United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re John Jake Klein

Bankruptcy No.: 16 B 8738

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Judge: A. Benjamin Goldgar

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 13
	)	
JOHN JAKE KLEIN,	)	No. 16 B 8738
	)	
Debtor.	)	Judge Goldgar

MEMORANDUM OPINION

Before the court for ruling in the chapter 13 case of debtor John Jake Klein is the objection of Kara Schwan to confirmation of Klein's plan. For the reasons that follow, the objection will be overruled.

1. Background

The facts are taken from the parties' papers and the court's docket. No facts are in dispute. Schwan is Klein's ex-wife. She is also a creditor in his chapter 13 case, holding a large general unsecured claim and a potential priority unsecured claim. Klein had objected to Schwan's claim earlier in the case, but the objection was resolved with an order entered last October. So the size and nature of her claim are no longer an issue.

Klein's income is above the median family income for an Illinois household of his household's size. As a result, his disposable income for purposes of section 1325(b) of the Code is determined under section 707(b)(2). *See* 11 U.S.C. § 1325(b)(3). To that end, Klein completed Form 122C-2, known colloquially as the "means test" form. The calculation on the means test form produced a negative income figure on Line 45. No party has disputed any of Klein's entries on the form or the mathematical correctness of his income calculation.

Klein also filed Schedules I and J, as all debtors do. His initial Schedules I and J showed

that after expenses, Klein had $179 left to devote to plan payments. One of the expenses on his initial Schedule I was a deduction for a domestic support obligation: $755 in monthly child support payments owed to Schwan. Because those payments ended in November 2016, Klein filed an amended Schedule I removing the deduction. With the deduction removed, Klein's income went up. But Klein also filed an amended Schedule J increasing several of his expenses and adding new ones. The expenses in the amended Schedule J offset all but about $30 of the increased income. The amended schedules therefore showed that Klein still has only $209 to pay toward his plan.

Under his plan, Klein proposes to make monthly payments of $180 over 60 months, for a total of $10,800. That figure would pay general unsecured creditors, including Schwan, a minimum of 2% of their allowed claims.

Schwan has objected to confirmation of Klein's plan on two grounds. First, she contends he is not devoting all of his projected disposable income to the plan, as section 1325(b)(1)(B) requires. That is so, she says, because Klein has "manipulated" his expenses on the amended Schedule J, exaggerating some and fabricating others. Second, Schwan contends that Klein's treatment of his expenses in his amended Schedule J, and the consequences she claims it has for creditors, show he has proposed the plan – and, for that matter, filed his case – in bad faith.

2. Discussion

Schwan's objection will be overruled. Neither of her grounds for denying confirmation has merit.

For starters, Schwan's disposable income objection is not well-taken. Klein is an above-median debtor. As a consequence, his projected disposable income is determined under section

707(b)(2), not under Schedules I and J. *See generally In re Farrar-Johnson*, 353 B.R. 224, 228-30 (Bankr. N.D. Ill. 2006) (discussing at length the changes to the disposable income calculation resulting from the 2005 amendments to the Code); *see also In re Mancl*, 381 B.R. 537, 541 (W.D. Wis. 2008). Since the 2005 Code amendments, "Schedules I and J no longer determine plan payments for above-median income debtors." *In re Nething*, No. 07-27145, 2008 WL 2246072, at *2 (Bankr. E.D. Wis. May 30, 2008).

Because Klein's projected disposable income depends on section 707(b)(2) rather than Schedules I and J, and because his income under that section is negative, he need not pay any particular dividend to general unsecured creditors. *See In re Faison*, 416 B.R. 227, 231-32 (Bankr. E.D. Va. 2008); *In re Davis*, 392 B.R. 132, 142 (Bankr. E.D. Pa. 2008); *In re Brady*, 361 B.R. 765, 772-73 (Bankr. D.N.J. 2007). That is so even though his Schedules I and J show he in fact has excess funds available every month. *In re Guzman*, 345 B.R. 640, 642 (Bankr. E.D. Wis. 2006). Frankly, no disposable income objection is possible in a case like this. Because Klein has negative disposable income, section 1325(b) does not obligate him to pay any particular amount under his plan.

