

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**LYLE H. EDWARDS, JR.,
Debtor.**

**Chapter 13 Case
03-10018**

Appearances:

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Glinka & Schwidde
Cabot, VT
For the Debtor*

*Nancy J. Creswell, Esq.
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Burlington, VT
For Farm Service Agency (FSA)*

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Chapter 13 Trustee
White River Junction, VT
Pro Se*

MEMORANDUM OF DECISION

SUSTAINING, IN PART, AND OVERRULING, IN PART, FSA'S OBJECTION TO CONFIRMATION OF PLAN

I. PROCEDURAL BACKGROUND

On January 6, 2003, Debtor Lyle H. Edwards, Jr. (the Debtor) filed a petition for relief under chapter 13 of the Bankruptcy Code and a chapter 13 plan (doc. #3). Creditor Farm Service Agency (FSA) filed an Objection to Confirmation of Plan (doc. #8). A confirmation hearing was held on February 13, 2003, and then adjourned to allow FSA to conduct Rule 2004 examinations of the Debtor and his wife, Katherine Edwards. After completion of those examinations, FSA filed a Motion to Dismiss Case for Bad Faith (doc. #16). The Court set an evidentiary hearing to consider both FSA's Motion to Dismiss and FSA's Objection to the Chapter 13 Plan.

The evidentiary hearing commenced on July 15, 2003, and concluded on July 16, 2003. At the hearing, evidence was taken and a stipulation of facts was entered into the record. After the first day of the hearing, the parties agreed to sever FSA's Motion to Dismiss from FSA's Objection to the Confirmation of Chapter 13 Plan, and proceed first with FSA's Motion to Dismiss. At the conclusion of the July 16th evidentiary hearing, the Court reserved decision on FSA's Motion to Dismiss and tentatively set a confirmation hearing on the Debtor's chapter 13 plan for August 28, 2003.

On August 26, 2003, the Court issued a Memorandum of Decision and corresponding Order denying FSA's Motion to Dismiss (doc. #76 and 77). On August 28th, the Court proceeded with an evidentiary hearing on FSA's Objection to Confirmation of Plan; the confirmation hearing concluded on August 29, 2003, and the parties were directed to file post-hearing memoranda of law.

This Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 157(b)(2)(L) and 1334.¹

Based on the evidence submitted and the papers filed, and for the reasons set forth below, the Court sustains in part, and overrules in part, FSA's Objection to Confirmation of the Debtor's Chapter 13 Plan.

II. ISSUES PRESENTED

The issues presented are whether the Debtor has proposed his chapter 13 Plan in "good faith" in compliance with 11 U.S.C. § 1325(a)(3) and, if so, whether the Debtor meets the "disposable income test" of 11 U.S.C. § 1325(b)(1)(B).

III. SUMMARY OF FSA'S ARGUMENTS

FSA alleges that the Debtor has not filed his Amended Chapter 13 Plan (the Plan) in good faith. The gravamen of FSA's "good faith objection" is that the Debtor has relied upon inaccurate cash flow analyses that understate the Debtor's true disposable income, and he is not devoting all of his disposable income to the Plan.

The Debtor's failure to devote all of his disposable income is also the bedrock of FSA's "disposable income objection." FSA contends that the Debtor's disposable income would support monthly Plan payments of at least \$2,500 for three years, significantly in excess of the Debtor's Plan which calls for monthly Plan payments of \$500 for four years. FSA asserts five distinct arguments in support of this objection:

1. The Debtor has understated his milk income.
2. All of the farm's income should be allocated to the Debtor.
3. The capital expenditures during the term of the Plan are unreasonably high.
4. There is no justification for a monthly cushion in the Debtor's budget during the term of the Plan.
5. The Debtor cannot prove that certain household expenses are reasonable and necessary.

IV. FACTS

A. *Stipulated Facts*

In their Joint Pre-Trial Statement (doc. #37), the parties presented 25 undisputed material facts, which the Court adopts and summarizes as follows. On February 10, 1993, the Debtor and his former wife, Barbara Edwards, filed a voluntary petition under chapter 12 of the Bankruptcy Code.² Their Chapter 12 Plan of Reorganization was confirmed on November 29, 1993. On February 24, 1995, the Debtor and Barbara

¹ All reference to statutes herein refer to Title 11 of the United States Code (the "Bankruptcy Code"), unless otherwise indicated.

² The Debtor and Barbara Edwards were not represented by Attorney Glinka in that case.

Edwards converted their chapter 12 case to a case under chapter 7. On August 17, 1995, the United States filed an adversary proceeding complaint in this Court, pursuant to § 523(a)(2)(B), (a)(6), & (c), to determine the dischargeability of the debt owed by the Debtor and Barbara Edwards to Rural Economic and Community Development Services, formerly known as Farmer's Home Administration, and now known as the Farm Services Agency or FSA. During the pendency of that chapter 7 case, the parties entered into a Settlement Stipulation resolving the adversary proceeding; it provided that \$75,000.00 of the total debt of \$250,681.77 would be excepted from discharge, without the Debtor admitting any wrongdoing, and dismissing the adversary proceeding against Barbara Edwards. On June 12, 1996, the United States Bankruptcy Court issued a judgment against Lyle H. Edwards, Jr., in the amount of \$75,000.00 (the "\$75,000 FSA Obligation"). Between the date of the Settlement Stipulation in April 1996 and the instant chapter 13 bankruptcy case (filed on January 6, 2003), the Debtor made no voluntary payments on the \$75,000 FSA Obligation.

