



SO ORDERED,

A handwritten signature in blue ink that reads "Jamie A. Wilson".

**Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: October 11, 2022**

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:

KEVIN ANTHONY CASSELL, JR.,

CASE NO. 22-01380-JAW

DEBTOR.

CHAPTER 13

ORDER SUSTAINING TRUSTEE'S OBJECTION TO CONFIRMATION

This matter came before the Court for hearing on September 26, 2022 (the "Hearing"), on the Trustee's Objection to Confirmation (the "Objection") (Dkt. #22) filed by Harold J. Barkley, Jr., chapter 13 trustee (the "Trustee"), and the Response to Trustee's Objection to Confirmation (the "Response") (Dkt. #23) filed by the debtor, Kevin Anthony Cassell, Jr. (the "Debtor"), in the above-referenced bankruptcy case (the "Bankruptcy Case"). At the Hearing, Joshua Lawhorn represented the Trustee, and Jordan L. Ash represented the Debtor. Having considered the pleadings and the arguments of counsel, the Court finds for the following reasons that the Objection should be sustained.¹

¹ The following constitutes the findings of fact and conclusions of law of the Court pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L). Notice of the Objection was proper under the circumstances.

Facts

The Debtor voluntarily filed a petition for relief (the “Petition”) (Dkt. #1) under chapter 13 of the U.S. Bankruptcy Code² on July 18, 2022. In connection with the Petition, the Debtor filed numerous statements and schedules regarding his current income and expenses, including Schedules I and J, and Form 122C-1.

The Debtor is employed by Nissan North America Inc., a manufacturer of cars and trucks. Schedule I shows that as of the date of the Petition, the Debtor earns an average gross monthly income of \$6,120.01. After deductions, the Debtor purports to receive a net income of \$4,378.63 per month. (Dkt. #4). Form 122C-1, titled “Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period,” lists the current monthly income (“CMI”) of the Debtor as \$6,120.01.³ (Dkt. #6). Here, the Debtor’s CMI for the last six (6) months has not changed. The Debtor claims a household size of four. (Dkt. #6). His annual income of \$73,440.12 is below the median family income of \$74,888.00 in Mississippi for the size of his household. For that reason, his disposable income is determined by subtracting his actual expenses as listed on Schedule J, rather than the standard deductions listed in the National and Local Standards by the Internal Revenue Service (“IRS”). *See* 11 U.S.C. § 707(b)(2).

² Hereinafter, the “Code” refers to the United States Bankruptcy Code found at Title 11 of the United States Code, and all code sections refer to the Code unless otherwise noted.

³ Despite the use of the word “current,” CMI is statutorily defined as a debtor’s average monthly income during the six-month period preceding the bankruptcy filing. 11 U.S.C. § 101(10A).

Schedule J reports average monthly living expenses of the Debtor of \$1,730.63.⁴ (Dkt. #4). If these expenses are deducted from the Debtor's average monthly income, as shown in Schedule I, the result is a monthly net income of \$2,648.00.

In the Chapter 13 Plan (the "Plan") (Dkt. #14), the Debtor proposes to pay the Trustee \$612.00 per week for five years. The Plan payment corresponds roughly to the monthly net income of \$2,648.00 shown on Schedule J. If the Debtor completes the Plan, he will be entitled to a general discharge of all his debts. 11 U.S.C. § 1328(a).

