

How Will My Bankruptcy Effect My Mom? Or, How Not To Get Your Chapter 13 Bankruptcy Plan Confirmed.

I recently stumbled across a South Carolina case, as described by a fellow blogger. In short, the chapter 13 bankruptcy plan was rejected by the trustee, because it included two pretty good sized mortgage payments as required expenses.

The problem? One was a primary mortgage on a second separate home, in which a family member resided.

This case demonstrated that bankruptcy coupled with an unreasonable chapter 13 plan can also bring a family together. Literally (for those not following, the second home was lost leaving the entire family under one roof).

For those interested, here are the details:

"In 2005, the debtors bought two virtually identical townhouses nearby each other. The debtors lived in one and the mother lived in the other.

The debtors and the mother both had unoccupied bedrooms. The townhouses had identical first mortgages, but the debtors' townhouse also had a \$100,000 second mortgage.

In 2009, as part of their exemption planning, the debtors switched townhouses with the mother in order to maximize their homestead exemption. By that time, the debtors had also amassed over \$152,000 of credit card debt. Their chapter 13 plan proposed to repay 7.5% of that amount. The plan also proposed to pay in full the amount owed on the debtors' 2009 Dodge Journey at \$437 a month.

The bankruptcy court held that a \$1,600 monthly mortgage payment to maintain a separate residence for the husband-debtor's 72 year-old mother was an unreasonable and unnecessary expense in the debtors' Chapter 13 Plan."

For those wondering "how are chapter 13 plan payments calculated?" - here is a quick description to get you up to speed. A debtor will generally pay off their secured debt in full, if they want to keep the security. In addition they will pay the entirety of their monthly disposable income to pay a portion of unsecured debt.

What expenses are considered necessary to the bankruptcy court? What constitutes a lavish or excessive lifestyle? As do many, this case illustrates the somewhat subjective nature of these numbers. In this case, the plan was rejected. But I can tell you from personal experience that this isn't always the case.

Why did I bother to mention this case today? For several reasons.

- I secretly despise chapter 13 bankruptcy. It has nothing to do with the paperwork, or preparation of the complicated repayment plan - rather because so many are abandoned prior to a successful discharge.
- When a bankruptcy attorney "helps" a debtor prepare a chapter 13 plan that has almost no chance of confirmation, the attorney provides little of value to the client. Yet, I am not surprised at all that it occurs Remember the subjective component I mentioned earlier? It has a tendency to blur the line between acceptable and not.
- In addition, successful completion of a chapter 13 bankruptcy requires the debtor adhere to a strict budget for a period of 3 to 5 years. Yes, your plan will allow you means to afford necessary expenses. True, if your situation changes (say you lose your job), we can amend your chapter 13 plan. But in general, you have to stick to your monthly plan payment.

What am I getting at? It has to be reasonable for you as the debtor. Strict plans may be easily confirmed, but if they are not sustainable by the debtor they will never reach successful discharge.

So where am I going with all of this? I don't remember. But I can say that chapter 13 plans are an art, and must be agreeable long term for both the debtor and the creditors. If you are considering chapter 13 bankruptcy, I highly recommend that you consult with an experienced bankruptcy lawyer.

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