

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

IN RE: MATTHEW W. PARCHMAN

**4:02-bk-11861 E
CHAPTER 13**

ORDER DENYING MOTION TO DISMISS

On July 30, 2002, the Court heard International Fidelity Insurance Company's Motion to Dismiss Debtor Matthew W. Parchman's Chapter 13 case. International Fidelity Insurance Company ("IFIC") appeared through its attorney, James Dowden, Esq. Debtor appeared through his attorney, Michael Knollmeyer, Esq. The standing Chapter 13 Trustee, Joyce B. Babin, Esq., was also present. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), and the Court has jurisdiction to enter a final judgment in this case.

IFIC filed its Motion to Dismiss Debtor's Chapter 13 plan on May 2, 2002, alleging that Debtor filed the Chapter 13 bankruptcy in bad faith. Debtor previously filed a Chapter 7 bankruptcy in which IFIC obtained a nondischargeable judgment against Debtor by consent order. Debtor received its Chapter 7 discharge on November 29, 2001, and filed this Chapter 13 bankruptcy on February 19, 2002. IFIC asserts that Debtor's only purpose in filing the Chapter 13 plan is to discharge IFIC's nondischargeable judgment at the completion of Debtor's five-year Chapter 13 plan.

Debtor argues that IFIC's motion should be denied because Debtor's plan was confirmed on July 16, 2002, and serves as *res judicata* as to any issue of good faith raised in IFIC's Motion to Dismiss. IFIC did not file an objection to the plan's confirmation and has not appealed the order

confirming Debtor's Chapter 13 plan. Debtor further argues that Debtor's plan was filed in good faith following collection efforts by two other secured creditors against him as well as IFIC.

The Court finds that IFIC's failure to object to Debtor's Chapter 13 plan during the confirmation process bars it from litigating the issue of good faith in a Motion to Dismiss. Because good faith is a requirement for confirmation of a Chapter 13 plan, the issue is necessarily determined by the confirmation order and has *res judicata* effect. *See* 11 U.S.C. § 1325(a)(3); 11 U.S.C. § 1327(a). While IFIC's Motion to Dismiss was filed prior to the confirmation of Debtor's Chapter 13 plan, confirmation of the plan prior to the hearing on the Motion to Dismiss precludes an analysis of the good faith issue. *See U.S. v. Tucker*, 1996 WL 741510 (M.D. Fla.) (court denied creditor's motion for summary judgment on issue of good faith where Chapter 13 plan was confirmed while creditor's motion to dismiss for lack of good faith was pending). *See also* 8 Collier on Bankruptcy, s. 1327.02[1][a]. Because IFIC's Motion to Dismiss was heard after confirmation of Debtor's Chapter 13 plan, it is hereby

ORDERED that IFIC's Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE: _____

cc: Mr. Michael Knollmeyer, attorney for Debtor
Mr. James F. Dowden, attorney for IFIC
Ms. Joyce B. Babin, Chapter 13 Trustee
U.S. Trustee