The Debtor and Katherine Edwards (Mrs. Edwards) were married in December 1996. The Debtor is a dairy farmer who, with Mrs. Edwards, operates a farm known as Spring Brook Farm (the Farm) in Westfield, Vermont. Both the Debtor and Mrs. Edwards work on the Farm. In September 1999, the Debtor and Mrs. Edwards bought their 55-acre farm from Mr. and Mrs. Gerald Choquette, financing \$130,000 of the purchase price. The Debtor and Mrs. Edwards both contributed to the down payment on the Farm. In March 2000, the Debtor and Mrs. Edwards bought two ten-acre adjoining lots from Mr. and Mrs. Marcel Choquette, financing \$19,500 of the purchase price. The Choquette families hold the mortgages on the Farm property. As of July 1, 2003, the Debtor and Mrs. Edwards owed the Choquettes approximately \$116,000. Other than these mortgages, the Debtor and Mrs. Edwards have no outstanding loans for the Farm operation, and their cattle and farm equipment are unencumbered. All of the Debtor's assets, except for an old pick-up truck, are owned by the Debtor and Mrs. Edwards together, as "tenants by the entirety."

Mrs. Edwards is a registered nurse who has been employed for a number of years by North Country Hospital. Her income at North Country Hospital was \$32,481.00 in 1999, \$37,262.25 in 2000, \$43,200.92 in 2001, and \$46,401.34 in 2002. Mrs. Edwards participates in a retirement plan sponsored by the hospital (to which her employer contributes), and she carries health and dental insurance for herself and the Debtor.

The Debtor and Mrs. Edwards have one bank account – a checking account – at the Lyndonville Savings Bank (the Joint Checking Account). The Debtor and Mrs. Edwards deposit all their income into the Joint Checking Account, including, but not limited to, the proceeds of milk checks, government subsidy payments, proceeds from the sale of cows and calves, and Mrs. Edwards' pay check from North Country Hospital. The Debtor and Mrs. Edwards pay all farm, household, and other expenses from the Joint Checking Account.

In May 2002, the Debtor and Mrs. Edwards began to convert their dairy farm from commercial to organic milk production. They received their first organic milk check on October 25, 2002.

On October 23, 2002, the United States Department of Agriculture, Commodity Credit Corporation, set off the sums of \$3,185.72, \$546.51, \$537.10, and \$972.00 from farm subsidy payments due to the Debtor under the Milk Income Loss Compensation (MILC) and Livestock Compensation programs, and applied the set offs to the outstanding \$75,000 FSA Obligation. In November and December 2002, FSA also set off payments of \$606.33 and \$475.20, respectively. Thus, the sums obtained by the various set offs totaled \$6,322.86. These subsidy payments that were set off represent one-half of the payments due to the Debtor and Mrs. Edwards from MILC during this period.

On January 6, 2003, Lyle H. Edwards, Jr. filed a bankruptcy petition under chapter 13 of the Bankruptcy Code. Mrs. Edwards did not join in this filing. On February 10, 2003, FSA filed its Objection to Confirmation on the grounds that the Debtor had proposed and filed the chapter 13 plan in bad faith and that the Debtor was not dedicating all of his disposable income to the plan. On February 26, 2003, the Court issued an Order (doc. #14) authorizing Rule 2004 examinations by FSA of the Debtor and Mrs. Edwards. Those examinations occurred on March 3, 2003, and March 5, 2003. In addition, on June 12, 2003, FSA deposed Dr. Richard Wackernagel, the Debtor's expert witness. On March 7, 2003, FSA filed a Motion To Dismiss Chapter 13 Case For Bad Faith (doc. #16). Subsequently, the Debtor amended his schedules to include an asset omitted from Schedule B, namely, the stock in the St. Albans Creamery. On July 8, 2003, the parties participated in a full-day mediation, but they were unable to resolve their dispute. After the mediation attempt, but before the July 15–16, 2003, evidentiary hearing, the Debtor filed another amendment to his schedules and a First Amended Chapter 13 Plan (the "Plan"). See docs. #39 and #40, respectively.

B. The Law of the Case: The Impact of the Court's Decision on FSA's Motion to Dismiss Regarding its Present Determination of Good Faith in Confirming the Debtor's Chapter 13 Plan

As noted above, upon the agreement of parties, the Court bifurcated FSA's Motion to Dismiss from its Objection to Confirmation of Plan, devoting the July 2003 evidentiary hearing to the Motion to Dismiss and tentatively scheduling an evidentiary hearing on confirmation of the Debtor's Chapter 13 Plan for the end of August 2003. Before the beginning of the August 2003 evidentiary hearing, the Court issued a Memorandum of Decision and a corresponding Order denying FSA's Motion to Dismiss based upon its arguments of bad faith under § 1307. In its Memorandum of Decision, the Court found, *inter alia*:

- (1) The filing of a chapter 13 bankruptcy to take advantage of chapter 13's super-discharge is one of the factors a court must consider in determining a debtor's good faith, but it is not a determinative factor. See In re Edwards, 2003 WL 22016324, at *6 (Bankr. D. Vt. Aug. 26, 2003).

