United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: *In re Bryce Stirlen*

Bankruptcy No. 17-bk-06666

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Judge: Deborah L. Thorne

Appearance of Counsel:

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United States Bankruptcy Court, Northern District of Illinois

JUDGE	Deborah L. Thorne	**Case No.**	17bk06666
DATE	07/24/2018	**Adversary No.**	
CASE TITLE	*In re* Bryce Stirlen		
TITLE OF ORDER	Order Denying Confirmation of Chapter 11 Plan		

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Bryce Stirlen, the debtor, has proposed a Chapter 11 plan for reorganization. For the reasons stated below, the court holds that Stirlen's plan for reorganization is not confirmable.

A. Jurisdiction

The court has subject matter jurisdiction to decide this matter under 28 U.S.C. §§ 1334(a)–(b), 157(a), and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

B. Background

The debtor, Bryce Stirlen, has proposed a plan of reorganization under Chapter 11 of the Bankruptcy Code. Creditor, Lycurgan, Inc., objects to this plan on multiple grounds.

Stirlen was previously employed as a financial advisor on Wall Street and has started several businesses, either on his own or with his business partner. Transcript of Proceedings Held February 15, 2018 (hereinafter "Tr."), at 71, lns. 1-5. Stirlen, through his wholly owned company, purchased Ares Armor, Inc., now known as American Weapons Components, Inc., from Lycurgan. Tr. 51, at lns. 9-11.

Ares Defense, a competitor of Ares Armor, filed a trademark infringement suit against Ares Armor. Tr. 56, at lns. 14-17. Stirlen settled with Ares Defense and changed the name of Ares Armor to American Weapons Components ("AWC"). This rebranding affected AWC's

sales overnight. Tr. 62, at lns. 19-23. Paired with a downturn in the firearm industry, AWC's sales steeply declined and AWC eventually ceased operations. Tr. 65, at ln. 5. AWC's collapse significantly contributed to Stirlen's decision to file Chapter 11 bankruptcy.

In his schedules, Stirlen values his business interests at $12,746.50. *See* Schedules, Docket No. 55, at 6. $11,746.50 is attributed to his share of Lake House Capital Management and $1,000 is attributed to his 50% share of Fresh Tracks Corp. *Id.* Stirlen claims his interest in Fresh Tracks is exempt under 735 ILCS 5/12-1001(b). *Id.* at 10. In his liquidation analysis, Stirlen lists the entire $12,746.50 as available to the estate. Liquidation Analysis, Docket No. 99-2, Exh. 3. In Stirlen's Rule 2015.3 forms, the aggregate value of his business interests is listed as $21,746.50. Fresh Tracks is valued at $1,500 and his interest in Industry Armament, Inc. is valued at $8,500. Stirlen proposes to retain his business interests in exchange for $16,496.50 of new value contributions. Trial Brief in Support of Confirmation of Debtor's Plan of Reorganization, Docket No. 213, at 17. Stirlen has only provided his own testimony as evidence of these valuations. There has been no independent valuation or expert testimony.

In all of the documents he has provided, Stirlen values his other business interests at $0, including American Weapons Holding Company, Inc. ("AWHC"). Periodic Report Regarding Value, Docket No. 189, Exh. A, at 3. Stirlen owns 100% of AWHC, and in the corresponding Rule 2015.3 form, Stirlen claims that the company is operating at a loss. *Id.* ("The company is . . . operating at a loss at this time."). Stirlen anticipates continued losses in the next two years. *Id.* ("Expect no meaningful earnings and anticipates continued losses from the Company over the next 2-3 years."). In Stirlen's operating reports, he claims that he is taking corporate draws of between $564.71 and $25,762 a month. *See* Summaries of Cash Receipts and Cash Disbursements, Docket No. 158, at 4, Docket No. 181, at 4–5. The amount varies greatly month

to month with no pattern or consistency. Yet in Stirlen's Cash Flow Projections, he claims that he will fund plan payments with draws from AWHC totaling at least $170,000 a year. Cash Flow Projections and Claims Payment Schedule, Docket No. 99-1, Exh. 3. This is inconsistent with Stirlen's testimony. Stirlen claimed that he generates $15,000 a month from corporate consulting and commercial finance relationships with various companies he is under non-disclosure agreements with, and that he will largely fund plan payments from that income. Tr. 106, lns. 4-11. Stirlen also claims he generates additional income from teaching at Robert Morris University. Tr. 106, lns. 24-25.

