IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

RONNY RICHARD GRIFFITH — CASE NO. 8700008JC

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Edward Ellington, Bankruptcy Judge

ORDER ON "OBJECTION OF STEEL CITY LEASING, INC. TO DEBTOR'S PLAN UNDER CHAPTER 13 TITLE 11 OF THE UNITED STATES CODE"

THIS MATTER came on for hearing on Objection of Steel City Leasing, Inc. to Debtor's plan under Chapter 13, Title 11 of the United States Code. After examining the facts and considering the same, the Court finds that the Objection is well taken and should be sustained. Thus, confirmation of Ronny Richard Griffith's Chapter 13 plan is denied.

STATEMENT OF THE CASE

On January 5, 1987, Ronny Richard Griffith filed with this Court his petition under Chapter 13 of

the Bankruptcy Code.

The Debtor filed his plan and proposed to pay 25% to all unsecured creditors except Steel City Leasing, Inc. (Steel City) which the Debtor proposed to pay zero. The Debtor classified Steel City separate from the other unsecured creditors due to the fact that Steel City's claim of $6,520.35 arose from a deficiency balance on an automobile lease.

Steel City filed an objection to confirmation of the plan contending that there is no difference in class between Steel City and the other unsecured creditors. Steel City alleges that the plan discriminates unfairly against it and that the plan should not be confirmed unless Steel City is classified as the other unsecured creditors are classified.

The matter came on for hearing and it was proposed to the Court that each of the parties be allowed to submit briefs on the issue of unfair discrimination between classes of creditors. The Court took the matter under advisement and thereafter Steel City submitted its brief. This issue having come before the Court in another bankruptcy case, Verlon Stepp, Jr. and Nancy Ann Stepp, Case No. 8601577JC, involving the Debtor's attorney, Mr. Childre requested that the Court allow his previous brief to be considered in this case also.

DISCUSSION

Section 1322(b)(1) of the Bankruptcy Code provides:

> §1322. Contents of plan.
>
> (b) Subject to subsections (a) and (c) of this section, the plan may--
>
> (1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated, however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

Section 1122 of the Bankruptcy Code provides:

> §1122. Classification of claims or interests.
>
> (a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.
>
> (b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

Section 1325(a)(1) of the Bankruptcy Code provides:

> §1325. Confirmation of plan.
>
> (a) Except as provided in subsection (b), the court shall confirm a plan if--

> (1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

Steel City challenges the Debtor's plan in that it violates §1322(b)(1) by unfairly discriminating among the unsecured creditors. Section 1322(b)(1) allows a Chapter 13 plan to designate classes of unsecured claims as provided in §1122 as long as the classification does not discriminate unfairly. Section 1122 permits classification of claims which are substantially similar and for classification when reasonable and necessary for administrative convenience. Section 1325(a) sets out six requirements for confirmation of the plan, including that the plan must comply with the provisions of Chapter 13 under the Code. See §1325(a)(1).

The Court must find that the Chapter 13 plan complies with section 1325 before the plan can be confirmed and thus, rendered effective. The Debtor as proponent of the plan has the burden of proof to show the plan complies with the provisions of Chapter 13 and that the plan should be confirmed. In re Wolff, 22 B.R. 510 at 512, 6 C.B.C.2d 1282 (Bkrtcy.App.Panels 9th Cir. 1982); citing In re Elkind, 4 C.B.C.2d 687, 11 B.R. 473 (Bkrtcy.D.Colo. 1981); In re Cargo, 4 B.R. 483 (Bkrtcy.S.D. Ohio 1980).

The sole issue before the Court is whether

the Debtor's plan unfairly discriminates against Steel City by proposing to pay zero to Steel City as a separate class from the other unsecured creditors receiving 25%. This Court finds that the Debtor has failed to meet his burden of proof to show that his plan does not unfairly discriminate in its classification scheme.

The Debtor cites numerous cases to the Court allowing classification of claims and contending that the standard for review by the Court on a classification scheme is primarily reasonableness or rational basis. See In the Matter of Curtis, 1 C.B.C.2d 314 (Bkrtcy. W.D. Mo. 1979); In the Matter of McCormick, 8 C.B.C.2d 352 (Bkrtcy. S.D. Oh. 1983); In re Haag, 2 C.B.C.2d 144, 3 B.R. 649 (Bkrtcy. D.Oregon 1980) and In re Roe, 5 C.B.C.2d 1396 (Bkrtcy. D.Kan. 1982). However, none of the cases cited to the Court establish a precedent for the treatment of a deficiency judgment as a separate class from general unsecured creditors.