- (2) While the Debtor is, in essence, “judgment proof,” he filed the present bankruptcy case to pay FSA a portion of the judgment owed it and discharge the balance. See id. at *6-7. This relief is available under the statute and, thus, does not, without more, demonstrate a lack of good faith. See id. at *6.
- (3) Where it is a close call as to whether a debtor filed his or her chapter 13 plan in good faith, the Court will presume good intentions on the part of the debtor, giving the debtor an opportunity to perform a plan if he or she proposes a plan that meets the requirements of the Bankruptcy Code. See id.
- (4) While there were inaccuracies and omissions in the Debtor’s schedules, they were plausibly explained, and the Debtor did not make them with fraudulent intent. See id. at *9.
- (5) The Debtor did not portray himself to be a dishonest debtor or a debtor seeking to manipulate the bankruptcy system to his own advantage and to the detriment of his creditors. See id.

As the law of this case, these findings provide the starting point for the Court’s consideration and determination of FSA’s Objection to Confirmation of Plan.

C. Additional Findings of Fact

Upon consideration of the record, including the testimony and exhibits entered into evidence during the August 2003 hearings, the Court makes the additional findings, see FED. R. BANKR. P. 7052(a):

- (6) While the parties stipulated that both the Debtor and Mrs. Edwards work on the Farm, based upon Mrs. Edwards’ testimony at the July 2003 hearings, which the Court finds credible, the Court finds: Mrs. Edwards:
 - a. does no farm financial management (e.g., how much it costs to maintain a cow per year; how much the Farm’s regular hired hand was paid);
 - b. is not familiar with the Farm’s vendors and did not know how much money was due them (e.g., the amount due on veterinary bills; the cost of hay for the dairy herd);
 - c. has little or no knowledge about the worth of the Farm’s equipment;
 - d. has insignificant involvement with the dairy herd; and
 - e. is responsible only for the “upstairs animals” only (i.e., a riding horse, approximately a half-dozen chickens, and a rabbit), all of which are extrinsic to the operation of a dairy farm.
- (7) Further, based upon the Stipulated Exhibits submitted, the Court finds that Mrs. Edwards is an “Injured Spouse.” See 2002 U.S. Individual Income Tax Return for Lyle H. Edwards, Jr., and Katherine I. Meagher Edwards, Government Ex. #21. As such, all Farm income and expenses are properly allocated solely the Debtor.
- (8) Similarly, Mrs. Edwards’ income as a registered nurse will be allocated solely to her.

- (9) The transition from conventional milk production to organic milk production occurred during the period from May 2002 until May 2003.
- (10) At the time of the August 2003 hearings, the Debtor had a 50-head dairy herd. However, milk production for the transition year was based upon up to a 54-head dairy herd (T3-143),³ and historically, the Debtor’s average herd size has been 50.7 milk cows.
- (11) The average price for organic milk as of the date of the hearing (\$21.24 cwt.) was – and generally is – higher and more stable than that for conventional (i.e., non-organic) milk.
- (12) Based on the expert testimony of Dr. Richard Wackernagel (the Debtor’s expert), which the Court finds credible, the Farm sold 920,244 pounds of organic milk for the twelve-month transition period from conventional to organic dairy farming, during which time there was a down-turn in the herd’s production because of the transition. (T3-153).
- (13) During the transition year, the average milk produced per cow was 17,462 pounds.
- (14) Under his Plan, the Debtor projects milk income of \$185,446.44 for a one-year period. This figure is based on 50 cows producing an annual average of 17,462 pounds per cow and being sold at \$21.24 cwt.
- (15) FSA takes the position that the Debtor’s organic milk income for the same one-year period is more accurately estimated at \$195,460.
- (16) FSA’s projected milk sale figure is flawed because it is based on an actual milk sold number that was generated from a herd of up to 54 milk cows. While the 920,244 pounds of milk sold is an historically accurate number, it is premised upon the fact that the Debtor’s average herd size was 50.7 cows, and was as large as 54 cows. Since the Debtor currently has a 50-head herd, FSA’s reliance upon a milk production figure premised on a herd of 50.7 to 54 cows is not sound.
- (17) It is prudent to base the projected milk production on the Debtor’s historic average herd-size, i.e., 50.7 milk cows. Thus, the projected milk sale figure to be used is \$188,042.69 or 50.7 milk cows producing 17,462 pounds of milk being sold at \$21.24 cwt for a one-year period.
- (18) Therefore, inserting this milk income figure into the Farm’s budgeted income for the first year of the Debtor’s Plan (i.e., calendar year 2003) means that the total Farm income should be **\$211,251.69**, computed as follows:

³ References to the August 28, 2003, evidentiary hearing transcript shall be cited as “T3-[page number]” and references to the August 29, 2003, continued hearing transcript shall be similarly cited as “T4-[page number].”

Category of Income	Budgeted Amount
Milk Checks	\$188,042.69
MILC	\$ 6,810.00
25 th Milk Check	\$ 2,619.00
Cattle Sales	\$ 13,780.00
Total	\$211,251.69

– *The Farm’s Budgeted Expenses* –

- (19) The Debtor included in his projected farm budget the expenses to be pro-rated between the Farm and the household. The Debtor’s expert, Dr. Wackernagel confirmed that this was an economically sound approach. (T3-163). These expenses include: the mortgages; electricity and heating fuel; telephone charges; insurance costs; and real estate taxes. Since the Debtor presented no persuasive evidence to the contrary and FSA’s pro-ration of these expenses are reasonable, the Court adopts the FSA allocation of these expenses, namely:

Expense (on a yearly basis)	Portion Allocated to Farm	Portion Allocated to Household
Mortgages	\$9,443	\$8,717
Electricity & Heating Fuel	\$5,073	\$1,900
Telephone	\$1,200	\$1,200
Insurance	\$1,350	\$1,350
Real Estate Taxes	\$2,080	\$2,080

- (20) It is most reasonable to pro-rate the accounting cost of \$2,000 equally between the Farm budget and the household budget as Dr. Wackernagle testified that a portion of his and an accountant’s work is for the Farm and a portion is for the household.
- (21) The Debtor’s proposed budget includes a category for major building repairs. The total amount budgeted for this category for a three-year period is \$16,613, which the Debtor proposes to allocate relatively equally between the Farm (\$8,063) and the household (\$8,550). During the August 2003 hearings, FSA suggested a different allocation between the Farm and the household, namely, \$10,614 for the Farm and \$6,000 for the household, with the same \$16,613 total for this category.