C. Discussion

Section § 1129 of the Bankruptcy Code sets forth the substantive requirements for confirmation of a Chapter 11 plan. In order to be confirmed, a plan must satisfy § 1129(a)(1)-(16). *See In re 203 N. LaSalle St. P'ship*, 126 F.3d 955, 960 (7th Cir. 1997), *rev'd on other grounds*, 526 U.S. 434, 119 S. Ct. 1411 (1999). A plan that satisfies every part of § 1129(a), except for subsection (a)(8), may be confirmed by "cram down" under § 1129(b) if the plan does not discriminate unfairly between impaired classes and is fair and equitable to the rejecting classes. *Id*. at 961.

"The proponent of the plan bears the burden of establishing that each requirement set forth in § 1129(a) has been met." *In re Sentinel Mgmt. Group, Inc.*, 398 B.R. 281, 292 (Bankr. N.D. Ill. 2008). The proponent must meet its burden by a preponderance of the evidence. *In re Repurchase Corp*., 332 B.R. 336, 342 (Bankr. N.D. Ill. 2005), *aff'd*, No. 05 C 7075, 2008 WL 4379035 (N.D. Ill. Mar. 24, 2008). Regardless of whether an objection to confirmation has been raised, the court must determine whether the requirements of § 1129(a), and if applicable § 1129(b), have been met. *Sentinel*, 398 B.R. at 292.

I.) Section 1129(a)(11)

A plan for reorganization may only be confirmed if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). Stirlen bears the burden of proof to show that this plan is feasible and he has failed to meet that burden. *See In re Draiman*, 450 B.R. 777, 812 (Bankr. N.D. Ill. 2011) (noting that confirmations should not solely be based on the visions of the debtor's champion).

There are several inconsistencies and shortcomings in the statements and records provided by Stirlen. First, in Stirlen's Cash Flow Projections and Claims Payment Schedule, Stirlen will make payments of at least $178,550 a year under the plan. *See* Cash Flow Projections and Claims Payment Schedule, Docket No. 99-1, Exh. 3. To fund these payments, Stirlen claims at least $170,000 a year will come from draws from AWHC. *Id.* This projected income seems inconsistent at best with Stirlen valuing AWHC at $0. *See* Periodic Report Regarding Value, Operations and Profitability of Entities, Docket No. 189, at 2. Second, the Operating Reports provided by Stirlen show corporate draws that drastically vary in amount with no trend or pattern. Stirlen has made corporate draws of as much as $25,762 a month and as little as $564.71 a month. *See* Summaries of Cash Receipts and Cash Disbursements, Docket No. 158, at 4, Docket No. 181, at 4–5. There is no indication that Stirlen will be able to draw sufficient amounts from these entities consistently to fund the plan. *See* Tr. 112, at lns. 18–21 (noting that Stirlen's income fluctuates and can be "success based"). A perfectly regular income is not required, but the wild fluctuations as seen in the operating reports cast doubt on the likelihood that this plan will be carried through to success.

Third, Stirlen testified that his income will primarily be generated from financial consulting, but he has not presented any concrete, credible evidence apart from his own assertions. "To confirm a plan, a debtor's 'income projections must be based on concrete evidence and must not be speculative or conjectural.'" *In re Rey*, No. 04B22548, 2006 WL 2457435, at *7 (Bankr. N.D. Ill. Aug. 21, 2006) (quoting *In re Ames*, 973 F.2d 849, 851 (10th Cir. 1992)); *In re Mullock*, 404 B.R. 800, 809 (Bankr. E.D. Pa. 2009). Stirlen's claims that he can make more money at will if necessary to the success of the plan, *see* Tr. 116, add little if anything to the court's confidence in the overall success of the plan. *See Draiman*, 450 B.R. at 813–14 (noting that the debtor's assertion that "it wouldn't be a hard job to attain more income" was vague and "not a sufficiently concrete basis on which to determine the commercial viability of the Plan.").

