

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
DAVE E. MATTHEWS,) CASE NO. 08-23717 JPK
) Chapter 13
Debtor.)

ORDER REGARDING CONFIRMATION OF THE DEBTOR'S CHAPTER 13 PLAN

The debtor's Chapter 13 plan was filed on October 31, 2008. The initial confirmation hearing was held on January 26, 2009, a hearing at which both the attorney for the Chapter 13 Trustee and the attorney for the debtor appeared. The court's docket order entered on February 2, 2009, noted that the secured claim of the Lake County Treasurer was not provided for by the plan, and that the court had "concerns regarding disposable income based on Schedule J expenses and retention of multiple vehicles". A hearing on confirmation of the plan was subsequently held on April 6, 2009. At that hearing, the court recited findings of fact and conclusions of law in relation to its determination that the plan as submitted could not be confirmed, and stated from the bench that an order would be entered denying confirmation and requiring the filing of an amended plan. No order stated from the bench is final until memorialized by a written order entered on the docket. This order now states the court's determination regarding further proceedings with respect to review of the plan filed on October 31, 2008 for the purposes of its confirmation.

The court first notes that the Chapter 13 plan submitted by the debtor does not provide for two claims filed as secured claims in the claims register of this case: the claim of the Lake County Treasurer filed as claim #1-1, and the claim of First Financial Bank filed as claim #6-1. 11 U.S.C. § 1325(a)(5) requires that a plan provide for allowed secured claims. Whether or not claim numbers 1-1 and 6-1 will ultimately be determined to be allowed secured claims with respect to this case, at this time they are allowed secured claims because no action has been

taken to challenge them. The plan at this time thus fails to comply with 11 U.S.C. § 1325(a)(5) with respect to those two claims.

Section 2(g) of the plan creates a separate class for the unsecured claim of USAA-FSB, which the plan designates as an unsecured claim to be paid 100%, as contrasted to the plan's treatment in Section 2(h) of a very minimal *pro rata* payment for other general unsecured claims. 11 U.S.C. § 1325(a)(1) states the confirmation requirement that a plan must comply with all provisions of Chapter 13, which includes the provision of 11 U.S.C. § 1322(a)(3) that a plan not discriminate against claims within the same class. The record establishes no discernable reason for the special treatment to be accorded to the claim of USAA-FSB, and thus on its face the plan cannot be confirmed due to the debtor's failure to establish compliance with 11 U.S.C. § 1325(a)(1) with respect to the treatment of this claim in relation to other unsecured claims.

Section 2(d)(i) provides for the payment of a secured claim of BMW Finance Bank, stated to be in the amount of \$42,894.36 and requiring a monthly payment of \$882.14 over the 60-month term of the plan. Review of claim #2-1 of BMW Financial Services establishes that the creditor's secured claim is a "910 day car" claim under the dangling paragraph of 11 U.S.C. § 1325(a)(9), in the amount of \$43,121.62. Thus, the plan does not properly provide for the amount of this claim, and the discount rate in the plan of 0.90% does not comply with the discount rate that would be required by applicable law. Thus, in relation solely to the treatment of this allowed secured claim, the plan does not comply with 11 U.S.C. § 1325(a)(5)/dangling paragraph of 11 U.S.C. § 1325(a)(9).

The court expressed other concerns in relation to the debtor's plan with respect to its treatment of unsecured creditors in light of the debtor's proposed retention of a very expensive automobile and of a time share – under any criteria luxury items which most people with the debtor's income cannot afford, particularly when they have had to seek protection under the

bankruptcy laws because of their debts.

IT IS ORDERED that confirmation of the plan filed on October 31, 2008 is denied, and that the debtor shall file an amended plan in 28 days.

Dated at Hammond, Indiana on April 29, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee