

FILED

APR 26 2007

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

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

In re:) Chapter 13
LINDA LEE CORBIN,) No. 4:05-bk-06707-JMM
)
) **MEMORANDUM DECISION RE:**
) **CONFIRMATION**

Debtor.)

On April 2, 2007, this court conducted an evidentiary hearing concerning confirmation of the Debtor's plan. One objection was heard. It was filed by Michael Lee Roberts. Also before the court was the issue of whether, if the plan is not confirmed, the case should be converted to a chapter 7 liquidation.

Michael Lee Roberts is an unsecured creditor, and former spouse of the Debtor. He filed an unsecured claim for \$96,859.50. To date, the unsecured claims filed in the case are \$146,272.58 (Claims Register).

The Debtor's amended plan was filed on January 9, 2006 (Dkt. #11). It is a 36-month plan which calls for two months of \$2,000 per month payments, followed by 34 monthly payments of \$1,625. The total to be paid to the Trustee is \$59,250.

Unsecured claims on file are:

<u>No.</u>	<u>Claimant</u>	<u>Amount</u>
1	Wells Fargo Bank	14,957.46
2	Wells Fargo Credit Card	2,314.67
3	American Express	2,294.84
4	American Express Bank	3,221.60
5	Chase Manhattan	9,981.91
6	World Financial Network Bank	141.38

1	7	Michael Lee Roberts	96,859.50
2	8	eCast	6,422.45
3	9	eCast	<u>10,078.77</u>
4		Total	\$146,272.58

5

6 The only secured claim, filed by Citizen's Bank, is \$32,238 (Claim No. 10). The debt relates

7 to a 2005 Infiniti motor vehicle. The plan proposes to pay this debt through the Trustee, with 8% interest.

8 The contract, however, only carries a 6.54% annual percentage rate.

9 Pursuant to the plan's intent, the payments to be made would then be distributed as follows:

10	<u>Paid In:</u>		<u>59,250</u>
11	Less:		
12		Trustee (up to 10%)	5,925
13		Attorneys' fees	2,000
14		IRS ¹	1,672
15		Citizen's Bank ²	32,238
16		Unsecured creditors	<u>17,415</u>
17		Total	\$59,250

18 The above numbers may vary slightly if (1) the Trustee reduces her percentage; (2) the IRS

19 is not paid through the plan; and/or (3) attorneys' fees increase.

20 Under the current plan, unsecured creditors will received an approximate dividend of 12%.

21 Mr. Roberts' claim represents about two-thirds of the total unsecured claims on file.

22

23 **The Debtor's Income**

24

25 The Debtor makes \$6,666 per month. In her schedules, there are deductions for health

26 insurance, taken out prior to arriving at a monthly disposable income of \$4,365.00 (Ex. A). The Debtor

27 ¹ No claim filed.

28 ² Per claim.

1 testified credibly as to how her monthly expenses deviate slightly from the Amended Schedules I and J.
2 From the range suggested by the Debtor, the court arrived at a budget of:

3	Rent	845
4	Electricity	175
5	Water/Sewer	25
6	Cable	101
7	Telephone/Cell	94
8	Food	260
9	Clothing	60
10	Laundry	120
11	Medical/Dental	160
12	Transportation costs	250
13	Recreation	27
14	Renter's insurance	35
15	Auto insurance	120
16	Personal Care	125
17	Pet care (boarding)	<u>140</u>
18	Total Monthly Expenses	2,537

19 This, then, leaves the Debtor with a monthly disposable income of \$1,828 (\$4,365 less \$2,537 = \$1,828).
20 That figure, multiplied by 36 months, equals \$65,808.

21 Thus, the court concludes that the Debtor is not devoting all of her net disposable income to
22 the plan. Therefore, at this time, the court finds that the current plan cannot be confirmed. 11 U.S.C.
23 § 1325(b)(1)(B).

24 However, the court also concludes that, even under the current plan, the Debtor is paying her
25 creditors more than they would receive on liquidation. She therefore has satisfied § 11 U.S.C. 1325(a)(4).

26 The next issue deals with the Debtor's good faith in both the filing of the chapter 13 in the
27 first instance, and in the later proposal of the plan. 11 U.S.C. § 1325(a)(3) and (7). The court, after hearing
28 the evidence, concludes that the chapter 13 case was filed in good faith § 1325(a)(7).

1 COPIES served as indicated below this
2 26th day of April, 2007, upon:

3 Alan R. Solot
4 Tilton & Solot
5 459 N. Granada Ave.
6 Tucson, AZ 85701
7 Email arsolot@tiltonandsolot.com

8 Rob Charles
9 Lewis and Roca LLP
10 One South Church Avenue, Suite 700
11 Tucson, Arizona 85701-1611
12 Email rcharles@lrlaw.com

13 Dianne C. Kerns, Trustee
14 7320 N. La Cholla #154
15 PMB 413
16 Tucson, AZ 85741-2305
17 Email mail@dcktrustee.com

18 Office of the United States Trustee
19 230 North First Avenue, Suite 204
20 Phoenix, AZ 85003-1706
21 U.S. Mail

22
23
24
25
26
27
28
By /s/ M. B. Thompson
Judicial Assistant