

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

IN RE:)	Case No.	22-20113 (JJT)
)		
MICHAEL S. KURLAND)	Chapter	13
)		
Debtor.)	Re: ECF Nos.	50, 51, 56
)		

**MEMORANDUM OF DECISION ON TRUSTEE’S
OBJECTION TO PLAN CONFIRMATION AND MOTION TO DISMISS**

I. INTRODUCTION

Before the Court are two interrelated motions submitted by the Chapter 13 Trustee (the “Trustee”) to this bankruptcy proceeding. The Trustee contemporaneously filed an Objection to Confirmation (ECF No. 50, the “Objection”) of the Second Amended Chapter 13 Plan of the Debtor, Michael S. Kurland (ECF No. 46, the “Second Amended Plan) with a Motion to Dismiss (ECF No. 51, the “Motion” and together with the Objection, the “Motions”) the Debtor’s bankruptcy case with prejudice. The gravamen of the Trustee’s Motions is that the Debtor filed both this case and his plan of reorganization in bad faith to thwart the collection efforts of his former spouse on court-mandated divorce settlement obligations. For the reasons that follow, the Objection is sustained and Motion is granted.

II. JURISDICTION

The Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157(b) and 1334(b) and the United States District Court for the District of Connecticut’s General Order of Reference dated September 21, 1984. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) (case administration) and (L) (confirmation of plans).

III. BACKGROUND AND RELEVANT PROCEDURAL HISTORY

A. The Debtor's Divorce Proceedings

The Trustee is mainly concerned with the relationship of this bankruptcy case to the contentious divorce of the Debtor from Jennifer Kurland, his former spouse. The background of these divorce proceedings is of considerable import to the Court's analysis and disposition of the Trustee's Motions — as such, a brief synopsis of those proceedings as well as the Debtor's bankruptcy case is appropriate.

The Debtor and Ms. Kurland resided in New Hampshire at the time of their separation. *See* Debtor's Obj. to Mot. to Dismiss and Resp. to Obj. to Confirmation ¶¶ 1, 5, Exh. B, ECF No. 56 (the "Debtor's Response"). On September 20, 2013, the Debtor filed a petition for divorce in the Family Division of the New Hampshire Circuit Court (the "Family Court"). Debtor's Resp., Exh. B, ECF No. 56. Ms. Kurland cross-petitioned for divorce on October 4, 2013. *Id.* On October 15, 2014, the Family Court issued its Order on Final Decree (the "Final Decree"), where it made a series of factual findings regarding the couple's turbulent marriage, divided the marital estate, and ultimately granted Ms. Kurland's cross-petition for divorce. *Id.* Of particular concern to the Court are the following findings and actions of the Family Court:

1. The Debtor appeared pro se in his divorce proceedings. *Id.* The Family Court noted that the Debtor struggled to establish the appropriate foundation for his proposed evidence — consequently, the Debtor "failed to address the foundational/evidentiary requirements relative to creating the appropriate record in regards to establishing the existence of a debt, entitlement, compliance or non-compliance with court orders or a statutory entitlement." Debtor's Resp., Exh. A, ECF No. 56. The Debtor's failure to lay the appropriate evidentiary foundation rendered the Family Court unable "to ascertain the exact value of some of the parties' real estate, personal property, the respective ownership interest in certain real estate, pre- and post-marital assets, pre-

and post-marital property purchased, and pre- and post-marital savings accounts, each party's exactly contribution to household expense, etc." *Id.*

2. In granting Ms. Kurland's petition for divorce, the Family Court found that she suffered both abusive and violent treatment at the hands of the Debtor. *Id.* ("The [Debtor's] abusive physical treatment of [Ms. Kurland] left [her] with bruises on her hands and feet.) ("[The Debtor left] a clip of ammunition on the garage floor with [the] purpose of terrorizing [Ms. Kurland].").

