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U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) Chapter 13
JEFFREY A. KING and JOYCE L. KING,)
) No. 2:06-bk-04089-JMM
)
) **MEMORANDUM DECISION**
)
_____ Debtors.)

A preliminary hearing on a motion for stay relief was held on January 31, 2007. The Debtor was represented by Allen NewDelman; creditor Joseph Rocco represented himself. Both Mr. Rocco and Debtor Jeffrey A. King are attorneys, who at one time practiced law together. After consideration of the entire administrative file in this matter, the law, and the arguments of the parties, the court now rules.

The Chapter 13 Case

The Debtors filed for chapter 13 relief on December 5, 2006. The debts which they scheduled fall within the following categories in the following amounts:

Secured creditors	\$209,494
Unsecured creditors	81,952

Between them, the Debtors gross \$14,445 per month, and take home \$10,975 (Schedule I). Their monthly expenses are listed as \$6,161.¹

¹ This includes monthly "charitable contributions" of \$650 and "recreation" of \$30.

1 The repayment plan proposed by the Debtors is a five-year plan, paying \$2,300 per month.
2 Over 60 months, that sum would total \$138,000. After deduction for the Trustee's expenses (10%), the net
3 available to creditors would be \$114,200.²

4 The creditor which is secured by a first lien on the Debtors' home is to be paid "outside" the
5 plan, and not through the Trustee. However, the current arrearage of \$1,727.28 is to be paid through the
6 plan. The second mortgage is current and is likewise to be paid "outside" the plan.

7 The bank which is secured by the 2001 Chevrolet is to receive \$110 per month through the
8 plan, until it is paid \$11,077.77, plus interest.

9 Dell Computer is to receive \$200. It is secured by the machine.

10 Unsecured claims are to share the difference, pro rata. The Debtors' reconciliation, attached
11 to the plan, reflects that unsecured creditors will receive 100% of their allowed claim amounts, no doubt
12 because the Trustee is currently receiving less than the 10% maximum commission. Thus the Debtors' plan
13 pays out in approximately the following manner:

14	Total paid in (60 months)	\$138,000
15	Less: Trustee fee (maximum)	(<u>13,800</u>)
16	<i>Subtotal</i>	\$114,200
17	Less: Tahoe vehicle	(11,077)
18	Arrearage (home)	(1,727)
18	Dell Computer	(<u>200</u>)
19	<i>Subtotal</i>	\$101,396

20
21 The unsecured claims listed in the schedules total \$106,737.³

22 The single largest unsecured claim, which is based on a Superior Court judgment, is listed
23 as \$73,952. It is owed to Joseph Rocco, and is listed as "disputed." Mr. Rocco's judgment is actually for
24 something less than it was scheduled for, \$64,192.25. This lower figure then would appear to allow for a
25 100% dividend to unsecured creditors, even if the Trustee's commission remains at 10%.

27 ² If the Trustee is presently collecting less than 10%, that figure would adjust upward.

28 ³ Unpaid and unapplied attorneys' fees may further erode this figure.

1 of a debtor's estate. In so doing, it provides the estate with the necessary breathing room to centralize and
2 collect assets in an orderly manner, or offer a reorganization plan to its creditors while preserving a debtor's
3 value short of liquidation.

4 In a proper chapter 13 case, reorganization is the goal, and unlike a chapter 11, a debtor is
5 required to quickly file a plan.

6 Here, the Debtors have done so, and their plan reveals a full payout to their unsecured
7 creditors, over a time period authorized by bankruptcy law. In so doing, they are committing to pay--each
8 month--the sum of \$2,300 to the Trustee, who will then distribute those funds to the creditors. If the Debtors
9 fail to do so, their case is subject to dismissal. 11 U.S.C. § 1307.

10 The Debtors should have the opportunity to present a case for confirmation of their plan. If
11 they do so, all of their property will re-vest in them, and creditors and the Debtors alike will be bound by
12 the terms of the confirmed plan. 11 U.S.C. § 1327. Since the plan will, if all payments are made, return
13 100% to every unsecured creditor on all allowed claims, the pending garnishments will be rendered moot.

14 According to Arizona law, since none of the garnishments were reduced to judgment, prior
15 to the filing of the bankruptcy petition, they were never perfected. Therefore, Mr. Rocco's claim was
16 unsecured on the date of filing. See ARIZ. REV. STAT. § 12-1598(D)(4).

17
18 **Conclusion**
19

20 The court is not persuaded that the necessary "cause" under 11 U.S.C. § 362(d)(1) has been
21 shown, which would allow a single unsecured creditor to (1) deplete the Debtors' estate for its sole benefit,
22 and (2) prefer itself over the pro rata payment policy implicit in a chapter 13 term payout. Since no issues
23 remain for a final hearing, an order will be entered which concludes this administrative matter.

1 COPIES served as indicated below
2 this 2nd day of February, 2007, upon:

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