SO ORDERED,

Judge Katharine Samson
United States Bankruptcy Judge
Date Signed: April 29, 2014

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: LOUIS E. PRENDERGAST **CASE NO. 13-52296-KMS**

DEBTOR **CHAPTER 13**

MEMORANDUM OPINION AND ORDER SUSTAINING THE TRUSTEE'S OBJECTIONS TO CONFIMATION

This matter came before the Court on the Trustee's Objection to Confirmation (the "Objection"), filed by the Chapter 13 Trustee, Warran A. Cuntz (the "Trustee"), (Dkt. No. 21), and the Debtor's Response to Trustee's Objection to Confirmation (DK #21), (Dkt. No. 35), filed by debtor Louis E. Prendergast, Jr. ("Prendergast"). A hearing was held on the Objection on March 13, 2014, where the Court sustained the Trustee's specific objections "to the special claim of Hancock Bank and the administrative fee calculation on Form B22C." (Dkt. No. 40). At the hearing, counsel for Prendergast volunteered to file a brief in response to the Trustee's remaining objection concerning the amount of Prendergast's Form B22C, line 47 deductions. (*Id.*). The Court agreed to allow the parties to submit briefs and advised them that it would take the matter under advisement once the briefs had been submitted. (*Id.*) Prendergast submitted his Debtor's Brief in Opposition to Trustee's Objection to Confirmation on April 3, 2014, (Dkt. No. 49), and the Trustee's Reply Brief was submitted by the Trustee on April 17, 2014. (Dkt. No. 54).

After considering the pleadings and attachments thereto; the supplemental briefs; the arguments of counsel; and the record, the Court finds that the Objection should be sustained in its entirety and states the following:

I. JURISDICTION

The Court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A) & (L). This memorandum opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.[1]

II. FINDINGS OF FACT

Prendergast filed his petition for relief under Chapter 13 of the Bankruptcy Code[2] on November 20, 2013. (Dkt. No. 1). He is an above-median income debtor. (Dkt. No. 11 at 2). Prendergast's plan proposes to pay zero percent to his general unsecured creditors, who hold claims totaling approximately $46,215.58. (Dkt. No. 12 at 2). According to Prendergast's Form B22C, he has a monthly disposable income of negative $136.50. The Trustee objected to Prendergast's plan on three grounds: (1) the treatment of a $10,000.00 loan from Hancock Bank; (2) Prendergast's calculation of monthly payments for administrative expenses; and (3) the amount of the deductions taken on line 47 of his B22C form as compared to the actual amounts Prendergast proposes to pay the same lenders in his plan. (Dkt. No. 21).

A. The Hancock Bank Loan

First, the Trustee objected to the treatment of a $10,000 loan–secured by a certificate of deposit owned by Prendergast's mother—which Prendergast proposed to pay, in full, outside of

[1] Rule 7052 is applicable in contested matters via Federal Rule of Bankruptcy Procedure 9014.

[2] "Bankruptcy Code" or "Code" refers to the United States Bankruptcy Code located at Title 11 of the United States Code. All Code sections hereinafter will refer to the Bankruptcy Code unless noted otherwise.

the plan. (Dkt. No. 21 at 1–2). According to the Trustee, Prendergast's deduction of $166.67 per month for the repayment of the loan should be added back into the disposable income calculation. (*Id.* at 2 ¶ 3). For the reasons stated on the record, the Court sustained the Trustee's objection to this treatment at the March 13 hearing,[3] and therefore does not consider Prendergast's arguments pertaining to it contained in his supplemental brief. (Dkt. No. 49 at 2–3). Accordingly, the Court finds that $166.67 should be added into Prendergast's disposable income calculation at line 59 of his form B22C.

B. Calculation of Monthly Administrative Expenses

Second, the Trustee objected to Prendergast's calculation for administrative expenses, which is based on a plan payment of $841.05 per month, not the $475.00 per month payment actually proposed in the plan. (Dkt. No. 21 at 3 ¶ 5). According to the Trustee, the monthly administrative expense deduction should be $34.68 rather than the $61.40 deduction currently listed and the difference of $26.72 should be added back into the disposable income calculation. (*Id.*). For the reasons stated on the record, the Court sustained the Trustee's objection on this ground at the March 13 hearing. (Dkt. No. 40). Accordingly, the Court finds that $26.72 should be added into Prendergast's disposable income calculation at line 59 of his Form B22C.

