UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:	)	
	)	**CHIEF JUDGE RICHARD L. SPEER**
Roger A. Conboy	)	
	)	
	)	Case No. 98-33426
Debtor(s)	)	
	)	

DECISION AND ORDER

This case comes before the Court upon the Motion for Relief from Stay brought by the Blade Federal Credit Union (hereinafter Creditor). Roger A. Conboy (hereinafter Debtor) objected to the Creditor's Motion, and thereafter a hearing was held on the matter, at which time it was agreed that the matter would be disposed of on the briefs submitted by the Parties.

The Creditor's purpose for bringing its Motion for Relief from Stay is to enable it to pursue its collection activities against the Debtor's wife and mother (hereinafter Codebtors) who are not presently themselves parties to any bankruptcy proceedings. Specifically, the Creditor wishes to collect postpetition interest which is currently owing on an unsecured promissory note it entered into with the Debtor, and to which the Codebtors are jointly and severally liable as co-signors. Currently, the Codebtors are protected from any action the Creditor may bring against them, vis-a-vis the promissory note, by virtue of the Stay imposed by § 1301(a) of the United States Bankruptcy Code.

Section 1301(a) of the Bankruptcy Code, which is known as the Codebtor Stay, operates to delay the collection efforts of creditors against individuals who have obligated themselves, whether directly or indirectly, to pay consumer debts incurred by and for the benefit of the Chapter 13 debtor. The stay automatically takes effect at the commencement of the case, and remains in full effect, unless otherwise ordered by the court, until the debtor's Chapter 13 case is closed, dismissed or otherwise

converted to a Chapter 7 or Chapter 11 case. § 1301(a)(2); 4 Collier on Bankruptcy § 1301.01, at 1301-3 (15th ed. 1998).

In support of its Motion to have the Stay relieved, the Creditor asserts that because the Debtor's Chapter 13 plan does not provide for the payment of postpetition interest, which is currently due and accruing on the promissory note, it is entitled to have the Stay lifted against the Codebtors pursuant to § 1301(c)(2) which provides:

> (c) On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent—
>
> (2) the plan filed by the debtor proposes not to pay such claim

In opposition to the Creditor's Motion, the Debtor asserts that the Creditor is not entitled to Relief from Stay under § 1301(c)(2) because his Chapter 13 Plan proposes to pay 100% of the Creditor's claim. Hence, the issue presented to the Court can be framed as follows: Is a creditor entitled to have the Codebtor stay lifted pursuant to § 1301(c)(2), when the debtor in his Chapter 13 plan proposes to pay 100% of the creditor's claim, but fails to provide for the payment of postpetition interest?

In addressing this issue, two principles are very clear. First, § 1301(c)(2) may not be invoked against a debtor who proposes in his Chapter 13 plan to pay the entire contractual amount due to a creditor. *See e.g. Harris v. Fort Oglethorpe State Bank*, 721 F.2d 1052 (6th Cir. 1983). Conversely, it is entirely clear that a creditor is absolutely entitled to relief from the Codebtor Stay pursuant to § 1301(c)(2) when the debtor's plan does not propose to pay the creditor's claim in full.[1] *Wiremen's Credit Union, Inc. v. Laska*, 20 B.R. 675, 676-77 (Bankr. N.D. Ohio 1982). Taking these two

[1] It should be underscored that the Stay is only lifted against the codebtors to the extent that the debtor does not propose to pay the claim in full. Thus, if a debtor in his Chapter 13 Plan only proposes to pay 70% of a creditor's claim, the creditor may thereafter seek and obtain relief from the codebtor stay, and then pursue the codebtor(s) for the remaining 30% of the debt. *In re Fink*, 115 B.R. 113 (Bankr. S.D. Ohio 1990); *First National Bank of Dickson v. Garrett*, 36 B.R. 432 (Bankr. M.D. Tenn 1984).