- (22) The Court finds that both the total amount proposed by the Debtor and the allocation of this category of expenses equally between the Farm and household to be reasonable. However, since the Debtor has chosen to extend the term of his Plan to four years, the proposed amounts needs to be amortized over this same period. Thus, adjusting the allocation of the costs of major building repairs to a four-year period, the Court finds the Debtor's proposed allocation of major building repairs between the Farm (\$2,015.75 per year for a total of \$8,063) and household (\$2,137.50 per year for a total of \$8,550) to be reasonable.
- (23) The other major source of FSA's objection to the Farm's budget is the Debtor's proposal of allocating approximately \$39,000 for equipment replacement (a/k/a. the "capital expenditure" line item). The Debtor testified that he anticipates acquiring the following equipment under this line item: a used bulk (holding) tank for milk and a used vacuum pump for milking the cows (totaling \$8,400); a used pick-up truck for the Debtor (\$5,775); a used tractor (\$10,000); and a new round bale feeder (\$15,000-\$16,000), for a grand total of \$39,175. FSA objects to the replacement of the tractor and the acquisition of the round bale feeder.
- (24) The Debtor originally proposed that the \$39,175 for these expenditures, the components of which were compiled and verified by Dr. Wackernagel, would be spread out over a 3-year period, making the yearly proposed expense for this line item \$13,058.33. However, with the extension of the Plan to a four-year term, the Debtor is proposing to amortize this \$39,175 expense over the four years, reducing the annual equipment replacement expense to \$9,793.75.
- (25) Historically, the Debtor has spent \$4,600 per year on equipment replacement.
- (26) After filing for bankruptcy relief, the Debtor purchased the bulk tank and vacuum pump for \$8,400 (paying for them in cash). The other items have not been purchased.
- (27) It is reasonable for the Debtor to allocate money in his Farm budget to replace the pick-up truck. The current Farm pick-up is over 20 years old and has over 100,000 miles on it.
- (28) Similarly, the tractor the Debtor proposes to replace is almost fifty years old, the clutch is slipping, the brakes do not function properly and it smokes. Further, the Debtor testified that with the bucket-loader attached, it is not properly balanced. Since the tractor is used to move around the bales of hay fed to the cows, it is necessary for the operation of the Farm that the Debtor have a reliable tractor.
- (29) While the Debtor testified that his current method of feeding the cows is labor-intensive, it is a workable method that he has been using for over three years. Moreover, FSA's expert, Brian Cooper, testified that a round bale feeder is not a typical piece of equipment in Vermont (T4-174). Therefore, the Court finds it is not necessary for the Debtor to allocate funds from his budget for the acquisition of a round bale feeder during the tenure of his Plan.

- (30) Thus, the \$15,000 earmarked for the round bale feeder shall be excluded from the proposed \$39,175 equipment replacement cost, thereby allowing the Debtor to allocate \$24,175 for equipment replacement over the 4-year term of his Plan or \$6,043.75 per year.⁴
- (31) Certain items included in the Farm budget have been completely eliminated and transferred to the household budget, such as the Debtor's child support payments and Mrs. Edwards' pension plan contributions. (Those expenses will be addressed further below.)
- (32) Thus, the expenses for the Farm for the first year of the Debtor's Plan should be no more than **\$173,031.50**, computed as follows:

Allowed Farm Expenses

Item	Budgeted Amount (yearly basis)
Grain	\$ 67,456.00
Hay	\$ 11,750.00
Custom Cropping	\$ 6,200.00
Breeding Fees	\$ 4,600.00
Mortgage Payments	\$ 9,443.00
DHIA	\$ 1,200.00
Electricity & Heating Fuel	\$ 4,400.00
Telephone	\$ 1,200.00
Gas & Oil	\$ 2,200.00
Labor	\$ 11,000.00
Insurance	\$ 1,350.00
Accounting	\$ 1,000.00
Repairs	\$ 7,300.00
Supplies	\$ 8,600.00
Major Building Repairs for Farm	\$ 2,015.75
Vet	\$ 5,800.00

⁴ The Court's finding that the Debtor may allocate only \$6,043.75 per year for equipment replacement does not prohibit the Debtor from acquiring a round bale feeder during the life of his Plan. Rather, the finding limits the amount the Debtor may spend through a four-year chapter 13 plan on equipment replacement. The Debtor may use his yearly allocation for capital expenditures for whichever items of equipment he deems necessary. (Thus, for example, if the Debtor wishes to finance the purchase of a round bale feeder or re-allocate his equipment allocation priorities he may do so, using the allowed \$6,043.75 as he deems most appropriate.)