The Debtor proposes to make payments in the Plan on four secured claims. He proposes to pay PennyMac Loan Services, LLC his ongoing mortgage payment of \$980.00 per month and a mortgage arrearage of \$2,940.00 over the length of the Plan. He "crams down" the claim of Wells Fargo Bank secured by a 2017 Ford Mustang by proposing to pay the vehicle's value of \$16,600.00 at an annual interest rate of 5.25%. The monthly payment to Wells Fargo for the 2017 Ford Mustang is approximately \$315.00. He also "crams down" the secured claim of World Finance to the value of its collateral, \$200.00. The final secured claim, which is the subject of the Objection, is the claim of TD Bank in the amount of \$52,734.25 secured by a 2022 Dodge Charger. Because the 2022 Dodge Charger is a "910" car, the Plan pays TD Bank's claim in full.⁵ However, the Debtor's proposed Plan contemplates reducing the interest rate from 6.84% per annum to the *Till* rate of 5.25%. (*Compare* Dkt. #4 with Cl. #9-1). The monthly payment to TD Auto Finance is \$1,001.21.⁶ The Debtor proposes to pay nothing to unsecured creditors. According to Schedule E/F, the Debtor's unsecured debt, as of the date of the Petition, was \$25,610.15. (Dkt. #4).

⁴ Schedule J does not include the Debtor's mortgage payment or any mortgage arrearage payment.

⁵ If a creditor has a purchase-money security interest in a motor vehicle acquired by the debtor for his personal use and the debt was incurred within 910 days of the bankruptcy petition, the debtor may not "cram down" the claim. 11 U.S.C. § 1325(a).

⁶ The Court notes that the Debtor's monthly car payment of \$1,001.21 is more than his ongoing monthly mortgage payment of \$980.00.

This Bankruptcy Case is the second chapter 13 case commenced by the Debtor since June 22, 2022. The Debtor purchased the 2022 Dodge Charger on June 11, 2022 and filed the prior chapter 13 case (No. 22-01196-JAW) eleven days later on June 22, 2022. No plan was confirmed, and the Debtor did not receive a discharge. Instead, he filed a voluntary motion to dismiss the prior case “due to financial hardship” on July 6, 2022. (No. 22-01196-JAW, Dkt. #15). The Court entered an order dismissing the prior case on July 8, 2022. (No. 22-01196-JAW, Dkt. #16). Ten days later, the Debtor commenced the current Bankruptcy Case. (Dkt. #1).

At the Hearing, the Debtor testified that he purchased the 2022 Dodge Charger to replace his 2019 Dodge Charger after it began having ignition problems. (Hr’g at 10:12 (Sept. 26, 2022)).⁷ The warranty did not cover the ignition system, and the cost to repair the 2022 Dodge Charger was approximately \$4,000.00. (Hr’g at 10:15). According to the documents attached to TD Bank’s proof of claim, the Debtor had negative equity of [-\$5,219.00] in the 2019 Dodge Charger, so the trade did not reduce the purchase price of the 2022 Dodge Charger. (Cl. #9-1). The loan the Debtor obtained from TD Bank in the principal amount of \$52,734.25 included both the \$45,215.25 purchase price of the 2022 Dodge Charger and the \$5,219.00 excess debt on the 2019 Dodge Charger,⁸ among other fees. The Debtor made a cash down payment of \$2,000.00.

The Debtor’s second car, a 2017 Ford Mustang, is driven by his wife who is an unemployed student. They have two minor children.

In the Objection, the Trustee contends that the Plan was not proposed in good faith, confirmation of the Plan should be denied, and the Bankruptcy Case should be dismissed. (Dkt. #22). As evidence of the Debtor’ lack of good faith, the Trustee contends that the \$1,001.21 monthly

⁷ The Hearing was not transcribed. Citations to the Debtor’s testimony are to the time stamp of the audio recording.

⁸ The Debtor did not argue, and the Court does not address whether an automobile loan that finances negative trade-in equity is immune to bifurcation. 11 U.S.C. § 1325(a).

payment for the 2022 Dodge Charger is not a reasonable and necessary expense. *See* 11 U.S.C. § 1325(b)(2)(A)(i). According to the Trustee, the Debtor should surrender the vehicle or pay an increased amount to unsecured creditors. The Debtor's Response denies the relief sought by the Trustee. (Dkt. #23).