C. Line 47 Deductions

Third, the Trustee objected to Prendergast's line 47 deductions on his Form B22C in light of the payments he proposes to make to the same lenders in his plan. (Dkt. No. 21 at 2–3 ¶ 4). In his plan, Prendergast proposes to pay $400 plus 7% interest each to Springleaf, Republic Finance, and Tower Loan. (*Id.* at 2; Dkt. No. 12 at 2). This amount equates to $7.92 per month paid to each entity. (Dkt. No. 21 at 2). But Prendergast's line 47 deductions on his Form B22C list payments of $105.12 per month to Republic Finance; $125.99 per month to Springleaf; and

[3] (Dkt. No. 40).

$66.67 per month to Tower Loan. (Dkt. No. 11 at 7). The Trustee argues that the difference of $274.02 should be added back into Prendergast's disposable income calculation at line 59 of his Form B22C. (Dkt. No. 21 at 2–3, ¶ 4). Prendergast argues that the plain language of B22C allows him to deduct monthly payments based on his pre-petition contract with the creditor, though his plan proposes to pay less than the amount owed under the pre-petition contract. (Dkt. No. 35 at 1–2 ¶ 4). The parties submitted briefs on this issue, (Dkt. Nos. 49 & 54), and the Court took the matter under advisement.

III. CONCLUSIONS OF LAW

The Trustee asserts that Prendergast's line 47 deductions violate § 1325(b)(1)(B). Section 1325(b)(1)(B) provides that, if the trustee objects to confirmation of the plan, the court "may not approve the plan, unless . . . (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period . . . will be applied to make payments to unsecured creditors under the plan." 11 U.S.C. § 1325(b)(1)(B). The parties disagree on the appropriate method for calculating "projected disposable income" for the purposes of § 1325(b)(1)(B). Prendergast argues that the plain language on the Form B22C allows him to calculate his deductions based on the amount he owes each lender under his pre-petition contracts. (Dkt. No. 49 at 3–4). The Trustee argues that Prendergast may only deduct the monthly payments he actually proposes to pay each lender in his plan. (Dkt. No. 54 at 1). The Court considers each approach in turn.

A. The "Plain Language" Approach

First, Prendergast points to the instructions on line 47 of Form B22C, which state:

> **Future payments on secured claims**. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment

> is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 47.

In his brief, Prendergast emphasizes the phrase "as contractually due," arguing that a plain reading of the text leads to the conclusion that the debtor may deduct what he is contractually required to pay the lender over the life of the plan according to the terms of the pre-petition contract. (Dkt. No. 49 at 3–4). But this approach ignores the plain language of the bold-faced heading on line 47, which categorizes line 47 deductions as those for "***Future*** **payments on secured claims.**" (emphasis added). The word "future" is necessarily forward-looking and modifies "payments," indicating that the debtor should list as deductions the payments he will actually make during the commitment period. Additionally, and as recognized by the court in *In re Hoss,* 392 B.R. 463 (Bankr. D. Kansas 2008),

> The term "contractually due," however, does not carry the same meaning in a chapter 13 case as in a chapter 7 case. The chapter 13 plan constitutes a new agreement between the debtor and each secured creditor. A debtor's obligations under the plan are substituted for his or her obligations under the original contract with each secured creditor.

Id. at 469 (*quoting In re McPherson,* 350 B.R. 38 (Bankr. W.D. Va. 2006)). Thus, rather than referring to the original contract between the parties, the term "contractually due" should be read to refer to the new agreement between the debtor and his secured creditors created by the Chapter 13 plan. *Id.*

Next, Prendergast cites *Maney v. Kagenveama (In re Kagenveama),* 541 F.3d 872 (9th Cir. 2008) and *In re Marshall*, 407 B.R. 1 (Bankr. D. Mass. 2009) for support. (Dkt. No. 49 at 5–6). Both cases support a mechanical approach to the calculation of "disposable income," which

would favor Prendergast's approach.[4] But both cases were also subsequently overruled or abrogated in light of Supreme Court precedent favoring a forward-looking approach to the calculation of "projected disposable income." *Kagenveama* was overruled by the Ninth Circuit Court of Appeals in *Danielson v. Flores (In re Flores)*, 735 F.3d 855 (9th Cir. 2013). The *Flores* court recognized that the Supreme Court had explicitly rejected a mechanical approach to § 1325(b) in favor of a "forward-looking approach." *Id.* at 861. *Marshall* was abrogated by *Hamilton v. Lanning*, 560 U.S. 505 (2010) and *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716 (2011), as recognized in *In re Kramer*, 505 B.R. 614, 617–18 (B.A.P. 1st Cir. 2014)—a case Prendergast attempts to distinguish in his brief. (Dkt. No. 49 at 6). Accordingly, the Court finds that Prendergast's approach to calculating "projected disposable income" is not mandated by a plain reading of the language of line 47 on the Form B22C, is unsupported by existing precedent, and is therefore without merit. The Court now turns to the Trustee's approach.