Seed & Lime	\$ 2,500.00
Custom Hire	\$ 3,382.00
Equipment Replacement	\$ 6,043.75
Milk Hauling	\$ 900.00
Bedding	\$ 4,500.00
Real Estate Taxes	\$ 2,080.00
Misc. & Uncategorized	\$ 1,000.00
Marketing	\$ 3,318.00
Class B Equity	\$ 3,793.00
Total	\$173,031.50

- (33) Given its finding of Farm income of \$211,251.69 and Farm expense of \$173,031.50, the Court finds the Debtor’s projected net income for the first year of his Plan is **\$38,220.19**.

– The Family Budget –

- (34) The Debtor proposes and, for this case only, FSA agrees that, with a few exceptions, the Debtor and his non-debtor wife, Mrs. Edwards, will split the household expenses evenly (*i.e.*, a 50/50 split).
- (35) FSA challenges several expense items on the basis that they are too high, unnecessary or unreasonable: food; laundry and dry cleaning; eye care; child support; vitamins and minerals; pet food; and home repairs.
- (36) With regard to the food costs, the Debtor and Mrs. Edwards testified that they often provide meals to their respective children and grandchildren who visit frequently, and, in light of this explanation, the Court finds the proposed monthly expense of \$700 to be reasonable.
- (37) With regard to laundry and dry cleaning costs, the Debtor testified that he and his wife own their own washer and dryer, do not send their clothes out to be laundered, and generally have no dry cleaning expenses. Moreover, the Debtor testified that he “guessed” his wife bought laundry detergent with the family groceries and that detergent may be included in his line item for grocery expenses. However, the Court finds that, given the Debtor’s and his wife’s respective occupations, it is likely they have a higher than average volume of laundry. Therefore, the Court finds \$31.25 per month (one-half the amount proposed for the Debtor) for a separate laundry expense for the Debtor to be reasonable.

- (38) With regard to eye care costs, the Debtor testified that, upon review of his records, he found that the \$30 per month projected expense for eye care is actually already included in the Debtor's monthly medical expense number, and therefore, the Court sustains FSA's objection to this expense.
- (39) With regard to the child support cost, the Debtor testified that this is his sole expense, that he is required by a state court order to make monthly child support payments of \$175, and that he voluntarily makes additional payments to help his other adult children. This Court does not find that unreasonable. See, e.g., In re Rushlow, 277 B.R. 216, 222 (Bankr. D. Vt. 2002) (within the context of a § 523(a)(15) determination, finding the support of one's children – even when they are over the age of minority – to be a legitimate expense for purposes of computing disposable income).
- (40) With regard to the vitamin and mineral costs, the Court overrules FSA's objection that this expenses is a luxury. To the contrary; the Court is persuaded by the testimony of the Debtor and Mrs. Edwards that using vitamins and minerals has been a sound, prophylactic measure for maintaining the Debtor's health. Since the Debtor is self-employed in a physically demanding occupation, the Court finds the Debtor's monthly vitamin and mineral expense not to be unreasonable.
- (41) With regard to the pet food costs, the Debtor's testimony leads the Court to conclude that the Debtor is unable to state with any reasonable degree of certainty the amount of his monthly pet food expense. The Debtor testified that the \$70 per month figure is a best guess. That is not sufficient to support such a high projected expense. The Court will allow \$30 per month for the pet food expense.
- (42) Finally, with regard to the home repair costs, based upon Mr. and Mrs. Edwards' testimony as to the condition of their home, *i.e.*, that it is an old home that needs work, the Court finds a monthly budgeted amount of \$100 to be reasonable.
- (43) As to the major building repairs for the household, the Court has already found the Debtor's proposed \$8,550 figure acceptable with the caveat that this amount be amortized over the four year term of the Plan now proposed by the Debtor. Consequently, this expense should be no more than \$2,137.50 per year, with the Debtor's annual share being \$1,068.75.⁵
- (44) Thus, the Court finds the allowed household expenses for the Debtor should be no more than **\$22,750.75** per year, computed as follows:

⁵ Originally, when all electric and heating expenses, mortgage expenses and real estate tax expenses were being allocated to the Farm, the Debtor proposed the major building repairs for the household be allocated solely to Mrs. Edwards. However, now that those expenses have been pro-rated between the Farm and the household, it is equitable for the Debtor and Mrs. Edwards to share the major building repair expenses equally between them.

Allowed Household Expenses for the Debtor (in third column)

Item	Total Yearly Amount	Debtor's Share	Mrs. Edwards' Share
Mortgages	\$ 8,717.00	\$ 4,358.50	\$ 4,358.50
Electricity & Fuel	\$ 1,900.00	\$ 950.00	\$ 950.00
Telephone	\$ 1,200.00	\$ 600.00	\$ 600.00
Home Maintenance	\$ 2,400.00	\$ 1,200.00	\$ 1,200.00
Major Building Repairs	\$ 2,137.50	\$ 1,068.75	\$ 1,068.75
Clothing	\$ 250.00	\$ 125.00	\$ 125.00
Food	\$ 8,400.00	\$ 4,200.00	\$ 4,200.00
Laundry/Dry Cleaning *	\$ 1,500.00	\$ 375.00 *	\$ 1,125.00
Medical	\$ 1,900.00	\$ 950.00	\$ 950.00
Recreation	\$ 2,160.00	\$ 1,080.00	\$ 1,080.00
Charitable	\$ 240.00	\$ 120.00	\$ 120.00
Insurance	\$ 1,350.00	\$ 675.00	\$ 675.00
RE Taxes	\$ 2,080.00	\$ 1,040.00	\$ 1,040.00
Class B Equity	\$ 1,897.00	\$ 948.50	\$ 948.50
Child Support *	\$ 3,500.00	\$ 3,500.00 *	\$ 0.00
Eye Care	\$ 0.00	\$ 0.00	\$ 0.00
Vitamins & Minerals	\$ 2,100.00	\$ 1,050.00	\$ 1,050.00
Pet Food *	\$ 1,680.00	\$ 360.00 *	\$ 1,320.00
Haircuts *	\$ 150.00	\$ 150.00 *	\$ 0.00
<i>* Denotes items that are not split equally.</i>	Debtor's Total Share:	\$22,750.75	

(45) Since the Court finds the evidence supports the Debtor has net income of \$38,220.19 from operation of the Farm and \$22,750.75 in household expenses, it holds that the Debtor has approximately \$15,469 of disposable income per year to devote to a chapter 13 plan of reorganization.