Although Schedules I and J no longer determine the projected disposable income of an above-median debtor like Klein, they do remain relevant to plan confirmation. Under section 1325(a)(6), a debtor must show he is able to make all payments under the plan – in other words, that the plan is feasible – and Schedules I and J provide evidence of feasibility. *In re Moore*, 446 B.R. 458, 462-63 (Bankr. D. Colo. 2011); *In re Melvin*, 411 B.R. 715, 720 (Bankr. D. Kan. 2008).

But feasibility is not a problem here. Under his plan, Klein must make monthly payments of $180 to the trustee. His amended Schedules I and J show he has excess income each month of $209, more than enough to make them. As for Klein's alleged "manipulation" of the expenses on

Schedule J, the increased expenses serve only to reduce the income he appears to have available to make plan payments and renders the feasibility of his plan less clear. If they hurt anyone, then, the changes in the amended Schedule J hurt Klein. With disposable income dependent solely on the means test, they had no effect on his creditors. Schwan has not claimed the plan is unfeasible in any event.

Schwan's good faith objection is not well-taken, either. To the extent the objection depends on her arguments about Klein's disposable income and the problematic expenses on Schedule J, no good faith objection is available. As *Farrar-Johnson* explained more than a decade ago, "[t]his kind of good faith objection to a debtor's disposable income has had little or no potency since the 1984 amendments to the Code." *Farrar-Johnson*, 353 B.R. at 231-32. Before 1984, courts determined a debtor's good faith by looking at whether the plan proposed to make a "substantial or meaningful repayment to unsecured creditors." *In re Smith*, 848 F.2d 813, 820 (7th Cir. 1988). By adding section 1325(b) with its disposable income test, however, the 1984 amendments eliminated that inquiry. *Id.* Good faith "no longer had an economic component." *Farrar-Johnson*, 353 B.R. at 232.

That became *a fortiori* true after the 2005 amendments, at least where above-median debtors like Klein were concerned. For those debtors, even the reasonable necessity of their expenses is no longer something for courts to determine. Reasonable necessity has instead become "a simple and straightforward matter of arithmetic based on sections 707(b)(2)(A) and (B)." *Id.* Because the disposable income and good faith questions are "separate and distinct," *In re Welsh*, 711 F.3d 1120, 1132 (9th Cir. 2013), inflated expenses on an above-median debtor's Schedule J do not establish bad faith, *Farrar-Johnson*, 353 B.R. at 231; *see also In re Burmeister*, 378 B.R. 227, 232 (Bankr. N.D. Ill. 2007), and the good faith requirement cannot be used to

demand "greater payments by an above-median debtor whose Schedule J shows excess available funds," *In re Smith*, No. 07-82462, 2009 WL 937144, at *3 (Bankr. C.D. Ill. Mar. 24, 2009).

To the extent, finally, that Schwan contends Klein's amended Schedule J shows he is proceeding in bad faith the disposable income question aside, her objection has no more force. Good faith in chapter 13 cases is a statutory requirement. As conditions of plan confirmation, sections 1325(a)(3) and (7) require a debtor to have filed his case and proposed his plan in good faith. 11 U.S.C. §§ 1325(a)(3), (7). That is all. Good faith is not some sort of free-floating morality test a court can invoke to bar a debtor from confirming a plan any time he has done something in the case the court finds distasteful. Had Congress wanted to create such a broad test, it could have. It did not, instead limiting the good faith requirement to the filing of the case and proposal of the plan.

Here, Schwan accuses Klein of bad faith only because of entries on his Schedule J she says are false. She has not accused him of filing his case or proposing his plan in bad faith. And as just discussed, any misstatements on Klein's Schedule J are irrelevant. An above-median debtor's Schedule J has no effect at all on what creditors receive under the plan. Fabricated or exaggerated expenses on a Schedule J instead tend to make the debtor's plan appear *less* feasible, making confirmation *less* likely. These kinds of problems do not work to an above-median debtor's advantage – quite the contrary. Mistakes in a chapter 13 debtor's schedules that do not affect creditors and gain the debtor nothing do not show bad faith. *See In re Fickel*, Nos. 1-07-bk-02822, 1-07-bk-02824 RNO, 2008 WL 1710102, at *5 (Bankr. M.D. Pa. Apr. 10, 2008); *In re Roberts*, 339 B.R. 807, 813 (Bankr. M.D. Ga. 2006).

3. Conclusion

The objection of Kara Schwan to confirmation of the plan of debtor John Jake Klein is overruled.

Dated: February 16, 2018

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A. Benjamin Goldgar

United States Bankruptcy Judge