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U.S. BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

In re:	Chapter 13
LINDA LEE CORBIN,	No. 4:05-bk-06707-JMM
	MEMORANDUM DECISION RE:
Debtor.	CONFIRMATION

On April 2, 2007, this court conducted an evidentiary hearing concerning confirmation of the Debtor's plan. One objection was heard. It was filed by Michael Lee Roberts. Also before the court was the issue of whether, if the plan is not confirmed, the case should be converted to a chapter 7 liquidation.

Michael Lee Roberts is an unsecured creditor, and former spouse of the Debtor. He filed an unsecured claim for \$96,859.50. To date, the unsecured claims filed in the case are \$146,272.58 (Claims Register).

The Debtor's amended plan was filed on January 9, 2006 (Dkt. #11). It is a 36-month plan which calls for two months of \$2,000 per month payments, followed by 34 monthly payments of \$1,625. The total to be paid to the Trustee is \$59,250.

Unsecured claims on file are:

23	<u>No.</u>	<u>Claimant</u>	Amount
24	1	Wells Fargo Bank	14,957.46
25	2	Wells Fargo Credit Card	2,314.67
26	3	American Express	2,294.84
27	4	American Express Bank	3,221.60
28	5	Chase Manhattan	9,981.91
	6	World Financial Network Bank	141.38

1	7	Michael Lee Roberts	96,859.50
2	8	eCast	6,422.45
3	9	eCast	10,078.77
4	Total		\$146,272.58
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6	The only secured claim, filed by Citizen's Bank, is \$32,238 (Claim No. 10). The debt relates		
7	to a 2005 Infiniti motor vehicle. The plan proposes to pay this debt through the Trustee, with 8% interest.		
8	The contract, however, only carries a 6.54% annual percentage rate.		
9	Pursuant to the plan's intent, the payments to be made would then be distributed as follows:		
10	Paid In:		<u>59,250</u>
11	Less:		
12	Tr	ustee (up to 10%)	5,925
13	At	torneys' fees	2,000
14	IR	$S^1$	1,672
15	Ci	tizen's Bank <sup>2</sup>	32,238
16	Ur	nsecured creditors	<u>17,415</u>
17	Total		\$59,250
	The above weeks		
18	I he above numbe	rs may vary slightly if (1) the Trustee	reduces ner percentage; (2) the IRS

er percentage; (2) the IRS is not paid through the plan; and/or (3) attorneys' fees increase.

Under the current plan, unsecured creditors will received an approximate dividend of 12%. Mr. Roberts' claim represents about two-thirds of the total unsecured claims on file.

## The Debtor's Income

The Debtor makes \$6,666 per month. In her schedules, there are deductions for health insurance, taken out prior to arriving at a monthly disposable income of \$4,365.00 (Ex. A). The Debtor

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No claim filed.

Per claim.

testified credibly as to how her monthly expenses deviate slightly from the Amended Schedules I and J. From the range suggested by the Debtor, the court arrived at a budget of:

Rent	845
Electricity	175
Water/Sewer	25
Cable	101
Telephone/Cell	94
Food	260
Clothing	60
Laundry	120
Medical/Dental	160
Transportation costs	250
Recreation	27
Renter's insurance	35
Auto insurance	120
Personal Care	125
Pet care (boarding)	<u>140</u>
Total Monthly Expenses	2,537

This, then, leaves the Debtor with a monthly disposable income of \$1,828 (\$4,365 less \$2,537 = \$1,828). That figure, multiplied by 36 months, equals \$65,808.

Thus, the court concludes that the Debtor is not devoting all of her net disposable income to the plan. Therefore, at this time, the court finds that the current plan cannot be confirmed. 11 U.S.C. § 1325(b)(1)(B).

However, the court also concludes that, even under the current plan, the Debtor is paying her creditors more than they would receive on liquidation. She therefore has satisfied § 11 U.S.C. 1325(a)(4).

The next issue deals with the Debtor's good faith in both the filing of the chapter 13 in the first instance, and in the later proposal of the plan. 11 U.S.C. § 1325(a)(3) and (7). The court, after hearing the evidence, concludes that the chapter 13 case was filed in good faith § 1325(a)(7).

However, the court struggles with the good faith of the current plan, Specifically, this has to do solely with the treatment of the Infiniti car lien. Under non-bankruptcy law, the debt to the secured creditor calls for 60 monthly payments of \$632.20 each, at a 6.54% annual interest rate. Under the plan, that obligation unnecessarily accelerates payment and increases the interest rate. This auto debt, in order for the plan to be accorded good faith, can be remedied by simply leaving it unimpaired and paying it "outside" the plan. Such payment would then alter Schedule J, and such payment would be placed in the monthly expense category. The plan can be so modified without prejudicing the unsecured creditors. § 1323.

Therefore, the court concludes that it may not confirm the current plan. The plan failed to meet the requirements of § 1325(a)(1) and (3). However, all of the other elements of § 1325(a) were met.

As for the Trustee's objection to the plan, the Trustee did not participate in the proceedings, and therefore has waived her objection (Dkt. #16). Moreover, since most of the Trustee's objections appeared to be related to the production of documents which supported Schedule J, it would seem that the Trustee received such proof and is satisfied therewith.

Accordingly, the confirmation of the amended plan is DENIED, without prejudice. If the Debtor fails to file an amended plan within 30 days from the date of this order, the Clerk is directed to dismiss the case.

As for the motion to convert to chapter 7, the creditor's motion is DENIED, as adequate cause to do so was not proven by a preponderance of the evidence. 11 U.S.C. § 1307(c).

A separate order will be entered.

DATED: April 26, 2007.

JAMES M. MARLAR UNITED STATES BANKRUPTCY JUDGE

1	COPIES served as indicated below this   26th day of April, 2007, upon:
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