VI. BURDENS OF PROOF

A. *Good Faith*

In the context of § 1325(a)(3), once a party in interest interposes a credible challenge to a chapter 13 debtor's good faith, the debtor has the burden of proof to establish his or her good faith. See RUSSEL, BANKRUPTCY EVIDENCE MANUAL, 2001 Ed., § 301.82(D); see also In re Reese, 281 B.R. 735, 739-40 (Bankr. M.D. Fla. 2002).

B. *Devotion of Disposable Income*

A party objecting to the confirmation of a proposed chapter 13 plan premised on an allegation that the debtor is not devoting all of his or her disposable income to payments under the plan bears the initial burden of presenting evidence that the proposed plan does not include all of the debtor's disposable income. See RUSSEL, BANKRUPTCY EVIDENCE MANUAL, 2001 Ed., § 301.80. However, once the objecting party makes this initial showing, the ultimate burden shifts to the debtor to demonstrate that his or her plan complies with the "disposable income" requirement of § 1325(b)(1)(B). See id. (citing In re McNichols, 249 B.R. 160 (Bankr. N.D. Ill. 2000)); see also In re Ehret, 238 B.R. 85, 87 (Bankr. D.N.J. 1999).

VII. DISCUSSION

A. *The Requirement of Good Faith for Plan Confirmation*

This Court has already ruled that § 1325(a)(3) expressly requires a finding of good faith and that such a finding is based on the totality of the circumstances, determined on a case-by-case basis. See French, 2003 WL 21288644, at *5; see also Connelly v. Bath National Bank (In re Connelly), 1995 WL 822677, at *3 (W.D.N.Y. Apr. 13, 1995); In re Corino, 191 B.R. 283, 289 (Bankr. N.D.N.Y. 1995) ("The essence of the totality of circumstances test requires a determination of whether Debtor's conduct evinces a continuum of bad faith as it relates to the Chapter 13 Plan's proposal."); In re Eatman, 182 B.R. 386, 392 (Bankr. S.D.N.Y. 1995) (instructing that the court must review the totality of the circumstances in determining bad faith). In making a determination about good faith:

The central and more pertinent inquiry . . . is whether the debtor came to bankruptcy court seeking a fresh start under Chapter 13 protection with an intent that is consistent with the spirit and purpose of that law—rehabilitation through debt repayment—or with an intent contrary to its purpose—debt avoidance through manipulation of the Code.

In re McGovern, 297 B.R. 650, 660 (S.D. Fla. 2003). In other words, a finding of good faith requires "honesty of intention" by the Debtor. In re Ochs, 283 B.R. 135, 137 (Bankr. E.D.N.Y. 2002) (citing Johnson v. Vanguard Holding Corp. (In re Johnson), 708 F.2d 865, 868 (2d Cir. 1983)).

B. Good Faith in the Instant Case

The Court has considered all the facts and circumstances of this case and the facts and circumstances that preceded this case. In particular, the Court has considered that the Debtor's major unsecured creditor is FSA and that the money the Debtor owes FSA was not dischargeable in the Debtor's prior (chapter 7) bankruptcy case. The Court has also considered that the Debtor is, essentially, judgment proof and that his primary motivation for filing the instant bankruptcy case is to have a portion of his debt to FSA discharged. Further, the Court has considered FSA's arguments that the Debtor's schedules and supporting documentation are, at best, sloppy and, at worst, intentionally misleading. The Court has also weighed the fact that the Debtor proposed a chapter 13 plan of reorganization during a transition from conventional dairy farming to organic dairy farming; and that the central purpose for the Debtor's conversion to organic dairy farming was to generate more income from the Farm.

Based upon the totality of circumstances, the Court is persuaded the Debtor filed his plan in good faith. Finding the Debtor to be credible, the Court also finds the Debtor's desire to repay FSA through his Plan is based on an honesty of intent. See, e.g., French, 2003 WL 21288644, at *5-6 (instructing that the Court will give a debtor the benefit of the doubt in a chapter 13 case where good faith is a close call). Therefore, the Court overrules FSA's Objection to Confirmation of Plan based on its good faith objection.

C. The Commitment of All Disposable Income in General

Where an unsecured creditor objects to a debtor's chapter 13 plan, a court may not confirm the plan unless the unsecured claims are paid in full or the debtor is committing all of his or her projected disposable income to the plan. See § 1325(b)(1); see also In re McNichols, 249 B.R. 160, 168 (Bankr. N.D. Ill. 2000); In re Sutliff 9 B.R. 151, 155 (Bankr. N.D.N.Y 1987). The Bankruptcy Code defines "disposable income" as:

(2) For the purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

§ 1325(b)(2).