Steel City also cites cases to the Court for consideration in determining the Debtor's classification scheme. Steel City cited In re Wolff, 22 B.R.. 510, 6 C.B.C.2d 1282, (Bkrtcy.App.Panels 9th Cir. 1982); In re Belvins, 1 C.B.C.2d 185 (Bkrtcy. E.D. Ohio 1979); In re Cooper, 1 C.B.C.2d 813 (Bkrtcy S.D. Calif. 1980); and In re Tatum, 1 C.B.C.2d 191 (Bkrtcy. S.D. Ohio 1979). Again, none of the cases cited to

the Court establish a precedent for the treatment of a deficiency judgment as a separate class in a Chapter 13 plan.

This Court finds that there is a split of authority as to the degree of flexibility in the interpretation of section 1122(a). One line of authority holds all claims of the same legal priority must be placed in the same class. Granada Wines, Inc. v. New England Teamsters and Trucking Industry Pension Fund, 748 F.2d 42 (1st Cir. 1984), is one of these cases and states that:

> The general rule regarding classification is that "'all creditors of equal rank with claims against the same property should be placed in the same class.'" In re Los Angeles Land and Investments, Ltd., 282 F.Supp. 448, 453 (1968), aff'd, 447 F.2d 1366 (9th Cir. 1971) (quoting In re Scherk v. Newton, 152 F.2d 747 (10th Cir. 1945)). Separate classifications for unsecured creditors are only justified "where the legal character of their claims is such as to accord them a status different from the other unsecured. . . ." Id. at 454.
>
> Granada Wines at 46.

The other position is much more flexible and is exemplified by Barnes v. Whelon, 689 F.2d 193 (D.C. Cir. 1982). This line of authority holds that similar claims may be separately classified when there is a legitimate reason for doing so, it is reasonable, and

it is not unfairly discriminatory. Barnes v. Whelon provides:

> Section 1322(b)(1) prohibits unfair discrimination, and an inquiry into fairness plainly involves more than the rationality of the debtor's classification on some minimum amount creditors must receive.
>
> What constitutes fair discrimination will vary from case to case, and we cannot offer a generally applicable definition. The Court must examine the amounts proposed for each class in light of the debtor's reasons for classification, and exercise sound discretion. See In re Gay, 3 B.R. 336, (Bkrtcy. D.Colo. 1981). . . .
>
> Barnes v. Whelon at 201 and 202.

After reviewing case law, this Court is of the opinion that the Bankruptcy Appellant Panel of the Ninth Circuit in In re Wolff, supra, had the best solution in interpreting the language of §§1322(b)(1) and 1122(a) when it held that:

> . . .there will be occasions where unsecured claims might be classified and treated differently, even though the legal character of the claims is identical and the treatment is discriminatory, but not unfairly so.
>
> We believe that the test created in In re Kouich, 4 B.R. 403 (Bkrtcy. Mich. 1980), and refined in In re Dziedzic, 9 B.R. 424 (Bkrtcy. Tex. 1981), more reasonably sets forth the interpretation to be placed upon §1322. The test is (1) whether the discrimination has a reasonable basis; (2) whether the debtor can carry out a plan without the discrimination; (3) whether the

> discrimination is proposed in good faith; and (4) whether the degree of discrimination is directly related to the basis or rationale for the discrimination. Restating the last element, does the basis for the discrimination demand that this degree of differential treatment be imposed?
>
> In re Wolff at 512.

Thus, this Court finds that under section 1322 a debtor's plan is allowed to discriminate just as long as it does not discriminate unfairly. The question before this Court is whether Steel City is being unfairly discriminated against by the Debtor's plan placing the deficiency amount of Steel City in a separate class. Applying the test stated in In re Wolff, supra, the Court finds that the Debtor has failed to carry his burden on all elements of the test.

The Court finds that Steel City should be included in the Debtor's plan as a general unsecured creditor; that the deficiency debt in this case is not a reasonable basis for discrimination; that the discrimination is not a good faith proposal; and, that the degree of discrimination to Steel City is not directly related to the rationale for placing Steel City in a separate class.

CONCLUSION

For the reasons stated herein, the Court finds that the objection of Steel City is well taken

and should be sustained and that confirmation of the Debtors' plan should be denied.

THEREFORE, IT IS ORDERED, that the confirmation of Ronny Richard Griffith's Chapter 13 plan is denied.

SO ORDERED, this the 17 day of July, 1987.

Edward O Ellington
U. S. BANKRUPTCY JUDGE