

FILED

Samuel L. Kay, Clerk
United States Bankruptcy Court
Augusta, Georgia
By jpayton at 4:59 pm, Sep 14, 2011

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:

FLORENCE R. BLOUNT

Debtor

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Chapter 13 Case
Number 11-11095

ORDER

The matter before me is the Trustee's objection to the confirmation of Debtor's proposed chapter 13 plan. This is a core proceeding pursuant to 28 U.S.C. §157(L) and jurisdiction is proper pursuant to 28 U.S.C. §1334.

Debtor's schedules disclose a monthly payment of \$86.84 on a 401(k) loan. At the current rate, the loan will be repaid in April of 2012. The chapter 13 trustee argues as a condition of confirmation of her chapter 13 plan, Debtor should agree to increase her plan payments once the 401(k) loan has been repaid. As required, the loan payment is disclosed in payroll deduction on Debtor's current income schedule I. Debtor is a below median income debtor and therefore she does not have to complete the §1325(b)(3) disposable income calculation on the B22 means test form. The Debtor's plan proposes to pay a 0% dividend to general unsecured creditors. Should the Trustee's objection be upheld, unsecured

creditors would realize a dividend of approximately 38%.

Section 1325(b)(1)(B) provides that "if the Trustee . . . objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan . . . the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan." 11 U.S.C. §1325(b)(1)(B).

For the reasons set forth on the record at the September 12, 2011 hearing, the Trustee's objection to confirmation is ORDERED sustained¹ and confirmation is denied. See also, Hamilton v. Lanning, 130 S.Ct. 2464 (2010); Burden v. Seafort (In re Seafort), 437 B.R. 204 (B.A.P. 6th Cir. 2010); McCarty v. Lasowski (In re Lasowski), 575 F.3d 815 (8th Cir. 2009); Nowlin v. Peake (In re Nowlin), 576 F.3d 258 (5th Cir. 2009); In re Brann, 2011 WL 3502495 (Bankr. C.D. Ill. August 9, 2011); In re McCullers, 451 B.R. 498 (Bankr. N.D. Cal. 2011). The case will be dismissed unless the Debtor moves to modify her plan on or before September 19, 2011 to provide for stepped up payments once the 401(k) loan is satisfied.



SUSAN D. BARRETT
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 14th Day of September 2011.

¹ The court reserves the right to enter supplemental findings regarding this matter. Educ. Credit Mgmt. Corp. v. Mosley (In re Mosley), 494 F.3d. 1320, 1328 (11th Cir. 2007).