As one of our sister bankruptcy courts noted: “[T]he development of a ‘reasonably necessary’ standard in the context of chapter 13 disposable income was left to case law.” In re Sutliff, 79 B.R. at 156. It also astutely observed that “an inquiry into a debtor’s ‘reasonably necessary’ expenses is unavoidably a judgment of values and lifestyles and close questions emerge.” Id. (citing cases finding various expenses to be reasonably necessary). Thus, while acknowledging a preeminent bankruptcy commentator’s urging that “‘court[s] cannot and should not order debtors to alter their lifestyles where there is not obvious indulgences in luxuries . . .,’” id. at 157 (quoting 5 COLLIER ON BANKRUPTCY ¶1325.08 at 1325-49 (14th ed. 1978)), the Sutliff court acknowledged that various Bankruptcy Code sections require bankruptcy judges to make similar findings. See id. (offering §§ 522(d)(10)–(11), 523(a)(8), and 1325(a)(6) as some examples). “These judgments are guided by the court’s sense of equity, which lies at the foundation of all bankruptcy law.” Id. (citations omitted). Thus, in making its disposable income determination, the Sutliff court adopted a “reasonably necessary” standard that examined expenses to determine if they supported a debtor’s basic needs; in other words, it was a standard of “adequacy”. See id. (citing In re Jones, 55 B.R. 462, 466-67 (Bankr. D. Miss. 1985)).

D. The Commitment of Disposable Income in the Instant Case

The Court will address the five arguments FSA has set forth in support of its disposable income objection to the confirmation of the Debtor’s Plan. First, based on the evidence presented, the Court finds the Debtor did understate slightly the amount of his milk income. However, since the Debtor’s projection of milk income was made based on a transition year, the Court finds that this may well have been an honest mistake and that this understatement, alone, does not warrant sustaining FSA’s objection to confirmation of the Debtor’s Plan.

Second, based on its finding that the Debtor and Mrs. Edwards have declared Mrs. Edwards to be an injured spouse and have relied upon that declaration to their benefit, they (the Debtor and Mrs. Edwards) are estopped in this Court from claiming otherwise. Thus, the Court has found all the Farm income and expenses should be allocated to the Debtor in the context of his chapter 13 Plan. Based on the record, the Court finds the current Plan fails to allocate all of the Farm net income to the Debtor. Therefore, the Court sustains that portion of FSA’s objection based upon the Debtor’s proposed allocation of the Farm income.

Third, the Court is persuaded by FSA’s argument that the capital expense line item in the Debtor’s budget is unreasonable and interferes with the Debtor devoting all of his disposable income to the Plan. During the term of the Plan, the Debtor must reduce his capital expenses. The Court finds the evidence supports the Debtor’s acquisition of a bulk tank, vacuum pump, a used pick-up for the Farm operation, and

a used tractor. However, the Court is not convinced that it is essential to the Farm's operation or the funding of the Plan that the Debtor acquire a new round bale feeder during the term of his Plan. Thus, based on the record before it, the Court finds it is reasonable for the Debtor to have a yearly capital expenditure expense of \$6,043.75.⁶ Hence, the Court sustains FSA's objection to the confirmation of the Debtor's current Plan to the extent it asserts that the Debtor has allocated too much to capital expenditures during the four-year term of his Plan.

Fourth, the Court finds the "cushion" in the Debtor's budget to be reasonable given the facts and circumstances of this case. As the chapter 13 trustee accurately observed, dairy farming can be a precarious livelihood, subject to many uncontrollable variables. Further, the Debtor's expert, Dr. Wackernagel, who assisted the Debtor in preparing his Plan, testified that the various line-item cushions were based on historic costs for those types of expenses and reliable, but not necessarily absolutely accurate for the future. Recognizing an inherent level of unpredictability in dairy farming, the Court is not offended by the precautionary cushion built into the Debtor's Plan. Thus, the Court overrules FSA's objection to the Debtor's Plan as it relates to the budget "cushion."

Finally, agreeing with FSA's approach of creating a "clean" Farm budget and a "clean" household budget (in other words, segregating the budgets for the Farm and the household), the Court has examined the Debtor's share of household expenses for reasonableness. Under the facts and circumstances of this case, the Court finds an equal allocation of household expenses (with a few noted exceptions) between the Debtor and his non-debtor spouse, Mrs. Edwards would be both economically and legally sound. Based upon the record, the Court agrees with FSA that the Debtor has not met his burden to prove that all of the household expenses included in his budget are reasonable and necessary. While the Court recognizes that the creation of a budget, by definition, requires a certain amount of estimation, it also finds that such estimates must be founded on reliable data and reasonable presumptions if the budget is to be valid. The Court finds the Debtor has not met his burden of proof that all of the household expenses are reasonable and necessary. Therefore, the Court sustains this aspect of FSA's objection to confirmation, on the ground that the Debtor has not presented a budget which clearly sets forth a proper allocation of income and expenses between the Debtor and his non-debtor spouse (or between the Farm and the household) upon which the Court and creditors can assess the feasibility and sufficiency of the Plan.

⁶ As indicated in its Additional Findings, the Court will refrain from specifying how the Debtor should allocate the equipment acquisition component of his budget. This is a business judgment which the Debtor is in the best position to make.

