

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

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Judge: David D. Cleary

Appearance of Counsel:

Attorney for Debtor:

Natalia Basinger
The Semrad Law Firm, L.L.C.
11101 S. Western Avenue, Chicago, IL 60643

Attorney for Trustee:

Yanick Polycarpe
Office of the Chapter 13 Trustee
224 S. Michigan, Suite 800, Chicago, IL 60604

U.S. Trustee:

Patrick S Layng
Office of the U.S. Trustee, Region 11
219 S Dearborn St., Room 873, Chicago, IL 60604

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Case No. 23 B 837
)	
CHANEL N. BROWN,)	Chapter 13
)	
Debtor.)	Judge David D. Cleary

ORDER OVERRULING OBJECTION TO CONFIRMATION AND CONFIRMING PLAN

This matter comes before the court on confirmation of the sixth amended chapter 13 plan (EOD 41) filed by Chanel Brown (“Debtor”). Future Finance Company, Inc. (“Future Finance”) filed an objection to confirmation of the plan (“Objection”). The court entered a briefing schedule. Debtor filed a response and Future Finance filed a reply. Having reviewed the papers and heard the arguments of the parties, the court will overrule the Objection and confirm the plan.

BACKGROUND

Debtor filed for relief under chapter 13 of the Bankruptcy Code on January 23, 2023. With her petition, she filed a proposed chapter 13 plan. About two weeks later, Future Finance filed the Objection. Over the course of the next three months, Debtor amended her original plan several times. The plan before the court today is the sixth amended chapter 13 plan (“Plan”).

Future Finance is a creditor secured by an interest in Debtor’s 2017 Jeep Grand Cherokee. According to the amended proof of claim that Future Finance filed on February 6, 2023, Debtor owes it \$15,336.26. The Plan provides for Future Finance’s claim in section 3.3, stating that the amount of the claim is the same as in the proof of claim. The Plan proposes payments of \$510 to the chapter 13 Trustee (“Trustee”) for 36 months, and, in section 3.3,

monthly disbursements by the Trustee to Future Finance in the amount of \$390. With interest on Future Finance's claim at 10.75%, the estimated total payment to Future Finance is \$19,570.32.

DISCUSSION

Future Finance raises three arguments in its papers and in oral argument. First, that Debtor "has a history of putting the collateral at an unreasonable risk and therefore the collateral cannot be adequately protected." (Reply, p. 2.). There is no evidence before the court, however, to support the allegation that Future Finance's collateral cannot be adequately protected with the insurance policy currently in place. Moreover, this argument was not mentioned in Future Finance's objection, but instead raised for the first time in its reply. It is therefore waived. *See Zylstra v. DRV, LLC*, 8 F.4th 597, 609 (7th Cir.), *cert. denied*, 142 S. Ct. 716 (2021).

Future Finance's second argument is that it has not been receiving the adequate protection payments provided for it in section 8.1 of the Plan. Future Finance admitted at the most recent court hearing, however, that it has received funds from the Trustee. Therefore, neither the first nor the second argument support sustaining Future Finance's objection to confirmation.

This leaves Future Finance's third argument, that the Plan is not feasible because the amount to be paid on its secured claim exceeds the total of the plan payments. Pursuant to 11 U.S.C. § 1325(a)(6), the Debtor must show that she "will be able to make all payments under the plan and to comply with the plan."

The Plan provides for Debtor to pay \$510 to the Trustee for 36 months, for a total of \$18,360. The Plan also provides that Future Finance will be paid \$19,570.32 in fixed monthly installments of \$390. Clearly, Debtor will not be able to make all payments to creditors under the Plan within 36 months. Since the proposed disbursements exceed the amount to be paid into

the Plan over 36 months, Future Finance contends that the Plan is underfunded. *See In re Faison*, 416 B.R. 227, 232 (Bankr. E.D. Va. 2008).

In court on May 8, 2023, the Trustee's attorney stated that she understood Future Finance's concern, but "from the Trustee's perspective, if the plan completes within 60 months it is feasible." She clarified that "we keep paying until everybody is paid, and as long as it is paid within 60 months we recommend for confirmation."

The court assumes that the basis for the Trustee's statements is the language of Official Form 113 ("Form 113"), which is the national form chapter 13 plan. "The U.S. Bankruptcy Court for the Northern District of Illinois elected to require debtors to use Form 113 in all cases filed or converted to chapter 13 on or after December 1, 2017." *In re Stamps*, 644 B.R. 760, 768 (Bankr. N.D. Ill. 2022). Form 113 provides in section 2.1 that "[i]f fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in this plan." If the Debtor is required to pay for 60 months, at the plan payment amount specified in section 2.1, she would pay a total of \$30,600, exceeding the amount required to pay Future Finance and the total amounts to be distributed by the Trustee under the plan. Plan, Ex. 1, at p. 8. A confirmed plan is a binding contract that the debtor must perform. *See* 11 U.S.C. § 1327(a) ("The provisions of a confirmed plan bind the debtor and each creditor[.]"); *In re Harvey*, 213 F.3d 318, 321 (7th Cir. 2000) ("[A] confirmed plan acts more or less like a court-approved contract or consent decree that binds both the debtor and all the creditors."). The obligation to make plan payments to the Trustee up to 60 months is definite.

The court located one published decision that focused on the payment obligations required by section 2.1 and Exhibit 1 of the national form plan (Form 113). *See In re Reynolds*,

587 B.R. 347 (Bankr. N.D. Ill. 2018). In *Reynolds*, the court compared the amount to be paid according to section 2.1, and the amount *estimated* to be paid according to the exhibit attached to the plan titled “total amount of estimated trustee payments,” finding that section 2.1 did not obligate the Debtor to make the estimated payments reflected in Exhibit 1. But, Exhibit 1 is not simply a list of estimated payment amounts. It is a summary of payments to creditors under the plan that clearly identifies each class of specified creditors treated by the plan, along with the plan section relating to each class. The summary exhibit states that the plan terms control.

Section 2.1 provides that additional payments will be made to the extent necessary to make the payments to creditors that are *specified* in the Plan. *See Reynolds*, 587 B.R. at 349 (“the language of the National Plan may sometimes act as a savings clause to a sum certain to be paid to creditors”). The payments to Future Finance are clearly *specified* in section 3.3 of the Plan. Therefore, according to the savings clause language in section 2.1, additional payments will be made to the extent necessary to pay Future Finance. The Debtor also is obligated to make plan payments to all classes of creditors and can do so within 60 months under the terms of the Plan. The Plan is not underfunded. Debtor has satisfied the requirement of § 1325(a)(6) that she will be able to make all payments under the plan and to comply with the plan.

For the reasons stated above, **IT IS ORDERED THAT:**

1. The objection to confirmation filed by Future Finance is overruled; and
2. The Plan is confirmed.

ENTERED:

Date: June 15, 2023



DAVID D. CLEARY
United States Bankruptcy Judge