3. The Family Court characterized the Debtor's conduct under New Hampshire law as "mental cruelty" but short of "extreme cruelty." *Id.*

4. As part of its Final Decree, the Family Court awarded Ms. Kurland one-half (1/2) of the Debtor's State of New Hampshire law enforcement pension. *Id.*

5. As part of its Final Decree, the Family Court awarded sixty percent (60%) of the proceeds generated from the sale of the couple's marital residence to the Debtor, and forty percent (40%) of those proceeds to Ms. Kurland. *Id.*

6. As part of its Final Decree, the Family Court awarded eighty percent (80%) of the value of the Debtor's one-half (1/2) stake in a property located in Freedom, NH to the Debtor, and the remaining twenty percent (20%) of that value to Ms. Kurland. *Id.*

7. The Family Court equally divided the value of a property the couple owned together in Tamworth, NH. *Id.*

8. The foregoing findings and actions were upheld on the Debtor's appeal, save for the equal division of the property located in Tamworth, NH. *In re Kurland*, No. 2014-0751, 2015 WL 11072354, at *2-4 (N.H. July 14, 2015). The proper allocation of the Tamworth property was remanded to the Family Court, *id.* at *4, which subsequently upheld its original allocation, ECF No. 62-6.

9. Ms. Kurland filed multiple motions for contempt against the Debtor between 2015 and 2018 for his failure to comply with the Final Decree. Debtor's Resp. Exh. B, ECF No. 56; ECF No. 62-7; ECF No. 62-8. The Debtor was twice found in contempt for his non-compliance with the Final Decree. ECF No. 62-7; ECF No. 62-10.

10. Between 2018 and 2022, Ms. Kurland filed multiple motions for contempt against the Debtor. Debtor's Resp. 2, ECF No. 56. Whereas the Debtor characterizes these motions as *ex parte* motions that were "essentially in the nature of collection actions," ECF No. 63, Ms. Kurland attributes these repeat filings to the Debtor's alleged avoidance of service. Proof of Claim No. 1-1. Neither party has presented the Court with evidence to clarify the precise nature of these particular motions.

11. On or around February 23, 2022, Ms. Kurland submitted a proposed amendment of a preexisting Qualified Domestic Relations Order ("QDRO") to collect on the Debtor's retirement funds. ECF No. 67-3.

12. In response to Ms. Kurland's proposed amended QDRO, on February 25, 2022, the Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code, Debtor's Resp. 3, ECF No. 56, ostensibly to protect the Debtor's remaining retirement income which he allegedly relies upon to support himself, *id.* at 7.

13. On April 1, 2022, Ms. Kurland submitted a general unsecured prepetition claim of \$60,322.51 for "[l]egal fees awarded" and "money awarded in divorce from [two] properties." Proof of Claim No. 1-1.

14. On April 26, 2022, Quantum3 Group, LLC (as agent for CF Medical LLC, "Quantum") filed a general unsecured claim of \$1,477.00 for medical debt. Proof of Claim No. 2-1. Ms. Kurland and Quantum are the Debtor's only creditors in this bankruptcy case.

15. Ms. Kurland has not appeared in this case or objected to the Debtor's plans of reorganization and their treatment of her claims. There has been no contest, proceedings, argument, or briefing by any party as to the nature (e.g., domestic support obligations or property settlements) of any of the Debtor's unperformed divorce obligations under the Final Decree or related orders.¹

16. To the Court's knowledge, the Debtor has taken no action in the Family Court to obtain equitable relief or otherwise modify his obligations under the Final Decree since Ms. Kurland filed her proposed amended QDRO.

B. The Debtor's Bankruptcy Proceedings

The Debtor contemporaneously submitted a plan of reorganization with his bankruptcy petition. The Trustee objected to the Debtor's original plan primarily on the basis of its non-feasibility and non-conformance with filed proofs of claim. *See* ECF No. 13. The Court denied the Debtor's original plan as unconfirmable with leave to amend. ECF No. 18. The Debtor then submitted an amended plan of reorganization on August 29, 2022. ECF No. 20 (the "Amended Plan"). Upon objection by the Trustee and after a hearing held on January 19, 2023, the Court found that the Debtor submitted his Amended Plan "to principally avoid bona fide state divorce settlement obligations" and not in good faith. ECF No. 44. The Court denied confirmation of the Amended Plan, but nonetheless granted leave to amend so as to assess whether the Amended Plan's shortcomings could be rectified. *Id.*

On February 22, 2023, the Debtor filed his Second Amended Plan. Through the Second Amended Plan, the Debtor proposes to increase his monthly Trustee payments from \$125.00 to

¹ Whether any such obligations constitute a "domestic support obligation" ("DSO") under 11 U.S.C. § 101(14A) would implicate the priority of Ms. Kurland's claims in a plan and whether those claims might be discharged in bankruptcy. *See* 11 U.S.C. §§ 507(a)(1)(A), 523 (a)(15). Neither arguments nor evidence regarding such treatment have been put before this Court.

