PRIORITIZING VOLUNTARY RETIREMENT CONTRIBUTIONS ABOVE PAYMENT OF UNSECURED CREDITORS IN CHAPTER 13 PLAN HELD UNFAIR

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A recent case in the United States Bankruptcy Court in Colorado highlighted an issue present in Chapter 13 Bankruptcy Plans: whether voluntary retirement contributions could be favored over the interests of unsecured creditors. Chapter 13 of the Bankruptcy Code allows individuals receiving regular income the opportunity to obtain relief from some debts while retaining their property. As a condition to a Chapter 13 plan, the bankruptcy court must approve the plan by which debtors pay out creditors out of future income. If the Chapter 13 plan is fulfilled by the debtor, the debtor earns the right to a discharge of prior financial debts.

In the immediate case, the debtor proposed to pay $142 per month for 60 months to the Chapter 13 Trustee. These payments were to be used to pay only the debtor's lawyer, the Internal Revenue Service, and Chapter 13 Trustee fees. Another part of the plan indicated that the debtor would make voluntary retirement contributions of almost $1,000 per month to the debtor's retirement plan so that the debtor could retire early. The plan proposed that general unsecured creditors, primarily credit card companies holding about $60,000 in debt, receive nothing. The Chapter 13 Trustee objected to the debtor's plan.

In this case, the Court examined a split of authority of whether voluntary retirement contributions are permissible if any debtor objects or, must the plan meet a good faith standard. The Court declined to decide the split of opinions on the permissibility of voluntary retirement contributions and instead just examined whether the debtor's plan lacked good faith as that was the issue raised by the Chapter 13 Trustee. The Court determined that the debtor's plan was, in blunt terms, a proposal to stiff the credit card claims by paying nothing whilst voluntarily contributing $59,700 ($995 per month) to the debtor's own retirement account over the five-year plan. The Court observed that the debtor proposed to pay the Chapter 13 Trustee monthly payment of just $142.03 while making voluntary contributions to his retirement account of more than seven times that amount. The Court stated that if instead the debtor decided to pay unsecured creditors those amounts, the debtor would be able to pay more than 90% of the filed unsecured proofs of claim.

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Further, even if the debtor just split the difference between retirement contributions and unsecured claims, the unsecured creditors might be able to realize a "respectable" 45% repayment on their aggregate debt. The Court found that the debtor had failed to show that the plan was proposed in good faith. The Court ordered that the debtor had 15 days to file an amended Chapter 13 plan consistent with the Court's order or convert the case to a Chapter 7 liquidation bankruptcy case. *In re Fidencio Melendez*, 597 B.R. 647.

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