

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Monica Harris Jackson,

Debtor(s).

C/A No. 24-02021-HB

Chapter 13

**ORDER OVERRULING
OBJECTION TO CONFIRMATION**

THIS MATTER came before the Court for a confirmation hearing on October 10, 2024, to consider the Chapter 13 plan filed by Debtor Monica Harris Jackson¹ and the Objection to Confirmation of Plan (the “Objection”) filed by Jermaine Jackson, Sr. (“Mr. Jackson”).² Appearances were made by Nancy E. Johnson on behalf of Debtor, William T. Jones on behalf of Mr. Jackson, and Chapter 13 Trustee Annemarie B. Mathews (the “Trustee”), and Debtor testified. The parties asked the Court to consider the attachments to Mr. Jackson’s Objection in ruling on this matter. The Court finds as follows.

FINDINGS OF FACT

Pre-petition, Debtor and Mr. Jackson were married and lived at 44 Kimberly Acres Drive, Jackson, SC (the “House”).

On July 5, 2020, during the height of the COVID-19 pandemic, Mr. Jackson executed a Note in the amount of \$92,000.00 at 3.75% annual interest in favor of the U.S. Small Business Administration (the “SBA”) in consideration of the SBA’s loan to him in that amount. The Note has a thirty (30) year term, and installment payments were to begin July 5, 2021. Mr. Jackson also

¹ ECF No. 19, filed Aug. 23, 2024.

² ECF No. 23, filed Sept. 19, 2024.

appears to have executed a Security Agreement on July 5, 2020, granting the SBA a security interest in certain property owned by Mr. Jackson.³

On September 10, 2021, Debtor filed a Summons and Complaint seeking divorce from Mr. Jackson in the Family Court for Aiken County, South Carolina (the “Family Court”) (Case No. 2021-DR-02-1001) (the “Family Court Action”). The Family Court issued a Final Order and Divorce Decree on April 12, 2024 (the “Family Court Order”), finding Debtor entitled to a divorce from Mr. Jackson. The Family Court Order also apportioned marital assets and liabilities. The Family Court, having concluded the debt to the SBA was marital since it was used to pay marital debt or buy things for the home or family, required Debtor to pay forty percent (40%) of the outstanding balance on the SBA loan and Mr. Jackson to pay sixty percent (60%) of the balance, with both parties to pay the SBA directly.⁴ Each party was required to pay debts on the vehicles in their possession. Debtor was awarded sole ownership and possession of the House and made responsible for all related expenses. The Family Court, having determined that the marital assets consisted of \$33,409.25 in equity in the House and \$10,526.00 in Debtor’s retirement account and should be divided sixty percent (60%) to Debtor and forty percent (40%) to Mr. Jackson, ordered Debtor to pay Mr. Jackson his forty percent (40%) share in the House equity and retirement account (for a total of \$17,574.10) within one hundred and eighty (180) days. The Family Court, having found that both parties had similar earning potential—with Mr. Jackson earning more than Debtor at the time—and were in good health, stated “[n]o alimony is awarded in this case.”

³ Only the first page of the Security Agreement is in the record, which does not include the full collateral description or signatures.

⁴ The Family Court held it could not determine the balance of the SBA loan at that time for lack of sufficient evidence. While the Family Court Order provided Debtor was to pay the SBA directly, the parties appear to agree that Debtor is not personally obligated on the loan and rather is obligated to help Mr. Jackson satisfy his obligation to the SBA.

On June 3, 2024, Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code to initiate the above-captioned case. On June 12, 2024, Debtor filed schedules and statements.⁵ Debtor listed Mr. Jackson as a creditor on Schedule D (Creditors Who Have Claims Secured by Property) with a \$17,574.10 claim secured by the House, and Mr. Jackson was given due notice of the bankruptcy filing. The SBA was listed on Schedule E/F (Creditors Who Have Unsecured Claims) for notice purposes only as a nonpriority unsecured creditor with a \$0.00 claim. On Part 4, Question 9 of the Statement of Financial Affairs for Individuals Filing for Bankruptcy, which asks “[w]ithin 1 year before you filed for bankruptcy, were you a party in any lawsuit, court action, or administrative proceeding?” and advises to include divorce actions, Debtor failed to list the Family Court Action. While Debtor has filed Amended Schedules I and J,⁶ she has not filed any other amendments to her schedules and statements.

