

faith" pursuant to Section 1325(a)(3). Id. at 147-8. The court's analysis utilizes eleven, nonexclusive, factors to be considered in determining "good faith."⁽¹⁾ Of these factors, this court finds that only two are of particular relevance to this case. One, the amount of the proposed payments and the debtors' surplus; two, the probable and expected duration of the plan.

The amount of debt to be paid in this case is \$10,518. The percentage of unsecured debt to be re-paid is approximately two percent. The plan also proposes to immediately sell 5,000 shares of stock in a family corporation. Proceeds from the sale will be distributed pro rata to unsecured creditors. Any money realized from the sale will be in addition to the two percent specified in the plan. In Flygare, the Tenth Circuit found that the proposed three percent payment on unsecured debt in debtors' previous plan was not a per se indication of bad faith. Id. at 1348. Similarly, the court referred approvingly to Goeb v. Heide, (In re Goeb), 675 F.2d 1386 (9th Cir. 1982), where a plan proposing to pay only one percent to unsecured creditors was held not to be per se evidence of bad faith.

(1) The eleven factors adopted by the Tenth Circuit in Flygare are as follows: (1) the amount of the proposed payments and the amount of the debtor's surplus; (2) the debtor's employment history, ability to earn and likelihood of future increases in income; (3) the probable or expected duration of the plan; (4) the accuracy of the plan's statement of the debts, expenses and percentage repayment of unsecured debt and whether any inaccuracies are an attempt to mislead the court; (5) the extent of preferential treatment between classes of creditors; (6) the extent to which secured claims are modified; (7) the type of debt sought to be discharged and whether any such debt is non-dischargeable in Chapter 7; (8) the existence of special circumstances such as inordinate medical expenses; (9) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act; (10) the motivation and sincerity of the debtor in seeking Chapter 13 relief; and (11) the burden which the plan's administration would place upon the trustee. Flygare, supra, at 1347-8.

In analyzing "good faith" under the Flygare decision, the percentage of proposed payments to unsecured creditors must be considered simultaneously with the amount of debtors' income. In re Dalby, No. 82C-02533, slip op. at 6 (Bkcy. Utah Feb. 20, 1984). In the present, the debtors' plan calls for the dedication of \$240 a month, or 91% of their total monthly surplus income to repayment of unsecured creditors. This court finds that debtors' proposed dedication of 91% of their surplus income to repayment of unsecured creditors weighs in favor of confirmation.

The expected duration of the plan is for 47 months, or, approximately four years. The Tenth Circuit has implied that a five-year plan is indicative of "good faith." Dalby, supra, at 11. However, a plan of less than five years, with a two-percent repayment to creditors, does not, in the absence of some other inculcating factor, require a finding of lack of "good faith." Rather, the bankruptcy court must determine "good faith" by a case-by-case inquiry based on the unique facts and circumstances of each individual case. Flygare, supra, at 1347.

In this case the debtors' proposal is well in excess, both in terms of duration and of percentage of surplus allocated, to the plans which the Circuit Court referred to as examples of plans not proposed in "good faith." For example, in the case of In re Tanke, 4 B.R. 339 (Colo. 1980), confirmation was denied where a plan proposed to pay "only" 40% of debtor's surplus income. And, in In re Estus, 695 F.2d 709 (8th Cir. 1982), although the debtor proposed to disburse 99% of his surplus to the trustee, the order of confirmation was reversed, in part, because the proposed duration of the plan was a bare 15 months. See In re Dalby, supra, (finding lack of good faith where debtor planned to pay only 40% of his surplus income for just 36 months).

It should be noted that unlike Dalby and Estus, in this case debtors are not attempting to discharge through Chapter 13 any

debts which would not also be dischargeable under Chapter 7. Further, this court notes that, although the unsecured creditors will only receive a two-percent payment, there is the possibility that a somewhat greater return will be realized due to the pending sale of the 5,000 shares of stock. In any event, as required by 11 U.S.C. Section 1325(a)(4), the unsecured creditors will receive more under the plan than the amount that would be paid on their claims if the case were liquidated under Chapter 7.

Applying the analysis adopted by the court in Flygare, this court finds that debtors' plan, which proposes to repay two-percent to unsecured creditors, by dedicating 91% of debtors' surplus monthly income, for a duration of 47 months, satisfies the requirement that a plan be "proposed in good faith" under 11 U.S.C. Section 1325(a)(3).

Further, upon the proceedings had before me, the parties having been afforded full opportunity to be heard, the court having considered the debtors' proposed plan on file herein, and the plan satisfies the requirements for confirmation pursuant to 11 U.S.C. Section 1325(a); accordingly, it is

ORDERED that the debtors' plan be, and hereby is, confirmed.

DATED this 20 day of August, 1984.

BY THE COURT

Harold J. Mai
United States Bankruptcy Judge