

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RAYMOND LOGAN,)	
)	
Appellant,)	
)	BK. No. 97-41769
vs.)	Civil No. 98-4350-JPG
)	
BOBBY LOGAN and MARGIE LOGAN,)	
)	
Appellees.)	

MEMORANDUM AND ORDER

GILBERT, Chief Judge:

Before the Court is Raymond Logan's appeal from the Bankruptcy Court's confirmation of the appellees' Chapter 13 plan. The matter has been fully briefed. (Does. 3, 11, 14, 17).

I. BACKGROUND

Raymond Logan ("Raymond") and Bobby Logan ("Bobby") are brothers. Bobby and his wife, Margie Logan, (collectively "the Logans"), cared for Bobby's parents until the parents passed away. Raymond is executor of his parents' estate. In 1995, pursuant to Raymond's petition, a Kansas state court found that the Logans breached their fiduciary duty to the parents by making bad faith transfers of money and other assets. The court entered judgment against the Logans and in favor of Raymond.

In October of 1997, the Logans filed a Chapter 7 petition in Bankruptcy Court. The petition was converted to a Chapter 13 proceeding, and the Logans filed a Chapter 13 plan. The plan was later amended to include Raymond as a secured judgment creditor. In March of 1998, Raymond filed an objection to the confirmation of the plan and moved to dismiss the Chapter 13 petition because the petition

and the plan were not made in good faith. The Bankruptcy Court denied the motion to dismiss the petition and reserved ruling on the objections to the plan pending a Rule 2004 examination of the Logans.

On September 1, 1998, the Bankruptcy Court held a hearing. Judge Meyers began by asking the parties for the status of the case. Raymond indicated that he recently became aware that the Logans possessed a box of cash. After some discussion about this newly discovered evidence, Judge Meyers asked Raymond if his objection was basically that the plan was not made in good faith. Raymond indicated that was his objection, and Judge Meyers noted that the box and other issues were not raised in Raymond's objections. After some discussion by the parties about the relevance of the box to the confirmation of the plan, Judge Meyers stated:

Well, this case has gone on and on and on and basically the kind of case I really enjoy is the kind of cases where you get into a blood family feud or divorce case. They always make it kind of interesting because they never end. They just go on and on and on. I ought to have a special file for those and put those kinds of cases in that file and then leave them for somebody else when I retire. But since that is eleven years from now, I really feel my obligation is to move ahead on these cases. I don't find any of the matters you raised were raised in your objection to confirmation. I am going to confirm this plan because I don't think the matters you have now raised go to the question of the good faith plan. It may have been a bad faith filing. I don't know. But to rehash a lot of these things-this case has been in litigation for years here and there and every place, and it is never going to end. It won't end with this order today, but I am going to go ahead and confirm the plan because I think based upon the standards for a good faith plan this plan fulfills those requirements. The trustee has made a review of the plan. The trustee filed no objection, and it is in the best interest of creditors or best effort of the debtors the plan that they have proposed. So I am going to go ahead and confirm it. Now, if there is something else that needs to be done, I am not going to make any ruling on anything of that nature today. The thing in front of the court is the objection to the objection to the confirmation of this plan. I am going to go ahead and enter an order confirming the plan.

Raymond filed a motion to reconsider, which the Bankruptcy Court denied.

Raymond now appeals the confirmation of the Logans' plan and the denial of his motion to

reconsider. He contends that the Logans' plan was not made in good faith and that the Bankruptcy Court's findings of fact were so minimal that they amount to clear error and indicate that the wrong legal standard was applied to the determination of good faith. The Logans respond that the Bankruptcy Court's findings of fact were not clearly erroneous, nor were its conclusions as to good faith incorrect as a matter of law. Moreover, the Logans argue, their plan was submitted in good faith.