Also on June 12, 2024, Debtor filed a Chapter 13 plan.⁷ That plan proposed to pay Mr. Jackson’s claim in the amount of \$17,574.10 in full plus nine percent (9.00%) interest and treat it as secured by the House. The claim related to the SBA loan was included in the pool of non-priority unsecured creditors. The plan was served on the matrix, including Mr. Jackson.⁸ Mr. Jackson did not file an objection to that plan.

On July 17, 2024, the § 341 meeting of creditors was held.

On August 9, 2024, Mr. Jackson filed a timely non-priority unsecured claim for \$38,823.00 for Debtor’s obligation to pay forty percent (40%) of the SBA loan balance.⁹

⁵ ECF No. 8.

⁶ ECF No. 22, filed Aug. 27, 2024.

⁷ ECF No. 9.

⁸ ECF No. 11, filed June 12, 2024.

⁹ Claim No. 19-1.

On August 16, 2024, on request of the Trustee, the Court entered a form Order denying confirmation of Debtor's June 12, 2024, plan and requiring Debtor to file a modified plan within ten (10) days.¹⁰

On August 20, 2024, Mr. Jackson filed an untimely non-priority unsecured claim for \$17,574.10 for Debtor's obligation to pay Mr. Jackson his forty percent (40%) share in the House equity and retirement account.¹¹

As of the date of entry of this Order, Debtor has not filed an objection to either of Mr. Jackson's claims and the SBA has not filed a claim.

On August 23, 2024, Debtor filed the Chapter 13 plan under consideration. In the plan, Debtor proposes to include Mr. Jackson's claims in the pool of non-priority unsecured creditors who will be paid less than one hundred percent (100%) on their claims on a *pro rata* basis to the extent funds are available after all other allowed claims are paid. The confirmation hearing was scheduled to be heard on September 27, 2024.

On September 19, 2024, Mr. Jackson filed an Objection to Debtor's plan, asserting he is a priority unsecured creditor by virtue of the Family Court Order, that his filed claims constitute domestic support obligations entitled to priority under 11 U.S.C. § 507(a)(1), and that the plan fails to comply with 11 U.S.C. § 1325(b)(1)(A) and should pay his claims in full.

On September 27, 2024, the Court continued the confirmation hearing to October 10, 2024, due to the effects of Hurricane Helene.

On October 10, 2024, the Court held a confirmation hearing. At the hearing, counsel for Mr. Jackson made assertions that were not raised in the pleadings in an apparent attempt to argue that Debtor filed the petition and plan in bad faith. He asserted that, between the entry of the

¹⁰ ECF No. 17.

¹¹ Claim No. 23-1.

Family Court Order and the filing of the bankruptcy petition, Debtor incurred debts knowing that most of them would be discharged. Debtor testified that the only additional debts she may have incurred during that period would have been to pay for necessities. Counsel for Mr. Jackson also asserted Debtor's representations on her financial disclosures filed in the Family Court were inconsistent with Debtor's schedules and statements filed in this Court. However, Debtor's financial disclosures filed in the Family Court are not in the record, Debtor testified that when she filed this case, she listed all her debts—secured and unsecured—on her schedules, and the Court's review of the record indicates that any errors or omissions on her schedules and statements were immaterial. Debtor was a credible witness and the Court finds no evidence of bad faith in the filing of this case or in the filing of the plan.

APPLICABLE LAW

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and the Court may enter a final order. To resolve any remaining issues, the Court must determine the nature of Mr. Jackson's claims.

