

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST SAINT LOUIS DIVISION

IN RE:

JAMES and TONI BARNES,

Case No. 02-31856

Debtors

ORDER OVERRULING TRUSTEE'S OBJECTION TO CONFIRMATION

This matter comes before the Court on the Chapter 13 Trustee's Objection to Confirmation, wherein he argues that the Debtors' plan should not be confirmed because it fails to satisfy 11 U.S.C. § 1325(b)(1)(B). For the reasons stated below, the Court overrules the Trustee's objection.

Here, the Debtors' original plan called for payments of \$810.00 per month which, based on the claims that were filed and allowed, is sufficient to pay creditors in full in 29 months. Notwithstanding these plan payments, the Debtors still have a significant amount in "disposable income." The Trustee has objected to confirmation, insisting that a debtor must direct all "disposable income" to the plan even if it otherwise provides for the full payment of claims within at least 36 months. According to the Trustee, the Debtors' additional disposable income should be directed to the plan so that allowed claims are paid in full in just 15 months. The Court must disagree.

Section 1325(b) of the Bankruptcy Code provides:

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such

claim is not less than the amount of such claim; or¹
(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

The first canon of statutory construction is that where the language of a statute is clear in its application, the court must apply its plain meaning as written. *In re Udell*, 18 F.3d 403,410-11 (7th Cir.1994). “[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Id.* (citation omitted). Section 1325(b) is clearly stated in the disjunctive. That is, a debtor's plan may be confirmed if it (1) provides for full payment to the objecting creditor's claim (or should the trustee object to confirmation, for the full payment of all allowed unsecured claims) *or* (2) requires that all of the debtor's disposable income be paid into the plan for at least three years. “[T]he upward limit of what the Debtor must pay in a confirmable Chapter 13 plan is the *lower* of (1) his disposable income; or (2) all claims against the Debtor which are payable under the plan.” *In re Weiss*, 251 B.R. 453, 463 (Bankr.E.D.Pa.2000).

This is not to say that § 1325(b)(1)(A) is unambiguous. Courts and commentators alike disagree as to whether the provision requires a debtor to pay the present value of a creditor's claims or just its face value. *Compare, e.g., In re Rhein*, 73 B.R. 285, 287 (Bankr.E.D.Mich.1987) (creditors must be paid present value of claim to satisfy § 1325(b)(1)(A)) *with In re Eaton*, 130 B.R.74, 78 (Bankr.S.D.Iowa1991) (§ 1325(b)(1)(A) does not require that interest be paid on claims in order for them to be paid in full). As these cases indicate, it is not clear whether § 1325(b)(1)(A) requires that interest be paid to compensate creditors for the time required to complete a plan. In objecting to confirmation,

¹When the trustee is the objecting party, § 1325(b)(1)(A) presumably requires that all allowed unsecured claims must be paid in full.

