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U.S. BANKRUPTCY COURT
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NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	CASE NUMBER 09-43917
CHARLES MILO ADAMS, JR. and BILLIE SUE ADAMS,	*	CHAPTER 13
	*	HONORABLE KAY WOODS
Debtors.	*	

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MEMORANDUM OPINION REGARDING CHAPTER 13 TRUSTEE'S OBJECTION TO CONFIRMATION

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This cause is before the Court on Standing Chapter 13 Trustee's Objection to Confirmation of Plan ("Confirmation Objection") (Doc. # 34) filed by Michael A. Gallo, Standing Chapter 13 Trustee ("Trustee"), on October 15, 2010. Debtors Charles Milo Adams, Jr. and Billie Sue Adams ("Debtors") filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code on October 15, 2009. That same day, the Debtors filed Chapter 13 Plan ("Plan") (Doc. # 2), which provided for the Debtors to pay $1,500.00 per month for 60 months. The Debtors neither responded to the Confirmation Objection nor filed an amended plan.

The Court held a hearing on the Confirmation Objection on November 18, 2010, at which appeared the Trustee and Robert A. Ciotola, Esq., on behalf of the Debtors. Both parties made arguments in support of their positions, but neither party offered any testimony or other evidence. At the conclusion of the hearing, the Court took the matter under advisement. The Court now issues its opinion regarding the Confirmation Objection.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. THE CONFIRMATION OBJECTION

The Debtors, husband and wife, have three dependent children. Their annual income of $101,508.00 is above median, which, for a family of five, is $78,389.00. As a consequence, the applicable commitment period for the Debtor's Plan is five years. As set forth above, the Debtors' Plan provides for payments of $1,500.00 per month for 60 months (5 years). Included within the Debtors' Plan is the payment of secured debt to First Merit Bank, NA ("First Merit") in the amount of $25,373.81 at 4.25% interest. (Plan at § 2D.) The debt to First Merit is secured by a "camper." (Pet. at 15.)

The Trustee objects to the Debtors' Plan on the basis that (i) it has not been proposed in good faith, as required by 11 U.S.C. § 1325(a)(3); and (ii) the debt secured by the camper does not constitute a reasonably necessary expense for the maintenance or support of the Debtors or their dependents, as required by 11 U.S.C. § 1325(b)(2)(A). The Trustee argues that the Plan, "which proposes full payment of the secured value of the Camper, does not allow for

all of Debtors' disposable income to be distributed to general unsecured creditors and has not been proposed in good faith." (Conf. Obj. ¶ 5.)

At the hearing, the Trustee described the camper as a "luxury good," which cannot be retained by the Debtors. The Debtors' Plan provides for only a 10% dividend to unsecured creditors. (Plan § 2A.) The Trustee contends that, because payment of the secured debt for the camper is not a reasonably necessary expense for the maintenance or support of the Debtors and/or their dependents, such payment should be included in the Debtors' "projected disposable income." If so included, the dividend to unsecured creditors would increase.

II. THE DEBTORS' POSITION

The Debtors concede that the camper is not necessary for their maintenance or support. At the hearing, however, counsel for the Debtors argued that, despite the projected dividend of 10% in the Plan, the actual dividend to unsecured creditors will be "closer to 40, 45, 50[%]." (Hr'g at 10:54:40.)[1] Debtors' counsel also contended that it is not bad faith for the Debtors to keep a luxury vehicle[2] and that the more than 40% dividend to unsecured creditors constitutes good faith and complies with § 1325(a)(3).

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[1] Debtors' counsel provided no support for this statement.

[2] Because the Debtors describe the collateral as a "camper" on Schedule F, it is not clear whether the item in question is motorized or whether it is a camper that has to be towed. Counsel for the Debtors described the camper as a "vehicle" and the Trustee referred to the camper as an "RV." As a consequence, the Court assumes that the camper in question is motorized and can operate on its own power.

(Hr'g at 11:01:38.)