principles together it would seem, at first blush, that the Creditor is entitled to have the Codebtor Stay lifted on the basis that the Creditor is not receiving the benefit of the Parties' bargain. However, the difficulty with lifting the Codebtor Stay for the nonpayment of postpetition interest is that under § 502(b)(2) of the Bankruptcy Code, an unsecured claim is not allowed to the extent that it is for postpetition interest.[2] Hence, since § 1301(c)(2) only allows the Court to lift the Codebtor Stay to the extent that the Chapter 13 plan "proposes not to pay [the] claim," a plain meaning analysis of both statutes, in conjunction with one another, would prohibit the Court from lifting the Stay solely on the basis that the Debtor's Chapter 13 plan fails to provide for the payment of postpetition interest.

Despite the plain meaning interpretation of the preceding Bankruptcy Code provisions, almost all the case law addressing this issue has held otherwise. *See e.g. In re DiDomizio*, 11 B.R. 357 (Bank. D. Conn. 1981); *In re Johnson*, 12 B.R. 894 (Bankr. D.C. Me 1981); *In re Henson*, 12 B.R. 82 (S.D. Ohio 1981). The basis given by the courts for their contrary interpretation is that the legislative history of § 1301 dictates otherwise.[3] In essence these courts have allowed the legislative history of the statute to trump the plain meaning text of the Bankruptcy Code. However, this Court disagrees with such a holding.

In a well analyzed opinion discussing the weight in which to accord the legislative history of a statute, the Court in *In re Sinclair* stated:

> legislative history is a poor guide to legislat[ive] intent because it is written by the staff rather than by members of Congress, because it is often losers' history ('If you can't get your proposal into the bill, at least write the legislative history to make it look as if you'd prevailed'), because it becomes a crutch ('There's no need for us to vote on the amendment if we can write a little legislative history'),

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[2] Section 502(b)(2) provides that a claim is disallowed if "such claim is for unmatured interest."

[3] The legislative history of § 1301 states that, "[t]he creditor is protected to the full amount of his claim, including postpetition interest, costs, and attorney's fees, if the contract so provides." H.R. Rep. No 595, 95th Cong., 1st Sess. 122, reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 6083.

> because it complicates the task of execution and obedience (neither judges nor those whose conduct is supposed to be influenced by the law can know what to do without delving into legislative recesses, a costly and uncertain process). Often there is so much legislative history that a court can manipulate the meaning of a law by choosing which snippets to emphasize and by putting hypothetical questions–questions to be answered by inferences from speeches rather than by reference to the text, so that great discretion devolves on the (judicial) questioner. Sponsors of opinion polls know that a small change in the text of a question can lead to large differences in the answer. Legislative history offers wilful judges an opportunity to pose questions and devise answers, with predictable divergence in results. These and related concerns have lead to skepticism about using legislative history to find legislative intent.

870 F.2d 1340, 1342-43, (7th Cir. 1989) (internal citations omitted). As the foregoing selection illustrates, the legislative history of a statute is not conclusive evidence of the intent of the legislative body enacting the law. In fact, a statute's legislative history may even be misleading. Hence, this Court espouses the view that the plain meaning language of a statute is the best indicator of what demonstrates the actual will of the legislative body enacting it. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570, 102 S.Ct. 3245, 3250, 73 L.Ed.2d 973 (1982). Nevertheless, this does not imply that legislative history is completely useless; only that there are broad limitations on its use. As the court in *In re Sinclair* further explained:

> [t]he plain meaning rule. . . rests not on a silly belief that texts have timeless meanings divorced from their many contexts, not on the assumption that what is plain to one reader must be clear to any other (and identical to the plan of the writer), but on the constitutional allocation of powers. The political branches adopt texts through prescribed procedures; what ensues is the law. Legislative history may show the meaning of the texts–may show, indeed, that a text plain at first reading has a strikingly different meaning–but may not be used to show an intent at variance with the meaning of the text.