In its analysis of the Debtor's Plan, the overall numbers in the proposed Plan and budget are not significantly changed.⁷ Rather, through the reallocation of the Farm's net income to only the Debtor; the proration of certain expenses between the Farm and the household, and some reallocations and modifications to the Debtor's share of the household expenses, the Court finds that the Debtor does have disposable income of approximately \$1,280 per month to devote to a chapter 13 plan of reorganization. Accordingly, the Court will not confirm the Debtor's current Plan because it finds the Debtor has not devoted all of his disposable income to the Plan. However, since the Court has found that the Debtor has proposed his Plan in good faith, it will give the Debtor one month to formulate and submit an amended plan, consistent with this Memorandum of Decision, that devotes all his disposable income to a chapter 13 plan.

VIII. CONDITIONS TO BE IMPLEMENTED IN THE DEBTOR'S PLAN

The Court indicated in its Memorandum of Decision denying FSA's Motion to Dismiss that if it were to confirm the Debtor's Plan, confirmation would be subject to specific conditions. See Edwards, 2003 WL 22016324, at *7 n.3, and *9 n.4. In particular, the Court identified the following conditions it would require for confirmation in this case (modified here only to include specific dates for compliance):

- (a) the restructuring of the Debtor's financial record keeping system in a way that segregates the Farm income and expenses from the household income and expenses, from January 1, 2004 forward;
- (b) the establishment of a separate checking account into which all the Farm income will be deposited and from which all Farm expenses will be paid from March 1, 2004 forward; and
- (c) the filing of updated statements of income and expense annually, along with copies of the Debtor's annual state and federal tax returns, all of which shall be served on the U.S. Attorney and chapter 13 Trustee and be filed with the Court by May 15 each year (or within 30 days of when the returns are filed, whichever is later) commencing in spring, 2004.

Any amended plan the Debtor submits for the Court's consideration must be accompanied by an affidavit indicating the Debtor has instituted practices to comply with these three conditions. It should be noted that if the Debtor chooses to continue his chapter 13 case, he should file an amended budget (Schedules I and J) that accurately portray his actual monthly expenses. This ruling is intended only to cap what the Court has found to be a reasonable aggregate of expenses; the line item figures specified are provided primarily to assist the parties in understanding what the Court finds to be reasonable Farm and household expenses for this Debtor, in light of the evidence presented. Similarly, if the Debtor determines that it is essential to the Farm operation that he purchase a round bale feeder, he is not precluded from doing so provided he can do so without exceeding the total allowable expenses articulated above.

⁷ The Court did slightly increase the projected milk sale number in its analysis.

CONCLUSION

Based on the papers filed, the testimony presented at the evidentiary hearing, and the entire record before it, the Court finds the Debtor has established that he filed his chapter 13 Plan in good faith, and that FSA has established that the Debtor has not committed all of his disposable income to the Plan. Therefore, the Court denies confirmation of the Plan currently before it, but does not find that the Debtor is ineligible for chapter 13 relief. If the Debtor wishes to proceed in chapter 13, he must file an amended plan, amended Schedules I and J, and proof of compliance with the three conditions set forth above by March 12, 2004. In that event, the confirmation hearing in this matter shall be set for April 8, 2004, at 1:30 P.M., in Burlington, Vermont.

This Memorandum of Decision constitutes the Court's findings of fact and conclusions of law.

February 12, 2004
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**LYLE H. EDWARDS, JR.,
Debtor.**

**Chapter 13 Case
03-10018**

Appearances:

*Gleb Glinka, Esq.
Glinka & Schwidde
Cabot, VT
For the Debtor*

*Nancy J. Creswell, Esq.
Office of the U.S. Attorney
Burlington, VT
For Farm Service Agency (FSA)*

*Jan Sensenich, Esq.
Chapter 13 Trustee
White River Junction, VT
Pro Se*

ORDER

SUSTAINING, IN PART, AND OVERRULING, IN PART, FSA’S OBJECTION TO CONFIRMATION OF PLAN

In conjunction with the Court’s Memorandum of Decision, of even date, sustaining, in part, and overruling, in part, FSA’s Objection to Confirmation of Plan (doc. # 8);

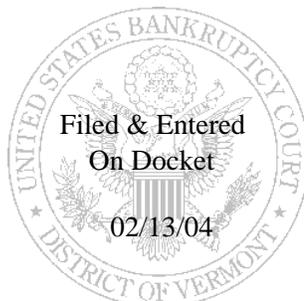
IT IS HEREBY ORDERED that FSA’s objection to confirmation of the Debtor’s Plan (as defined in the Memorandum) on the basis of lack of good faith, pursuant to 11 U.S.C. § 1325(a)(3), is OVERRULED. The Court finds the Debtor has propose his Plan in good faith.

IT IS FURTHER ORDERED that FSA’s objection to confirmation of the Debtor’s Plan on the basis that the Debtor fails to devote all of his disposable income to the Plan, pursuant to 11 U.S.C. § 1325 (b)(1)(B) is SUSTAINED. Based on the record before it, the Court finds the Debtor has failed to devote all of his disposable income to the Plan.

IT IS FURTHER ORDERED that there has been no determination that the Debtor is ineligible for chapter 13 relief, and if he wishes to continue with his chapter 13 case, he must submit an amended plan and amended Schedules I and J, and the affidavit of compliance, consistent with the Court’s Memorandum of Decision, by March 12, 2004. The Debtor shall set the hearing for confirmation of said amended plan for April 8, 2004, at 1:30 P.M., in Burlington, Vermont, unless the parties stipulate to a different date.

SO ORDERED.

February 12, 2004
Rutland, Vermont



A handwritten signature in cursive script, appearing to read "Colleen A. Brown".

Colleen A. Brown
United States Bankruptcy Judge