

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT HAMMOND

WE-18J

IN RE: )  
FRANK PALMER )  
 ) BANKRUPTCY NO. 05-60717  
 )  
Debtor )

**MEMORANDUM OPINION AND ORDER**

Final hearing held on July 6, 2005 in this Chapter 13 case on Objection filed by DaimlerChrysler Services North America (“ Objectant” ) on May 12, 2005, to the Confirmation of the Plan filed by the Debtor.

Debtor appears in his own proper person and by counsel.

Trustee appears.

Objectant appears by counsel and reports it has no evidence to submit in support of its objection filed by the Objectant.<sup>1</sup>

Submitted.

The Debtor has the burden of proving the conditions of confirmation in §§1322 and 1325(a). Lundin, Chapter 13 Bankruptcy 3<sup>rd</sup> Ed. (2000 + Supp. 2004). §217.1, P. 217-1

---

<sup>1</sup> N.D. Ind. L.B.R. B-5071-1(d), Continuances, provides as follows:

A motion to postpone an evidentiary hearing on account of the absence of evidence shall be made only upon affidavit, showing the materiality of the evidence expected to be obtained; that due diligence has been used to obtain it; where the evidence may be. If the motion is for an absent witness, the affidavit must show the name and residence of the witness, if known; the probability of procuring the testimony within a reasonable time and that the absence has not been procured by the act or connivance of the party, or by others at the party's request, or with his or her knowledge or consent, the facts that the party believes to be true, and that the party is unable to prove such facts by any other witness whose testimony can be as readily procured. If the adverse party will stipulate to the content of the evidence that would have been elicited at trial from the absent document or witness, the trial shall not be postponed. In the event of such a stipulation, the parties shall have the right to contest the stipulated evidence to the same extent as if the absent document or witness were available at trial.

+ N.1 (Collecting cases). However, the Objectant has the initial burden of coming forward with the evidence in support of its Objection to a Plan. In re Valley Park Group, Inc., 96 B.R. 16, 21 (Bankr. N.D.N.Y. 1989); In re Silver Falls Petroleum Corp., 55 B.R. 495, 497 (Bankr. S.D. Ohio 1985); In re Northeast Dairy Co-op Federation, Inc., 73 B.R. 239, 248 (Bankr. N.D.N.Y. 1987). As stated by the Court in In re Blevin, 150 B.R. 444 (Bankr. W.D. Ark. 1992):

[i]n Education Assistance Corp. v. Zellner, 827 F.2d 1222 (8<sup>th</sup> Cir. 1987), the Eight Circuit Court of Appeals agreed with the reasoning of Menden hall [54 B.R. 44 (Bankr. W.D. Ark. 1985)], stating that:

[g]enerally, in civil litigation, the party seeking to change the status quo has the ultimate burden of proving his allegations are true. See Joseph A. Bass Co. v. United States, 340 F.2d 842, 844 (8<sup>th</sup> Cir. 1965) (“ [i]t is fundamental that the burden of proof \* \* \* rests upon the party who, as determined by the pleadings or the nature of the case, asserts the affirmative of an issue”). Since a Chapter 13 plan that meets the requirements of section 1325(a) would be confirmed absent the objections of the creditor, the creditor has, at minimum, “the initial burden of producing satisfactory evidence to support the contention that the debtor is not applying all of his disposable income” to the plan payments. In re Fries, 68 B.R. 676, 685 (Bankr. E.D. Pa. 1986); see also In re Menden hall, 54 B.R. 44, 45-46 (Bankr. W.D. Ark. 1985).

827 F.2d at 1226. The holding of Education Assistance Corp. v. Zellner is binding in this Circuit.

Substantial support exists for the Eighth Circuit’s view. For example, a leading treatise on bankruptcy states that:

An objection to confirmation gives rise to a contested matter which is to be litigated by the parties directly involved, including the debtor and the objecting creditor or creditors. Generally, the burden of going forward with evidence and the ultimate burden of proof is borne by the party objecting to confirmation, and if that party fails to prosecute the objection, the objection should be dismissed.

5 Collier on Bankruptcy, ¶1324.01[3] (15<sup>th</sup> ed. 1991). See also, In re Packham, 126 B.R. 603 (Bankr. D. Utah 1991); In re Fricker, 116 B.R. 431 (Bankr. E.D. Pa. 1990); In re Colon Vasquez, 111 B.R. 19 (Bankr. D.P.R. 1990); In re Carver, 110 B.R. 305 (Bankr. S.D. Ohio 1990); In re Stein, 91 B.R. 769 (Bankr. S.D. Ohio 1988); In re Keffer, 87 B.R. 509 (Bankr. S.D. Ohio 1988); In re Navarro, 83 B.R. 348 (Bankr. E.D. Pa. 1988); In re Cruz, 75 B.R. 56 (Bankr. D.P.R. 1987); In re Fries, 68 B.R. 676 (Bankr. E.D. Pa. 1986); In re DeSimmons, 17 B.R. 862 (Bankr. E.D. Pa. 1981); HCC Consumer discount Co. v. Tomeo (In re Tomeo), 1 B.R. 673 (Bankr. E.D. Pa. 1979). Therefore the creditor has the burden of proof on issues raised by the objection.

In this case, no credible evidence concerning value was received. Therefore, the bank failed to meet its burden of proof on the issue of valuation. The objection to confirmation is overruled and the plan is confirmed.

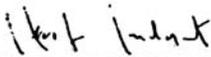
Id. 150 B.R. at 446. See also, Lundin, Chapter 13 Bankruptcy 3<sup>rd</sup> Edition (2000 + 2004 Supp.). §217.1, P. 217-3 + NN. 3 + 4 (Collecting cases).

Accordingly, because the Objectant has failed to appear and present any evidence in support of its Objection, it has not met its initial burden of coming forward with the evidence. Therefore, said Objection shall be denied. It is therefore,

**ORDERED, ADJUDGED, AND DECREED**, that the Objection by DaimlerChrysler Services North America to the Confirmation of the Plan by the Debtor is hereby **DENIED**.

The Clerk shall enter this Order upon a separate document pursuant to Fed. R. Bk. P. 9021.

Dated: July 8, 2005

  
\_\_\_\_\_  
**JUDGE, U. S. BANKRUPTCY COURT**

Distribution  
Debtor, Attorney for Debtor  
Objectant's Attorney  
Trustee, U.S. Trustee

Rev. 06/17/05