Fourth, Stirlen has not provided any concrete evidence of his wife's income, which will be used to make payments under the plan. Cash Flow Projections and Claims Payment Schedule, Docket No. 99-1, Exh. 3; *see also* Tr. 80 (Stirlen noting that his recollection is that his wife made $8,500 in 2017). Perhaps most importantly, he has not provided the identity of the generous relative who will cover any shortcomings under the plan and provide new value contributions. Trial Brief in Support of Confirmation of Debtor's Plan of Reorganization, Docket No. 213, at 15; Tr. 108–09. The support of both parties is vital to the success of this plan due to the plan's very thin margin for error. Cash Flow Projections and Claims Payment Schedule, Docket No. 99-1, Exh. 3; *see also* Tr. 107–09 (discussing the Debtor's alternative sources of income). Any overestimation in projected income, or the incurrence of extra expenses, such as the attorneys' fees for the debtor's ongoing adversary proceedings (or even the extra attorney's fees incurred in the main bankruptcy case – *see, e.g.*, Tr. 117–18, at lns. 18–25, 1–5) or perhaps

unforeseen tax liabilities, would bring the support of Stirlen's wife and the generous unidentified relative right to the fore.

Neither his wife nor the relative are bound to the plan, however, which casts doubt on its feasibility. *See In re Save Our Springs Alliance, Inc.*, 632 F.3d 168, 173 (5th Cir. 2011) (holding that there was "ample evidence supporting the conclusion that [the debtor's Chapter 11] plan was not feasible" where the debtor had obtained no firm commitments to fund certain of its obligations under the plan); *In re Repurchase Corp.*, 332 B.R. 336, 343 (Bankr. N.D. Ill. 2005) ("[I]n the absence of any form of corroboration or contract from the alleged sources of these [third party contributions], Mr. Greenblatt's testimony amounted to nothing more than sheer speculation and wishful thinking . . . Allowing Debtor's confirmation to be based on a hope . . . that the financing [would] actually materialize post-confirmation without *some form of corroboration* would go against a bankruptcy judge's duties of ensuring that the Plan complies with the provisions of the Bankruptcy Code. . . . Optimistic but hollow declarations . . . about hopes for funding did not satisfy its burden of proof.") (emphasis added) (citations and internal quotation marks omitted), *aff'd*, No. 05C7075, 2008 WL 4379035 (N.D.Ill. Mar. 24, 2008); *see also In re Slabbed New Media, LLC*, 557 B.R. 911, 917–18 (Bankr. S.D. Miss. 2016); *In re Lyons*, 193 B.R. 637, 649 (Bankr. D. Mass. 1996) ("Additionally, since gifts are not legally enforceable, they cannot be considered a source of payment for the plan."); *In re Nesbit*, No. BAP EP 07-068, 2008 WL 8664762, at *5 (B.A.P. 1st Cir. June 17, 2008). Stirlen provides no evidence that his relative even has an income sufficient to contribute to plan payments, which again casts doubt on the plan's feasibility. *See In re Wiston XXIV, Ltd. P'ship*, 153 B.R. 322, 327 (Bankr. D. Kan. 1993) ("The general partner's promise to pay $100,000 cash to the debtor in the next two years is not supported by proof he has any tangible means of satisfying that promise.").

In short, the Debtor's evidence regarding his ability to fund the plan through corporate draws from AWHC is contradictory at best. The Debtor's evidence regarding his ability to make money selling his labor essentially at will is uncorroborated and vague. Perhaps most importantly, the Debtor has no legally enforceable commitment from either his wife or his *unidentified* relative to fund the plan in an as-needed manner, nor is there any concrete evidence as to the unidentified relative's means and ability to fund the plan. In light of this plan's very thin margins, the relative's funding of the plan will likely be necessary to its success, and the lack of any binding commitment or even corroborated evidence on this point is highly detrimental to the Debtor's case. The Debtor has therefore failed to meet his burden of proof as to the plan's feasibility.