Discussion

To be confirmed, a proposed chapter 13 plan must satisfy the requirements of 11 U.S.C. § 1325(a), including the requirement that “the plan [be] proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1325(a)(3). In proceedings to confirm a plan, the debtor has the burden of proving good faith. *Suggs v. Stanley (In re Stanley)*, 224 F. App'x 343, 346 (5th Cir. 2007) (unpublished). If the Court determines that a chapter 13 plan has not been filed in good faith, then it must deny confirmation. 11 U.S.C. § 1325(a)(3). In making this determination, the Court applies the “totality of the circumstances” test. *In re Chaffin*, 816 F.2d 1070, 1073 (5th Cir. 1987), *modified*, *In re Chaffin*, 836 F.2d 215, 216-17 (5th Cir. 1988).

The issue of good faith raised by the Trustee concerns the requirement in 11 U.S.C. § 1325(b)(1)(B) that a chapter 13 plan devote all “projected disposable income” to the benefit of unsecured creditors during the “applicable commitment period.”⁹ 11 U.S.C. § 1325(b)(1)(B). As noted by the U.S. Supreme Court, Congress enacted this requirement “to help ensure that Debtors who *can* pay creditors *do* pay them.” *Ransom v. FIA Card Servs.*, 562 U.S. 61, 64 (2011).

The Code defines “disposable income” as “current monthly income received by the debtor . . . less amounts reasonably necessary to be expended . . . for the maintenance or support of the debtor or the dependent of the debtor.” 11 U.S.C. § 1325(b)(2). The Trustee's Objection focuses on the “expense” side of the disposable income calculation. He considers the amount of the monthly

⁹ This requirement applies when the trustee or an unsecured creditor objects to the confirmation of a plan, which the Trustee did in this Bankruptcy Case.

payment that the Debtor proposes to pay TD Bank for the 2022 Dodge Charger as not being reasonably necessary.

As a preliminary matter, the Court notes that reliable transportation is necessary for a debtor to get to work and earn an income to fund a repayment plan and that a car payment generally is viewed as a reasonable and necessary expense. That said, a debtor should not require his creditors to bear the burden of the cost of a luxury car. “A chapter 13 debtor who proposes to pay his creditors . . . cents on the dollar cannot expect to ‘go first class’ when ‘coach’ is available.” *In re Kitson*, 65 B.R. 615, 622 (Bankr. E.D.N.C. 1986).

The Debtor acquired the 2022 Dodge Charger for \$45,215.25 on June 11, 2022—just eleven days before he filed the prior bankruptcy case and thirty-seven days before he filed the current Bankruptcy Case—when he was unable to pay his other debts.¹⁰ He purchased the R/T model, which he testified has a V8 engine. (Hr’g at 10:13-10:14). A national automobile magazine touts the R/T model as a “muscle sedan.” MOTORTREND, *Buyer’s Guide*, <https://www.motortrend.com/cars/dodge/charger>. The magazine’s description of the car’s V8 engine explains why:

Dropping a little extra cash for eight cylinders will indulge buyers with tire smoke on demand and an unmistakable burble with any twitch of the right foot. Performance is best exercised in a straight line, though, even with the Widebody cars’ upgraded suspension and tires. These cars aren’t awful around corners, but their specialty is full-throttle highway pulls.

Id.

Notably absent from the Debtor’s testimony at the Hearing was any evidence that he had made an effort to purchase a less expensive car. Clearly, there were economic alternatives to a 2022 Dodge Charger R/T. The Debtor’s employer, for example, sells the 2022 Nissan Versa, a four-

¹⁰ If the Debtor had purchased the vehicle during the pendency of his current Bankruptcy Case, the Court likely would not have approved a motion to incur debt under these facts. *In re Ward*, 546 B.R. 667, 678 (Bankr. N.D. Tex. 2016).