B. The "Forward-Looking" Approach

The Trustee argues that Prendergast should only be able to deduct the amount of the monthly payment he actually proposes to pay each lender over the life of his plan. (Dkt. No. 54 at 1). He cites two Supreme Court cases—*Ransom* and *Lanning*—for support. In *Ransom*, the Court held that an above-median income Chapter 13 debtor could not take a standard deduction for car ownership on his Form B22C because he was not making lease or loan payments on the vehicle. *Ransom*, 131 S. Ct. at 725. Specifically, the Court stated that "if a debtor will not have a particular kind of expense during his plan, an allowance to cover that cost is not 'reasonably

[4] The *Kagenveama* court reasoned that the term "projected disposable income," was merely "disposable income," defined by 11 U.S.C. § 1325(b)(2) as "current monthly income received by the debtor . . . less [certain allowed deductions]," projected over the applicable commitment period. *Kagenveama*, 541 F.3d at 872–75. The court specifically rejected a forward-looking approach to the definition of "projected disposable income." *Id.* at 872. In *Marshall*, the court expanded the rationale of a Chapter 7 case to conclude that the debtors could deduct expenses related to a second mortgage, which they intended to strip. *Marshall*, 407 B.R. at 8.

necessary' within the meaning of [§ 1325(b)(2)]." *Id.*

In *Lanning*, the Court held that, when calculating projected disposable income, a bankruptcy court "may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation." *Lanning*, 560 U.S. at 524. The Court found that this forward-looking approach was supported by "the ordinary meaning of the term 'projected'" and pre-BAPCPA case law. *Id.* at 513–17. It also reasoned that a mechanical approach "clashes repeatedly with the terms of 11 U.S.C. § 1325." *Id.* at 517. First, the use of the phrase "to be received in the applicable commitment period" in § 1325(b)(1)(B) favors the forward-looking approach because the projection should accurately reflect income to be received during the commitment period. *Id.* at 517–18. Next, as directed in § 1325(b)(1), projected disposable income is determined "as of the effective date of the plan," which is the confirmation date when the plan becomes binding. *Id.* at 518. If Congress had "intended for projected disposable income to be nothing more than a multiple of disposable income in all cases," it would have selected the filing date as the applicable date for determining projected disposable income. *Id.* Use of the confirmation date, rather than the filing date, indicates that "[c]ongress expected courts to consider postfiling information about the debtor's financial circumstances." *Id.* Last, a plain reading of the requirement contained in § 1325(b)(1)(B) that projected disposable income "will be applied to make payments," indicates "that the debtor will actually pay creditors in the calculated monthly amounts." *Id.* at 518–19.

The Trustee argues that, under *Ransom*, Prendergast's deductions should be disallowed because they are not reasonably necessary for his maintenance and support. (Dkt. No. 54 at 2–3). He also argues that, under *Lanning*, it is "known or virtually certain" that Prendergast will not have the expenses he claims in his line 47 deductions over the life of his plan. (*Id.* at 3). The

Court agrees and finds that the Trustee's approach is supported by current, binding precedent and should be used to calculate projected disposable income. Accordingly, the Court finds that $274.02 should be added back into Prendergast's disposable income calculation at line 59 of his Form B22C.

IV. CONCLUSION

For the reasons stated above, the Court finds that the Trustee's Objection is well taken and should be sustained. The Court sustained the Trustee's specific objections to the treatment of the Hancock Bank loan and the debtor's calculation of administrative expenses at the March 13, 2014 hearing. The Court now also sustains the Trustee's last objection to the debtor's line 47 deductions. Accordingly, the Court finds that the $166.67 previously reserved to pay off the Hancock Bank loan, the $26.72 difference in the administrative expense calculations, and the $274.02 difference in the claimed line 47 deductions and the actual proposed payments to the secured lenders—or a total of $467.41—should be added back into Prendergast's disposable income calculation at line 59 of his Form B22C.

IT IS THEREFORE ORDERED AND ADJUDGED that the Trustee's Objection is **SUSTAINED** and $467.41 should be added back into Prendergast's disposable income calculation.

END OF OPINION