\$150.00, and his commitment period from thirty-six (36) months to sixty (60) months. ECF No. 46. On April 8, 2023, the Trustee filed her Objection to confirmation of the Second Amended Plan, primarily on the basis that the “barely perceptible rise in the [Second Amended] Plan’s payments in response to the Court’s finding that this bankruptcy was filed in bad faith . . . makes a mockery of the bankruptcy system.” Obj. The Trustee also notes that the Debtor devotes more than his proposed Trustee payments to entertainment and personal care products and services per month and that she would object to any proposed plan in this instance that would yield a dividend of less than one hundred percent (100%) to the Debtor’s unsecured creditors (which would require monthly payments of \$1,907.39). *Id*; Trustee’s Resp. to Debtor’s Resp. 6–7, ECF No. 59 (the “Trustee’s Response”). In the Trustee’s Motion to Dismiss, she similarly claims that the proposed payments, coupled with the peculiar timing of the Debtor’s bankruptcy petition (namely, just after Ms. Kurland proposed a modified QDRO that, according to the Debtor, would significantly reduce his retirement income), served as sufficient indicia that the Debtor’s bankruptcy petition was filed in bad faith and warranted dismissal with prejudice.² Mot.

On April 14, 2023, the Debtor objected and responded to the Motions. The Debtor argues that both his bankruptcy petition and his Second Amended Plan were filed in good faith to preserve what remaining income he has, to submit plan payments to the extent financially possible, and to legitimately discharge a non-support debt pursuant to 11 U.S.C. § 1328(a). Debtor’s Resp. 5–6. After a hearing held on the Motions and the Debtor’s Response, the Court took the matter under advisement. Upon its request, the Court received additional rulings from the Debtor’s divorce proceedings (ECF No. 62), as well as additional arguments from both the

² Notably, the Debtor has indicated in his schedules that his sole source of individual income is his state retirement pension. ECF No. 1. Statements made on the record indicate that the Debtor is of retirement age, disabled, and unable to work. *See also* Debtor’s Resp. 8, 10, ECF No. 56.

Debtor (ECF No. 63, 67) and the Trustee (ECF No. 64) in support of their respective positions.³ The Court has considered all of these filings in its decision.

IV. DISCUSSION

To be confirmed, a Chapter 13 plan must have “been proposed in good faith and not by any means forbidden by law.” 11 U.S.C. § 1325(a)(3). This Court has previously noted that, when “determining whether a debtor has advanced a plan in good faith, courts must review the totality of the circumstances.” *In re Kash*, No. No. 19-20078 (JJT), 2020 Bankr. LEXIS 3215, at *2–3 (Bankr. D. Conn. Nov. 16, 2020) (citing *In re Lin*, 499 B.R. 430, 435 (Bankr. S.D.N.Y. 2013). “The totality of the circumstances should take into consideration whether the debtor has abused the provision, purpose, or spirit of the Bankruptcy Code and whether the filing is fundamentally fair to creditors.” *Id.* (quoting *In re Armstrong*, 409 B.R. 629, 634 (Bankr. E.D.N.Y. 2009) (internal quotation marks omitted); *see also In re Wrobel*, 525 B.R. 211, 217–18 (Bankr. W.D.N.Y. 2015) (“[I]t has been [the court’s] view that ‘good faith’ in a Chapter 13 case simply means treating creditors in a ‘fundamentally fair’ manner, and [the court] has said that if a Chapter 13 Debtor seeks to extract too many benefits from the Chapter 13 process, his or her plan might be rejected as lacking ‘good faith.’”).

