

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 03-33704-DHW
Chapter 13

ANDREA L. DORSEY,

Debtor.

**ORDER OVERRULING OBJECTION
TO CONFIRMATION OF MODIFIED PLAN**

Motors Acceptance Corporation filed an objection to confirmation of the debtor's proposed modified plan. A confirmation hearing was held May 24, 2004. The parties submitted the objection for decision based on stipulations of fact made in open court.

Jurisdiction

The court's jurisdiction in this matter stems from 28 U.S.C. § 1334 and the United States District Court's general order of reference of title 11 matters to this court. Further, because plan confirmation issues are core matters under 28 U.S.C. § 157(b)(2)(L), this court's jurisdiction extends to the entry of a final order and judgment.

Findings of Fact

On March 15, 2003, the debtor and her daughter, Chari Dorsey, purchased a 2001 Mitsubishi Mirage. Motors Acceptance financed the purchase and took a security interest in the car. The amount financed was \$6,663.94. The first of thirty installment payments under the note was due on June 15, 2003. Motors Acceptance does not acknowledge receipt of any payment from the debtor, but the debtor believes that one or two payments were made under the original contract. Further, the contract required the buyers to insure the collateral.

At all times the debtor's daughter, Chari, had possession, use, and control of the vehicle. In November 2003, the Mitsubishi Mirage was totaled in an accident. At the time of the accident, the vehicle was uninsured. Shortly thereafter, on December 4, 2003, the debtor filed this chapter 13 petition for

relief, but she did not list Motors Acceptance Corporation as a creditor. The original plan, which was confirmed on February 25, 2004, made no provision for the claim of Motors Acceptance Corporation.

On March 30, 2004, the debtor modified the plan to provide for Motors Acceptance Corporation with an unsecured deficiency claim in the amount of \$3,000.00. Unsecured creditors are to be paid 100% of their claims under the confirmed plan.

Motors Acceptance Corporation filed an objection asserting that the modified plan is not proposed in good faith.

Conclusions of Law

11 U.S.C. § 1325(a)(3) requires the court to confirm a plan if, *inter alia*, “the plan has been proposed in good faith and not by any means forbidden by law.”¹

The United States Court of Appeals for the Eleventh Circuit considered the good faith requirement in *Kitchens v. Georgia Railroad Bank and Trust Co. (In re Kitchens)*, 702 F.2d 885 (11th Cir. 1983). In that case, the Court provided a non-exhaustive list of factors which a bankruptcy court must consider in determining whether the statutory requirement of good faith has been met.² The

¹The requirements of 11 U.S.C. § 1325(a) are made applicable to post confirmation modifications of chapter 13 plans by 11 U.S.C. § 1329(b).

² When considering whether a chapter 13 plan has been proposed in good faith, a bankruptcy court must consider the following factors: (1) amount of debtor's income from all sources; (2) living expenses of debtor and his dependents; (3) amount of attorney fees; (4) probable or expected duration of debtor's Chapter 13 plan; (5) motivations of debtor and his sincerity in seeking relief under provisions of Chapter 13; (6) debtor's degree of effort; (7) debtor's ability to earn and likelihood of fluctuation in his earnings; (8) special circumstances such as inordinate medical expense; (9) frequency with which debtor has sought relief under Bankruptcy Reform Act and its predecessors; (10) circumstances under which the debtor has contracted his debts and has demonstrated bona fides, or lack of same, in dealings with his creditors; and (11) burden which plan's administration would place on trustee. In addition, the court may consider the type of the debts to be discharged and whether

court held that good faith, which defies comprehensive definition, is determined based on the totality of the circumstances in each case: has there “been an abuse of the provisions, purpose or spirit” of the provisions of chapter 13? *Kitchens*, 702 F.2d at 888.

Motors Acceptance Corporation contends that the debtor was disingenuous in her dealings. It points particularly to the fact that the debtor purchased the vehicle only a few months before filing for bankruptcy relief, made no payment under the contract,³ breached the contract by failing to obtain insurance, and failed to list Motors Acceptance Corporation as a creditor initially when the case was filed.

Considering the totality of the debtor’s dealings with this creditor, the court would most certainly find that she lacked good faith but for one major mitigating factor: the debtor never possessed the automobile. Indeed, the court has the impression that the debtor acted more as an accommodation or surety for her daughter, who at all times had the possession, use, and control of the collateral. If, as the court suspects, the debtor’s participation in this transaction was merely to assist her daughter in purchasing the vehicle, then the court cannot impute a lack of bona fides to this debtor for acts committed solely by her daughter.

The debtor’s omission of the creditor from the original schedules bolsters the conclusion that the debtor viewed the claim of Motors Acceptance Corporation as owed primarily by her daughter. Further, the court is impressed that the debtor’s plan provides for the payment of the Motors Acceptance claim in full, albeit as an unsecured creditor. Thus, taken as a whole, the court cannot conclude that the modified plan was filed in bad faith. Accordingly, it is

ORDERED that the objection to the debtor’s modified plan filed by Motors Acceptance Corporation is OVERRULED. The modified plan will be confirmed by separate order.

such debts would be nondischargeable under Chapter 7, and accuracy of plan's statements of debts and expenses and whether any inaccuracies are attempt to mislead court. *See Kitchens*, 702 F.2d at 888-89.

³As noted, the debtor contends that one or possibly two payments have been made.

Done this 18th day of June, 2004.

A handwritten signature in black ink, appearing to read "Dwight H. Williams, Jr." with a stylized flourish at the end.

Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtor
Earl Gillian, Jr., Attorney for Debtor
Britt B. Griggs, Attorney for Creditor
Curtis C. Reding, Trustee