II. STANDARD OF REVIEW

This Court, in its appellate function, upholds the Bankruptcy Court's findings of fact unless they are clearly erroneous and reviews pure questions of law de novo. In re Matter of UNR Indus., Inc., 986 F.2d 207, 208 (7th Cir. 1993). The Bankruptcy Court's good faith finding is a purely factual finding evaluated under the clearly erroneous standard of review. In re Love, 957 F.2d 1350, 1354 (7th Cir. 1992); In re Smith, 848 F.2d 813, 816, n. 2 (7th Cir. 1988). Under the clearly erroneous standard, this Court gives great deference to the Bankruptcy Court. "[I]f the trial court's account of the evidence is plausible in light of the record viewed in its entirety, a reviewing court may not reverse even if convinced that it would have weighed the evidence differently as trier of fact." Love, 957 F.2d at 1354 (citing EEOC v. Sears, Roebuck & Co., 839 F.2d 302, 309 (7th Cir. 1988)). Reversal under the clearly erroneous standard is only warranted if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." EEOC, 839 F.2d at 309. Whether the Bankruptcy Court applied the correct legal standard to its good faith determination is a question of law reviewed under the de novo standard. Love, 957 F.2d at 1354 (citing United States v. Singer Mfg. Co., 374 U.S. 174, 193 (1963)).

III. DISCUSSION

The Bankruptcy Court "shall confirm a plan if . . . the plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1325(a)(3) (West 1999). The plan's proponent bears the burden of demonstrating that the plan is made in good faith. See In re Smilgys, 1999 WL 423034, No. 98 B 11404 (Bankr.N.D.Ill. Jun 21, 1999).

The Seventh Circuit Court of Appeals has held that "good faith is a term incapable of precise definition, and, therefore, the good faith inquiry is a fact intensive determination better left to the discretion of the bankruptcy court." Love, 957 F.2d at 1354. Accordingly, the Seventh Circuit has "directed the bankruptcy courts to look at the totality of circumstances and, thereby, make good faith determinations on a case-by-case basis." Id. Nonetheless, this circuit has approved the following non-exhaustive list of relevant factors to consider when rendering a decision about good faith: (1) whether the proposed plan states the debtors' secured and unsecured debts accurately; (2) whether it states the debtors' expenses accurately; (3) whether the percentage of repayment of unsecured claims is correct; (4) whether any inaccuracies in the plan amount to an attempt to mislead the bankruptcy court; and (5) whether the proposed payments indicate a fundamental fairness in dealing with one's creditors. Smith, 848 F.2d at 816-22; In re Rimgale, 669 F.2d 426, 431-33 (7th Cir. 1982); see also In re Schaitz, 913 F.2d 452, 453-56 (7th Cir. 1990).

In this case, the Bankruptcy Court has made almost no findings and given very few reasons for its decision to confirm the Logans' plan. Judge Meyers' finding of good faith and decision to confirm the plan was conclusory at best: "I am going to confirm this plan because I don't think the matters you have now raised go to the question of the good faith plan." The reasons cited for this decision indicate only that Judge Meyers was frustrated with this case: "to rehash a lot of these things-this case has been in litigation for

years here and there and every place, and it is never going to end. It won't end with this order today, but I am going to go ahead and confirm the plan because I think based upon the standards for a good faith plan this plan fulfills those requirements." Judge Meyers then stated that the trustee reviewed the plan and did not object and that the plan was in the "best interest of creditors or best effort of the debtors the plan that they have proposed." Without more, this Court cannot even determine upon what standards Judge Meyers was relying, much less whether his application thereof or findings thereunder were correct.

IV. CONCLUSION

Based on the foregoing, the Court concludes that it is unable to conduct a properly deferential, yet meaningful, review under the clearly erroneous standard. Accordingly, the decision to confirm the Logans' Chapter 13 plan is **REVERSED**, and the matter is **REMANDED** to the Bankruptcy Court for further proceedings, with directions to set forth its findings and conclusions as to whether the Logans' Chapter 13 plan was submitted in good faith. **IT IS SO ORDERED.**

DATED: September 28, 1999.

/s/ J. Phil Gilbert
Chief Judge