In the present matter, the Debtor has but two creditors: Ms. Kurland, who has submitted a prepetition general unsecured claim in the amount of \$60,322.51 for “[l]egal fees awarded” and “money awarded in divorce from [two] properties,” Proof of Claim No. 1-1, and a medical provider, who has also submitted an unsecured claim for \$1,477.00. Proof of Claim No. 2-1. Put differently, Ms. Kurland’s claim accounts for approximately ninety-eight percent (98%) of

³ Although the Debtor has submitted additional evidence (*see* ECF No. 62) to better inform the Court of his divorce proceedings, which may well shed additional light on his motivations, the Court notes that he has submitted no evidence indicating any effort to secure relief from the contempt orders or modification of the Final Decree due to changed circumstances or other cognizable cause.

the total claims in this bankruptcy case. A properly filed proof of claim constitutes *prima facie* evidence of the claim's validity and amount, and the Debtor has done nothing to assail its amount, validity, or enforceability. Fed. R. Bankr. P. 3001(f); *see also* 9 Collier on Bankr. P. 3001.09.

The Second Amended Plan would pay but a paltry amount (approximately fifteen percent (15%)) of Ms. Kurland's total claim against the Debtor. Moreover, the record of the Debtor's divorce proceedings, by any measure, reflects deep acrimony between the estranged couple, abuse on the part of the Debtor, and confirmed contemptuous behavior on the part of the Debtor in complying with the Final Decree and subsequent orders of the Family Court.

The Debtor has made the Court aware, however, of a potentially troubling factual issue in his divorce proceedings. Throughout those proceedings, the Debtor repeatedly claimed he owned only a minority stake in the Tamworth property, which precluded him from paying fifty percent (50%) of the proceeds from the sale of that property to Ms. Kurland in compliance with the Final Decree. That factual contention does not appear to have been properly put into the record of the Debtor's divorce proceedings, but he has provided this Court with documentation that seemingly indicates he was a fifteen percent (15%) minority owner of the Tamworth property. ECF No. 62-16. While this factual finding may somewhat mitigate the weight of the Debtor's contempt citations in this Court's analysis, the Court remains satisfied that the totality of the circumstances (namely the timing of the Debtor's filing, the overall history of his divorce proceedings, the composition of the Second Amended Plan, and the absence of other significant creditors besides Ms. Kurland) indicates that the Debtor seeks to deny his former spouse the allocation she was fairly and finally awarded by the Family Court. This Court is not positioned

or authorized to scrutinize the propriety of that adjudication.⁴ To the extent the Debtor might otherwise obtain equitable relief or other modifications of the Final Decree from the Family Court with the assistance of legal counsel, there is no record that he has contemplated or availed himself of such proceedings.

V. CONCLUSION

The Court is ultimately satisfied that the record before it supports the conclusion that the Debtor's bankruptcy petition and Second Amended Plan were not filed in good faith. In the event the Debtor must equitably adjust his financial obligations to his former spouse, the Court believes that the Family Court, which has both a complete record before it and specialized jurisdiction and competency in domestic disputes, is the appropriate forum in which the Debtor should seek relief. Indeed, the Debtor is encouraged to do so in light of the evidence he submitted to this Court and considering the fact that, by all accounts, he inadequately advocated for himself during his divorce proceedings.

Based on the foregoing, the Trustee's Objection to Confirmation is **SUSTAINED**. The Trustee's Motion to Dismiss is **GRANTED**, and the Debtor is barred from filing a new bankruptcy petition in this Court for a period of one (1) year. Accordingly, the Debtor's Objection to Motion to Dismiss and Response to Objection to Confirmation are **OVERRULED**.

IT IS SO ADJUDGED, ORDERED, AND DECREED at Hartford, Connecticut this 7th day of June 2023.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut

⁴ It is this Court's estimation that involving itself in possibly rectifying the divorce proceedings of the Debtor would overstep its role as a bankruptcy court and, more importantly, disrupt federal and state relations. This the Court shall not do. *See Allegheny Cnty. v. Frank Mashuda Co.*, 360 U.S. 185, 189-90 (1959); *see also Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716-17 (1996).