

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
JEFFREY JAY CRUME, JR., and) CASE NO. 06-30218 HCD
AIMEE LYNN CRUME,) CHAPTER 13
)
DEBTORS.)

Appearances:

Loraine Troyer, Esq., attorney for debtors, 121 North Third Street, Goshen, Indiana 46526;

Debra L. Miller, Standing Chapter 13 Bankruptcy Trustee, P.O. Box 11550, South Bend, Indiana 46634; and

Thomas E. Panowicz, attorney for Trustee, P.O. Box 11550, South Bend, Indiana 46634.

MEMORANDUM OF DECISION

At South Bend, Indiana, on January 12, 2007.

Before the court are the Amended Chapter 13 Plan of debtors Jeffrey Jay Crume, Jr., and Aimee Lynn Crume and the Trustee's Objection to Confirmation of Plan, filed by Chapter 13 Trustee Debra L. Miller.¹ The sole issue under consideration is whether the debtors' chapter 13 plan, which is proposed for a term of 48 months, complies with the definition of "applicable commitment period" found in 11 U.S.C. § 1325(b)(4). For the reasons that follow, the court sustains the objection of the Trustee and directs the debtors to modify their Amended Plan in accordance with the determinations of the court in this Memorandum of Decision.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and

¹ On April 13, 2006, creditor DaimlerChrysler Fin. Servs. Amerse. LLC, sbmt DaimlerChrysler Servs. NA LLC, also objected to confirmation of the debtors' Amended Chapter 13 Plan. Counsel for the creditor did not appear at the May 25, 2006 confirmation hearing. Debtors' counsel suggested at the hearing that the parties might file a stipulation concerning the interest rate to be paid on the creditor's allowed secured claim. To date, no agreement has been filed with the court.

determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(L) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

The facts in this case are not in dispute. The debtors filed their chapter 13 petition and their first plan on March 15, 2006, after the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) became effective. They amended the plan on April 11, 2006, and amended schedules B and C on May 9, 2006. The amended plan (“Plan”) proposes payments of \$1,024.94 per month for a term of 48 months. It provides a 0% dividend to the unsecured creditors. The debtors’ household size is three, and the debtors’ annualized current monthly income, as shown on Line 15 of Form B22C, is \$74,904.96. The median family income in Indiana for a household of three is \$52,526.00.² The debtors agree that their current monthly income, for a family of three, is greater than the median family income in Indiana.

The Trustee’s Objection To Confirmation of Plan was filed on May 17, 2006. The objection presently before the court was argued by the parties at a hearing on May 25, 2006, and in briefs filed subsequent to the hearing.³ The issue remaining to be resolved is whether the “applicable commitment period” of the debtors’ Plan, as defined in 11 U.S.C. § 1325(b)(4), must be 5 years or may be reduced to 4 years, as their Plan now proposes.

² The median family income is calculated and reported by the Bureau of the Census. *See* 11 U.S.C. § 101(39A).

³ The Trustee had objected that the Plan did not meet the “best interest of creditors” test because it did not provide that the general unsecured creditors receive at least \$1,100, based on the debtors’ 2005 tax refunds. The debtors have agreed, however, that the minimum payment to the general unsecured creditors will be \$1,100.

The Trustee objects to the debtors' proposed completion of their Plan in 48 months. She asserts that the Plan does not satisfy § 1325(b)(4): Because the debtors' current income is greater than the median family income and because the Plan does not pay the unsecured creditors in full, the applicable commitment period for the debtors' Plan must be no less than five years, according to the Trustee. *See* R. 29 at 4, R. 30 at 11. In response, the debtors rely on Form B22C, the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income. They point out that, on Form B22C, their monthly disposable income is a negative amount, \$-491.71. *See* R. 28 at 1. Because they have no disposable income (as they calculated it on Form B22C), therefore, they argue that they are not required to pay a dividend to unsecured creditors under § 1325.⁴ *See id.* at 2. They further contend that "all parties benefit if creditors are paid more quickly" and urge the court to confirm their proposed Plan payments of \$1,024.94 per month for 48 months rather than payments of \$820.00 per month for a 60-month period. *Id.* at 3. They also ask the court to "find that the 5 year period can be used as a multiplier if [there is] no objection by creditors." *Id.*

Discussion

The parties focus on § 1325(b)(4), a new subsection of the Bankruptcy Code introduced under the BAPCPA. It defines the new term "applicable commitment period":

- (4) For purposes of this subsection, the 'applicable commitment period' –
 - (A) subject to subparagraph (B), shall be –
 - (I) 3 years; or

⁴ The Trustee raised two objections to the debtors' arguments in their brief. She objected to the debtors' statement that no party objected to the 0% dividend to the unsecured creditors; she pointed out that she herself objected and that the parties subsequently agreed that the general unsecured creditors shall be paid a minimum of \$1,100. The Trustee also objected to the debtors' statement that Form B22C does not require a dividend to be paid to the unsecured creditors. She noted that the legal issue before the court in this case is the term of the applicable commitment period of the debtors' Plan, not the calculation of projected disposable income in Form B22C and Schedule J. The court agrees that the issue before it is the meaning of § 1325(b)(4)'s applicable commitment period.

