

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

ROGER M. NOREEN

CHAPTER 13

Debtor.

Bky. 3-91-730

ORDER

This matter is before the Court on consideration of confirmation of the Debtor's proposed Chapter 13 plan. An objection was filed by the Debtor's major creditor, Starr Bridget Slattengren. Appearances are as noted in the record. The Court, having received evidence, reviewed briefs, and heard oral arguments, and now being fully advised in the matter, makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

From December 1979, to April 1982, the Debtor engaged in a pattern of felonious sexual assaults and abuse of Ms. Slattengren, who was from 8 to 12-years old at the time. In January 1984, the Debtor plead guilty to four counts of criminal sexual conduct in the second degree in connection with the assaults.

After Ms. Slattengren attained the age of majority, she commenced a civil action in December 1989, against the Debtor in state court for damages resulting from the Debtor's conduct. The state court granted her summary judgment on liability in October 1990, allowed the amendment to the complaint to include a demand for punitive damages, and set trial for February 19, 1991.

The Debtor filed his petition on February 8, 1991. He scheduled the following debts:

credit card account	\$ 539.00
attorney's fees	1500.00
unsecured bank loan	1428.22
Skye Jensen	unknown
Starr Slattengren	unknown

Skye Jensen is Ms. Slattengren's younger brother, who apparently has a similar personal injury claim against the Debtor. This Court subsequently granted Ms. Slattengren relief from the Section 362 stay to liquidate her claim in the state court action.

The Debtor scheduled unencumbered homestead real estate valued at \$62,300, and miscellaneous personal property valued at \$15,324, for a total of \$77,624. Of that amount, slightly more than \$74,000 was claimed exempt. Debtor's net monthly income at filing was \$2,185. He initially proposed a three-year plan with monthly payments of \$200. At confirmation, the Debtor offered a five-year plan with monthly payments of \$500.

Ms. Slattengren objects to confirmation, arguing that the plan and the case were filed in bad faith. The Court agrees.

II.

This case was not filed in February because the Debtor could not pay his debts as they came due in the ordinary course. It was filed for two reasons. One was to preserve eligibility for Chapter 13 relief on the eve of a trial that would in all probability have resulted in a liquidated non-contingent unsecured debt exceeding the \$100,000 qualifying limitation of 11 U.S.C. Section 109(e). The other reason was to deprive Ms. Slattengren of the right to have her personal injury claim determined and liquidated by a jury of her peers. Timing of the filing was clearly an attempt to unfairly manipulate the Bankruptcy Code. Accordingly, the proposed plan is in bad faith and cannot be confirmed. See: *Handeen v. LeMaire (In re LeMaire)*, 898 F.2d 1346 (8th Cir. 1990).

The initial proposal is also evidence of bad faith. Only in response to the objection, did the Debtor increase the offered payments by 150%, and lengthen the plan from three to five years. While, ordinarily, the proposal of a three-year plan is not evidence of bad faith, it can be in light of the overall circumstances of the case. Here, the only significant claims against the Debtor are the result of willful and malicious serious personal injury inflicted by him. Given the nature of the claims, timing of the filing, and the paltry payment initially offered, the three-year proposal is capping evidence of a bad faith manipulation of the Bankruptcy Code.

III.

Based on the above findings and conclusions, IT IS HEREBY ORDERED that confirmation of the Debtor's proposed Chapter 13 plan is denied. Because the filing of the case was in bad faith and was an unfair attempt to manipulate the Bankruptcy Code, the case is hereby dismissed.

Dated: May 29, 1991

By The Court:

DENNIS. D. O'BRIEN
U.S. BANKRUPTCY JUDGE