door sedan, at a suggested retail price of only \$15,580.00. See <https://www.nissanusa.com/vehicles/cars/versa-sedan.html>. Moreover, the Court questions whether a replacement car was even necessary. The Debtor testified that the amount to repair the ignition system for the 2019 Dodge Charger was only \$4,000.000, and the Debtor paid half that amount in cash when he purchased the 2022 Dodge Charger R/T. (Hr’g at 10:12-10:13). Also, the Debtor disclosed in Schedule A/B that he had cash on hand in the amount of \$3,000.00 when he filed the Petition. (Dkt. #4). He claimed the entire amount as exempt in Schedule C. (Dkt. #4)

The Court finds that the Debtor’s decision to retain the 2022 Dodge Charger R/T lacks good faith. Although it may not be unusual for a debtor to purchase a luxury item before filing for bankruptcy relief, the debtor must propose a plan that attempts to remedy his unwise financial decision in a way that does not unfairly treat unsecured creditors. The Plan proposed by the Debtor, however, retains the 2022 Dodge Charger while paying nothing to unsecured creditors. The Debtor’s personal preference for a “muscle” sedan does not justify a luxury price tag that negatively impacts the Debtor’s unsecured creditors.

At the Hearing, the Debtor’s counsel asked the Court to compare \$1,316.21—the combined total of the car payments for the 2022 Dodge Charger and the 2017 Ford Mustang—with the standard vehicle ownership expense allowed for two vehicles under the means test in 11 U.S.C. § 707(b)(2). Under that statute, the monthly expenses of an above-median income debtor are determined by reference to the IRS’s National and Local Standards.¹¹ At the time the Debtor filed the Petition, the standard “ownership cost” for one vehicle was \$588.00 and for two vehicles was

¹¹ The IRS standards consist of tables that list expenses for certain essential items, including the “ownership costs” of a vehicle. *Ransom*, 562 U.S. at 66. The IRS created these tables to calculate the amount that taxpayers can afford to pay for delinquent taxes.

\$1,176.00.¹² The Debtor's monthly payment for the 2022 Dodge Charger exceeds the local standard by \$413.21 but his payments for both cars exceed it by only \$140.21. (\$1,316.21-\$1,176.00=\$140.21). Even under the IRS local standards, the combined car payments exceed the standardized expense for two vehicles and would not be permitted.

Moreover, application of the means test in 11 U.S.C. § 707(b)(2) is statutorily limited to above median income debtors, and the Debtor's income is below the median. The Court finds no legal authority that would allow it to determine the reasonableness of the Debtor's expenses using the IRS local standards, even as a guide. "Because the means test does not apply to chapter 13 debtors whose incomes are below the median, those debtors must prove on a case-by-case basis that each expense is reasonably necessary." *Ransom*, 562 U.S. at 71 n.5.

To the extent the Debtor's counsel's arguments may be viewed as an application of the totality of the circumstances test, the Court does not rest its decision solely on the amount of the car payment in question. That the Debtor purchased the 2022 Dodge Charger on the eve of bankruptcy, along with the lack of evidence that the Debtor attempted to find a less expensive means of transportation, are additional factors that support the Court's finding of bad faith.

Conclusion

On these facts, where the Debtor's income is below median, the Plan includes a monthly expense for a luxury car that is more than his monthly mortgage, and unsecured creditors are not being paid, the Court finds that the Debtor has not satisfied his burden of proving good faith under

¹² The website of the U.S. Trustee Program contains the IRS local transportation expense standards. U.S. TRUSTEE PROGRAM, <http://www.justice.gov/ust/means-testing>.

11 U.S.C. § 1325(a)(3), and the Objection should be sustained. By sustaining the Objection, the Court does not intend to set a limit on car payments for all below median income debtors.¹³

IT IS, THEREFORE, ORDERED that the Objection is hereby sustained.

IT IS FURTHER ORDERED that the Debtor may file an amended plan consistent with this Order within fourteen (14) days.

##END OF ORDER##

¹³ Under different circumstances, a monthly car payment of \$1,000.00 may be reasonable. For example, a debtor who is responsible for caring for a dependent with mobility needs would likely be able to show that a \$1,000.00 monthly payment for a wheelchair accessible van is reasonable and necessary.