II.) Section 1129(b)(2)(B)(ii)

Even if the plan were feasible, it would still be unconfirmable under the cram down provisions of section 1129. For a plan to be confirmable, with respect to a class of unsecured claims, "the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property." 11 U.S.C. § 1129(b)(2)(B)(ii). This is known as the absolute priority rule. "Congress did not explicitly eliminate the absolute priority rule for individual Chapter 11 debtors." *Draiman*, 450 B.R. at 821. To qualify for the exception, one must contribute capital which is "new, substantial, necessary for success of the plan, reasonably equivalent to the value retained, and in the form of money or money's worth." *203 N. LaSalle St. P'ship*, 126 F.3d at 963 (citing *Woodbrook*, 19 F.3d at 319–20). Lower courts have interpreted Supreme Court opinions as requiring contributions to be "up front" or "liquidable" to satisfy the "money or money's worth" requirement. *See In re Stegall*, 865 F.2d 140, 142 (7th Cir. 1988).

Stirlen has proposed to retain non-exempt property by providing new value contributions he has either already received or will receive in the future from a relative. He has already received $15,000 and says he will receive an additional $20,000 in the future. With this $35,000, he plans to retain his business interests, his motorcycle, his Infiniti, and other household goods. Trial Brief in Support of Confirmation of Debtor's Plan of Reorganization, Docket No. 213, at 16.

Stirlen has already received $15,000 from a generous relative, which satisfies the "money or money's worth" requirement. The $20,000 promised to be paid in the future fails to satisfy this requirement because it is not up front and liquidable. "[A] promise to fund the distribution to unsecured creditors is not an adequate form of capital contribution because it is a promise to take place in the future." *Matter of Yasparro,* 100 B.R. 91, 97–98 (Bankr. M.D. Fla. 1989). If this $20,000 can be provided upon plan confirmation, it will satisfy this requirement.

Stirlen proposes to retain his business interests with new value contributions. These contributions must be necessary to an effective reorganization. *See In re Trikeenan Tileworks, Inc*., No. BK 10-13725-JMD, 2011 WL 2898955, at *5–6 (Bankr. D.N.H. July 14, 2011). If these business interests are worthless or only worth $16,495.50 as Stirlen claims, it is unclear how they would be necessary for an effective reorganization, since such low valuations are at least somewhat inconsistent with the ability of the business interests to produce the amount of net income necessary to fund the plan. If Stirlen instead plans to fund the plan from his ability to sell his labor as a financial advisor or teacher, it is even more unclear why the retention of these business interests is necessary to an effective reorganization, since it has not been made clear to the court why Stirlen would need to utilize any particular corporate identity in selling his

personal labor. In short, the Debtor has not met his burden in showing that the retention of the business interests is necessary to a successful reorganization.

By contrast, if these business interests were indeed necessary and were to generate enough income to fund plan payments, it is doubtful that $16,495.50 is reasonably equivalent to the value of the retained interests. Stirlen bears the burden of proof but has not provided any independent evidence that his $16,495.50 valuation is accurate. Only his self-serving testimony has been provided. The Supreme Court and the Seventh Circuit have placed great emphasis on providing a competitive process to value retained equity interests. *See In re Batista-Sanechez*, 505 B.R. 222, 227 (Bankr. N.D. Ill. 2014) (applying the absolute priority rule and the new value corollary in an individual chapter 11 case). The court takes this to mean that, at the very least, if equity interests are to be retained over the objection of creditors who are not being paid 100% of their claims, a more stringent test of valuation is appropriate, and that test is not satisfied where the only evidence offered is the opinion of the very individual proposing to retain the equity interests. Allowing Stirlen to retain these business interests at a price cheaper than the market rate would unfairly prejudice creditors.

In short, the Debtor has not met his burden in showing that the retention of the business interests is necessary to an effective reorganization or that the value he is proposing to contribute is reasonably equivalent in value to the business interests he is proposing to retain. This plan is therefore not confirmable.

D. Conclusion

Because the court concludes that § 1129(a)(11) and § 1129(b)(2(B)(ii)) have not been met, it does not consider any of the other confirmation requirements.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

(1) Confirmation of the Debtor's Chapter 11 Plan is DENIED; and

(2) Case status, including a status on the claims objections in the main bankruptcy case, is set for August 16 at 10:00 A.M.

Date: 07/24/2018

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Hon. Deborah L. Thorne
United States Bankruptcy Judge