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than –

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

11 U.S.C. § 1325(b)(4). The “applicable commitment period,” therefore, is the term or period by which to measure a debtor’s plan. *See In re Hardacre*, 338 B.R. 718, 722 (Bankr. N.D. Tex. 2006) (“The ‘applicable commitment period’ is the term of the debtor’s plan.”). Two factors must be considered: (1) whether the debtor’s annual income (current monthly income multiplied by 12) is above or below the applicable median family income for a similarly sized household in the debtor’s state; and (2) whether the plan provides for payment in full of all unsecured creditors. In this case, it is a fact that the debtors’ annual income (\$74,904.96) is above the applicable median family income for a household of 3 in Indiana (\$52,526.00). This information is relevant to the determination of the applicable commitment period under subsection (A). It is also a fact that the debtors’ Plan does not provide for payment in full of all unsecured claims. This information is needed to consider whether the applicable commitment period may be reduced to less than 3 or 5 years under subsection (B). *See, e.g., In re Schanuth*, 342 B.R. 601, 606 (Bankr. W.D. Mo. 2006) (comparing pre-BAPCPA’s fixed 3-year commitment period with the BAPCPA’s two-tiered system based on a debtor’s income).

The Trustee’s position is that the statute plainly provides that the applicable commitment period must be “not less than 5 years,” since the debtors’ household size is 3 and the debtors’ annual income exceeds the median family income in Indiana for a household of 3. *See* R. 29 at 3-4. Moreover, because the Plan does not

provide for payment in full of the unsecured claims, the Trustee asserts that § 1325(b)(4)(B) does not apply and that the applicable commitment period cannot be less than 5 years. *See id.* at 8-9. The cases upon which the Trustee relies include *In re Schanuth*, 342 B.R. 601 (Bankr. W.D. Mo. 2006); *In re McGuire*, 342 B.R. 608 (Bankr. W.D. Mo. 2006); *In re Beasley*, 342 B.R. 280 (Bankr. C.D. Ill. 2006); *In re Dew*, 344 B.R. 655 (Bankr. N.D. Ala. 2006); and *In re Wiggs* 2006 WL 2246432 (Bankr. N.D. Ill. 2006). Those cases concluded that the applicable commitment period is a temporal requirement of chapter 13 plans.

The debtors suggest (without explanation or citation to case law or statutory authority) that the applicable commitment period should be used as a multiplier rather than as a temporal term. *See R.28* at 3. Courts that have considered the applicable commitment period as a multiplier explain it as a calculation of the total amount of income to be paid under a plan, regardless of that plan's length of time. *See In re Dew*, 344 B.R. at 661; *In re Schanuth*, 342 B.R. at 607. The debtors also assert that, because they have no projected disposable income, a 5-year plan provides no benefit to the creditors.⁵ *See id.* For the latter argument, they rely on *In re Alexander*, 344 B.R. 742 (Bankr. E.D.N.C. 2006), which found that the applicable commitment period "is a temporal requirement but that it is only applicable in cases that require a payment of 'disposable income' to unsecured creditors." *Id.* at 2. After examining § 1325(b)(1)(B), § 1325(b)(4), § 1329(c), and § 1322(d)(1) and (d)(2), *Alexander* determined that those "provisions establish a maximum plan length, but they do not require a minimum commitment period." *Id.* at 3 (quoting *Alexander*, 344 B.R. at 751). The case then concluded that "a debtor with no projected disposable income is free to meet the other confirmation requirements of § 1322 and § 1325 in whatever period of time he may feasibly do so." *Id.* Following *Alexander*, the debtors contend that

⁵ In *In re Daniel*, ___ B.R. ___, 2006 WL 3848773 (Bankr. D. Kan. December 15, 2006), the court found that the "Debtor's predicate for her argument that the applicable commitment period is a multiplier rather than a temporal period is that she has zero projected disposable income." *Id.* at *8. The debtors in this case did not create a link between the applicable commitment period as a multiplier and their zero projected disposable income. In addition, the case upon which the debtors relied, *In re Alexander*, rejected the argument that "applicable commitment period" should be interpreted as a multiplier and found that it is a temporal requirement. *See In re Alexander*, 344 B.R. 742, 750-51 (Bankr. E.D.N.C. 2006).

there was no benefit to the creditors or the debtors to extend the Plan payments to 60 months. According to the debtors, “[a]s a practical matter, all parties benefit if creditors are paid more quickly.” *Id.*