Counsel for the Debtors explained that, prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act in 2005, a debtor could increase plan payments from 36 months up to as many as 60 months in order to keep a luxury item and still pay unsecured creditors an appropriate dividend. Debtors' counsel described this past practice as providing a "premium" to unsecured creditors. (Hr'g at 10:54:00; 10:55:38.) Counsel further stated that the Debtors' Plan was consistent with Congressional intent to encourage debtors to file chapter 13 cases rather than chapter 7 cases. (Hr'g. at 10:56:38.)

III. ANALYSIS

Section 1325 (b)(2) determines projected disposable income by taking current monthly income less "amounts reasonably necessary to be expended — (A)(i) for the maintenance or support of the debtor or a dependent of the debtor, ..." 11 U.S.C. § 1325 (West 2010). For above median debtors, such as the Debtors in this case, section 1325(b)(3) provides, "Amounts reasonably necessary to be expended under paragraph (2), . . . shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), ..." *Id.*

Section 707(b)(2)(iii) provides:

> (iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of —
>
> > (I) the total of all amounts scheduled as contractually due to secured creditors in each

> month of the 60 months following the date of the petition; and
>
> (II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;
>
> divided by 60.

11 U.S.C. § 707 (West 2010).

As a consequence, in calculating "amounts reasonably necessary to be expended under paragraph (2)" of § 1325(b), the Court must look to the Debtors' secured debt, as set forth in § 707(b)(2)(iii). The Debtors' Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income ("Means Test") (Doc. # 3) is instructive in this case. Although it appears that the camper probably constitutes a "vehicle" (*see* n. 2, *infra*), the Debtors list only one vehicle on line 28 of the Means Test. (Means Test at 4.) The Debtors do not list the camper as a secured debt on either lines 47 or 48 of the Means Test. (*Id.* at 5.) Line 47, which required the Debtors to list "each of your debts that is secured by an interest in property that you own," lists a mortgage payment and one "car" payment. On line 48 of the Means Test, the Debtors did not list the camper payment as one "secured by . . . other property *necessary for your support or the support of your dependents*. . . ." (*Id.*) (Emphasis added).

The Debtors fail to list any secured debt for the camper on

the Means Test. Accordingly, such debt does not constitute an expense that can be deducted from their current monthly income to determine the Debtors' projected disposable income. Based on the Means Test, there is no dispute that the camper in question does not constitute an expense reasonably necessary for the maintenance or support of the Debtors or their dependents. In addition, at the hearing, counsel for the Debtors conceded that the camper was not a necessary item. (Hr'g at 10:53:19.)

Because there is no dispute that the expense for the camper is not "reasonably necessary" for the "maintenance or support" of the Debtors or their dependents, this Court finds that the amount of such expense must be included in the Debtors' projected disposable income. In the instant case, the Debtors failed to account for the debt secured by the camper in the Means Test. Accordingly, there is no basis for this Court to find that the secured debt for the camper is an expense that may be deducted in calculating the Debtors' projected disposable income. Because the Debtors failed to account for the debt secured by the camper, this Court finds that the Debtors have not proposed their Plan in good faith, as required by 11 U.S.C. § 1325(a)(3). As a consequence, the Court will sustain the Trustee's Confirmation Objection. An appropriate order will follow.

Kay Woods

KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

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IN RE:	*	CASE NUMBER 09-43917
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ORDER SUSTAINING CHAPTER 13 TRUSTEE'S OBJECTION TO CONFIRMATION
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This cause is before the Court on Standing Chapter 13 Trustee's Objection to Confirmation of Plan ("Confirmation Objection") (Doc. # 34) filed by Michael A. Gallo, Standing Chapter 13 Trustee ("Trustee"), on October 15, 2010. For the reasons set forth in the Memorandum Opinion Regarding Chapter 13 Trustee's Objection to Confirmation entered on this date, the Court hereby sustains the Trustee's Objection to Confirmation.

IT IS SO ORDERED.

Kay Woods
KAY WOODS
UNITED STATES BANKRUPTCY JUDGE