870 F.2d at 1344 (internal quotations and citations omitted). Thus, as the *Sinclair* case expounds, the use of legislative history for statutory interpretation is generally appropriate to discern the proper meaning of a statute when its meaning is unclear. In other words, legislative history may be used to solve doubt, but not to create it. *Wisconsin R.R. Comm'n v. Chicago, Burlington & Quincy R.R.*, 257

U.S. 563, 589, 42 S.Ct. 232, 238, 66 L.Ed. 371 (1922). However, where the plain meaning language of a statute is clear, that interpretation must be used. *Caminetti v. United States*, 242 U.S. 470, 490, 37 S.Ct. 192, 196, 61 L.Ed. 442 (1917).

Notwithstanding the foregoing pronouncement, if applying a statute to its plain meaning would lead to absurd results or results contrary to public policy, a court should refrain from using such an interpretation. *Id*; *Pierce v. Underwood*, 487 U.S. 552, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988). However, in the case sub judice, there is nothing to indicate to the Court that declining to lift the Codebtor Stay because of the Debtor's failure to include postpetition interest payments in his Chapter 13 plan would lead to any absurd results or results contrary to public policy. To the contrary, such a holding will actually promote the public policy underpinning § 1301, which is to insulate the Chapter 13 debtor from the indirect moral pressures exerted by friends, family members and coworkers who are simultaneously obligated with the debtor on the financial obligation owed to the creditor. 4 Collier on Bankruptcy § 1301.01, at 1301-3 (15th ed. 1998).

Further reinforcing the Court's conclusion to disregard the legislative history of § 1301, and to instead apply the statute's plain meaning, is the fact that the Supreme Court of the United States has repeatedly invoked the plain meaning principle when interpreting provisions of the Bankruptcy Code and the Bankruptcy Rules. *See e.g. Patterson v. Shumate*, 504 U.S. 753, 112 S.Ct. 2242, 2248, 119 L.Ed.2d 519 (1992) (party seeking to defeat the plain meaning of the Bankruptcy Code text bears an exceptionally heavy burden); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242, 109 S.Ct. 1026, 1031, 103 L.Ed.2d 290 (1989) (the plain meaning of legislation should be conclusive, except in those rare cases in which the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters); *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 110 S.Ct. 2126, 109 L.Ed.2d 588 (1990) (when the exact meaning of a Bankruptcy Statute is not clear, the language, structure and context of the statute with other Code provisions is to be used to ascertain the statutes meaning); *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375, 108 S.Ct. 626, 632-33, 98 L.Ed.2d 740 (1988) (different Bankruptcy Code provisions should be viewed in conjunction with one another when

no specific code provision is on point); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992) (Chapter 7 Trustee could not contest the validity of claimed exemption after 30-day statutory period for objecting had expired and no extension had been obtained, even though debtor had no colorable basis for claiming exemption); *Nobelman v. American Savings Bank*, 508 U.S. 324, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993). Accordingly, based on the foregoing analysis, the Court will apply the plain meaning of § 1301(c)(2) in conjunction with § 502(b)(2), and thus the Stay in effect for the Codebtors will not be lifted.

In summary, when applying the plain meaning of § 1301(c)(2), the Court holds that an unsecured creditor will not be entitled to have the Codebtor Stay lifted pursuant to § 1301(c)(2) against a Chapter 13 debtor who, except for postpetition interest, otherwise proposes to pay the creditor's claim in full. The Court cautions, however, that this holding in no way eliminates the Codebtors' liability on the promissory note to which they were signatories. Instead, the Stay imposed by § 1301(a) only operates to delay the Creditor from receiving its payment. Consequently, at the time the Debtor's case is closed, dismissed, or otherwise converted, the Codebtors will become immediately liable for the full amount due on the promissory note that was not paid by the Debtor under his Chapter 13 plan, including any accrued interest.

Accordingly, it is

ORDERED that the Motion of the Blade Federal Credit Union for Relief from Stay pursuant to 11 U.S.C. § 1301(c) be, and is hereby, *DENIED*.

Dated:

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Richard L. Speer

Chief Bankruptcy Judge