(14A) The term “domestic support obligation” means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

- (i) a separation agreement, divorce decree, or property settlement agreement;
 - (ii) an order of a court of record; or
 - (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and
- (D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

11 U.S.C. § 101(14A). “Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a . . . former spouse. . .” are entitled to priority. 11 U.S.C. § 507(a)(1)(A). The Bankruptcy Code requires Chapter 13 plans to “provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim[.]” 11 U.S.C. § 1322(a)(2); *see also* 11 U.S.C. § 1325(a)(1) (requiring as a condition of confirmation that a Chapter 13 plan comply “with the provisions of this chapter and with the other applicable provisions of this title”). “Property settlement and equitable distribution debts generally do not have priority and need not be paid in full in a chapter 13 plan.” *In re Haney*, No. 10–10258–SSM, 2010 WL 3363270, at *3 (Bankr. E.D. Va. Aug. 24, 2010) (citing *In re Uzaldin*, 418 B.R. 166, 172 (Bankr. E.D. Va. 2009)).

“To determine whether an obligation is in the nature of alimony, maintenance or support, the court must look to federal law.” *In re Sapp*, 655 B.R. 421, 435 (Bankr. D.S.C. 2023) (citing cases from this Court and *In re Ludwig*, 502 B.R. 466 (Bankr. W.D. Va. 2013)). “This Court has applied the following factors to determine whether an obligation is a domestic support obligation: (1) the substance and language of the document in question; (2) the financial condition of the parties at the time of the decree or agreement; (3) the function served by the obligation and intent of the parties at the time of the agreement; and (4) whether there is evidence to question the intent

of a spouse or evidence of overbearing by either party.” *Id.* at 436 (citing *In re Krueger*, 457 B.R. 465, 474 (Bankr. D.S.C. 2011); *In re Poole*, 383 B.R. 308, 314 (Bankr. D.S.C. 2007)).

A party objecting to confirmation on the basis that the plan fails to meet the requirements of § 1325(a) must first establish a *prima facie* objection. If the objecting party makes such a *prima facie* showing, the debtor bears the ultimate burden of proving that the plan meets the requirements for confirmation. *See In re Moore*, 635 B.R. 451, 453 (Bankr. D.S.C. 2021); *see also Trantham v. Tate*, 112 F.4th 223, 236 (4th Cir. 2024) (citing § 1322(b) for the proposition that the Code does not require that a debtor justify her plan’s permissive provisions included pursuant to that Code section, in contrast to when a party objects on the basis that the plan does not comply with § 1325(a)).

DISCUSSION AND CONCLUSION

Debtor’s obligations to Mr. Jackson under the Family Court Order do not constitute domestic support obligations entitled to priority status under the plan. The factors used to determine whether an obligation is a domestic support obligation indicate that Debtor’s obligations to Mr. Jackson under the Family Court Order are not in the nature of alimony, maintenance, or support. There is no allegation or evidence in the record of overbearing by either party. The Family Court Order specifically stated “[n]o alimony is awarded in this case”, and the Family Court found that both parties had similar earning potential and were in good health, and that Mr. Jackson earned more than Debtor at the time, such that neither party needed to support the other financially. Rather, the substance of the Family Court Order indicates the Family Court imposed the obligations it did on Debtor to divide the marital assets and liabilities equitably. Debtor’s obligation to pay Mr. Jackson \$17,574.10, representing a forty percent (40%) share in the House equity and retirement account appears to have been imposed to compensate Mr. Jackson for his

contributions to the household during the marriage, and Debtor's obligation to pay forty percent (40%) of the outstanding balance of the SBA loan appears to have been imposed because she enjoyed some of the benefits of that loan. The obligations are properly treated as unsecured debts without priority under the proposed plan.

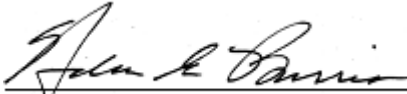
IT IS, THEREFORE, ORDERED:

1. The Objection to Confirmation of Plan filed by Jermaine Jackson, Sr. on September 19, 2024, is overruled; and
2. A separate Order confirming the Chapter 13 plan filed by Debtor Monica Harris Jackson on August 23, 2024, will be entered.

**FILED BY THE COURT
10/21/2024**



Entered: 10/21/2024


Chief US Bankruptcy Judge
District of South Carolina