After weighing the arguments of counsel and reviewing the BAPCPA amendments to the Bankruptcy Code and the cases interpreting them, this court agrees with *In re Schanuth* and the many cases following it that the language of § 1325(b)(4) is plain and unambiguous and must be enforced according to its terms. *See, e.g., In re Casey*, ___ B.R. ___, 2006 WL 3071401 at *7-*8 (Bankr. E.D. Wash. October 27, 2006); *In re Davis*, 348 B.R. 449, 455 (Bankr. E.D. Mich. 2006); *In re Dew*, 344 B.R. at 661. The court finds that the applicable commitment period clearly is a temporal requirement that establishes the length of a debtor’s chapter 13 plan. *See In re Davis*, 348 B.R. at 455 (“Here, the Court finds that the plain language used to describe and define the scope of the commitment a debtor must make of disposable income in a chapter 13 plan clearly indicates that that commitment is temporal in nature.”); *In re Schanuth*, 342 B.R. at 608 (“Quite simply, the plain language of § 1325 dealing with applicable commitment period indicates that plan duration is still determined by temporal, not monetary, requirements.”); *see also In re Alexander*, 344 B.R. at 751 (“The court finds that the ‘applicable commitment period’ is a temporal requirement.”); *In re Dew*, 344 B.R. at 661 (“The Court is convinced that the three years referred to in § 1325(b)(4)(A) represents a period of time over which chapter 13 plan payments must be made, not a multiplier for use in calculating the total amount to be paid under the plan regardless of its term.”); *In re McGuire*, 342 B.R. at 615 (agreeing with *Schanuth* that the applicable commitment period is a temporal, not a monetary, requirement).

The court points out that the debtors’ mere reference to a “multiplier” was too cursory to require the court’s response. Moreover, the one case on which the debtors relied, *In re Alexander*, expressly dismissed the multiplier interpretation of § 1325(b)(4) and embraced the temporal requirement. *See In re Alexander*, 344 B.R. at 750-51. Nevertheless, the court did consider and reject the multiplier or monetary interpretation of the applicable commitment period for the reasons discussed in depth in *In re Davis*, 348 B.R. at 455, and *In re Schanuth*, 342 B.R. at 606-08. The court agrees with *In re Casey* that “Subpart (b)(4) makes no reference to any

monetary analysis to be used in determining the length of the plan, but refers to a measurement of time.” *In re Casey*, 2006 WL 3071401 at *7 (distinguishing *In re Fuger*, 347 B.R. 94 (Bankr. D. Utah 2006)). As *Casey* succinctly pointed out, the plan must have a length of 3 or 5 years (under § 1325(b)(4)(A)) unless unsecured claims are paid in full (under § 1325(b)(4)(B), which establishes an exception to Subpart (A)). *Casey* further stated that “[i]t is irrelevant whether the projected disposable income is zero or \$1,000 or some other amount” when determining whether to shorten the time period of a plan. *See id.* at *6. This court respectfully disagrees with the *Alexander* view that the applicable commitment period “simply does not come into play where no projected disposable income must be taken into account.” *In re Alexander*, 344 B.R. at 751. The language of the statute does not lend itself to a monetary interpretation, in this court’s view. Like *Davis*, this court “declines to abandon the temporal framework for determining plan duration without clear instructions from Congress to do so.” *In re Davis*, 348 B.R. at 456.

The court finds that nothing in § 1325(b)(4) allows a debtor with zero or a negative projected disposable income to reduce the length of an applicable commitment period. As Judge Keith M. Lundin, editor of *Chapter 13 Bankruptcy, 3d Edition*, put it so clearly, “[t]he applicable commitment period may be less than three or five years ‘only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.’” *5 Chapter 13 Bankruptcy, 3d Edition*, § 493.1 at 493-8 (Keith M. Lundin, ed., 2000 & Supp. 2006) (quoting § 1325(b)(4)(B)).

In this case, there is no dispute that the debtors’ annual income is greater than the state’s median family income and that their Plan does not provide for full payment of all the unsecured claims. For over-median income debtors like the Crumes, therefore, § 1325(b)(4) requires that a plan provide for an applicable commitment period of not less than 5 years – unless the plan is paying unsecured creditors in full. The debtors’ Plan does not satisfy that exception. For that reason, the Plan must have a term of not less than 5 years. Because this Plan is proposed for the shorter time period of only 4 years, it cannot be confirmed.

Conclusion

For the foregoing reasons, the court sustains the Trustee's Objection to Confirmation of Plan and denies confirmation of the debtors' Plan. The debtors are directed to file an amended Plan within thirty days of the date of this Order.

SO ORDERED.



Harry C. Dees, *et.*, Chief Judge CJ
United States Bankruptcy Court