruptcy Code or otherwise proposed their Plan in an inequitable manner.” *In re Bodine*, 113 B.R. 134, 136 (Bankr. W.D.N.Y. 1990) (citing *In re Johnson*, 708 F.2d 865, 868 (2d Cir. 1983)). The proposed percentage to be paid on unsecured creditors’ claims is a factor in determining whether the debtor has proposed a plan in good faith. *In re Namie*, 395 B.R. 594, 596 (Bankr. D.S.C. 2008) (citing *Deans v. O’Donnell*, 692 F.2d 968, 972 (4th Cir. 1982)). Some courts have dismissed cases for lack of good faith under § 707(a) based on the debtor’s behavior in his prior bankruptcy proceedings,⁹ usually involving wrongdoing in a previous case that has not been rectified in the current case.¹⁰ However, a debtor’s “‘behavior in . . . prior cases is only of limited relevance’ to a question regarding the debtor’s good faith in a current case.” *In re Woods*, 2011 WL 4807932, at *6 (Bankr. M.D. Pa. Oct. 11, 2011) (quoting *In re Barrett*, 149 B.R. 494, 501 (Bankr. N.D. Ohio 1993)). In particular, “prior omissions” on a debtor’s schedules and statements may “be afforded little weight” “[i]f the instant petition disclose[s] assets of the estate and the disposition of assets transferred pre-petition.” *Id.*

With regard to feasibility under § 1225(a)(6), “[t]he court should not confirm a plan unless it appears under the totality of circumstances that the plan has a reasonable likelihood of success.” *Pressley*, 502 B.R. at 202 (quoting *In re Harrison*, 203 B.R. 253, 256 (Bankr. E.D. Va. 1996)). “The feasibility test of chapter 12, similar to that of both chapters 11 and 13, requires the court to

⁹ The standard governing a debtor’s good faith is the same regardless of chapter and whether the Court is analyzing the debtor’s good faith in filing a plan or a petition. *See In re Hall*, 346 B.R. 420, 426 (Bankr. W.D. Ky. 2006) & *In re Cardona-Pereira*, 2010 WL 500404, at *3 (D.N.J. Feb. 4, 2010).

¹⁰ *See* 3 A.L.R. Fed. 3d Art. 3, *Prepetition Conduct by Debtor as Constituting “For Cause” Under 11 U.S.C. § 707(a) Permitting Dismissal of Chapter 7 Bankruptcy Petition*, §§ 44 & 45 (collecting cases).

ascertain the ability of the debtor to make the payments called for by the plan and to otherwise comply with the plan. This determination is made in light of projections of income and expenses, just as with the sister chapters.” *In re Wise*, C/A No. 12-07535-dd, 2013 WL 2421984, at *3 (Bankr. D.S.C. May 31, 2013). Although “success of a debtor’s plan does not have to be guaranteed . . . the plan must present a workable scheme of organization and operation from which there may be a reasonable expectation of success.” *Pressley*, 502 B.R. at 202-03 (quoting *In re Om Shivai, Inc.*, 447 B.R. 459, 462 (Bankr. D.S.C. 2011)) (internal quotation marks omitted); *see also In re Jubilee Farms*, 595 B.R. 546, 550 (Bankr. E.D. Ky. 2018) (“A chapter 12 plan is considered feasible if the court finds a ‘reasonable assurance of success,’ which is established when the plan offers a ‘realistic and workable framework for reorganization.’” (quoting *In re Perkins*, 581 B.R. 822, 839 (6th Cir. BAP 2018))).

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

- (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;
- (B) the plan provides that all of the debtor’s projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or
- (C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor’s projected disposable income for such period.

11 U.S.C. § 1225(b)(1). Because objections were raised here, the plan must commit the debtor’s projected disposable income pursuant to § 1225(b).

“[D]isposable income” means income which is received by the debtor and which is not reasonably necessary to be expended—

- (A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

11 U.S.C. § 1225(b)(2).

CONCLUSIONS

The Court previously found that Ollis did not qualify for Chapter 12 relief because, *inter alia*, he exceeded the debt limit. Due to the recent change in the law, this is no longer an issue and the evidence indicates he otherwise qualifies for relief. It also appears that the plan is feasible. Ollis is engaged in farming and his household has income from a number of sources, which is projected to be sufficient to meet expenses and plan obligations. Additionally, Ollis intends to increase income from expanded farming operations upon plan confirmation. The facts also demonstrate that Ollis is currently proposing payment of all his disposable income into the plan. As the Trustee suggested, if after confirmation any party wishes to challenge the calculation of disposable income utilizing § 1229 to seek modification to the plan, they may do so by appropriate motion. Further, while the distribution to unsecured creditors may not be substantial, the evidence indicates it is not less than the amount they would be paid if this case were filed under Chapter 7.

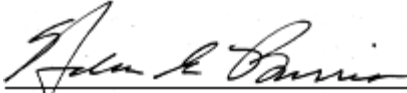
Finally, the facts show a sufficient rectification and change of circumstances since the prior case to conclude this plan has been proposed in good faith. Appropriate penalties for a debtor and protection for creditors can be found in § 1228(a)(2) if needed to address any *pre*-petition bad conduct or the manner in which the Objecting Creditors' debts were incurred or remain unpaid. That authority provides if the plan is confirmed and Ollis receives a discharge after completion of payments under the plan, debts of the kind described in § 523(a) are excepted from that discharge. Therefore, if the Objecting Creditors are successful in their adversary proceedings, their debts will remain after any Chapter 12 discharge of Ollis' debts.

Based on the foregoing, Ollis has met all requirements for confirmation.

IT IS, THEREFORE, ORDERED that the objections to confirmation are overruled and the plan filed on December 18, 2020 meets the requirements for confirmation under 11 U.S.C. § 1225. Counsel for Ollis shall submit a separate confirmation order within five (5) days from entry of this Order. The Court will enter separate orders approving the pending motions to sell property.

**FILED BY THE COURT
02/17/2021**




Chief US Bankruptcy Judge
District of South Carolina

Entered: 02/17/2021