February 1962

Bankruptcy--Chapter XIII Wage Earners' Plans

Charles Henry Rudolph Jr.
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Bankruptcy Law Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol64/iss2/5

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.
CASE COMMENTS

Bankruptcy—Chapter XIII Wage Earners' Plans

The debtor had elected to submit a plan to his creditors under Chapter XIII of the Bankruptcy Act. It soon became apparent to the debtor that the plan was not feasible, and, although not in default under the plan, he filed a voluntary petition for a general adjudication in bankruptcy. The United States District Court for the District of Kansas entered an order honoring the voluntary petition. The trustee under the wage earner plan appealed, contending that once a proceeding under Chapter XIII was pending, no other type of bankruptcy could be invoked. Held, affirmed. The bankruptcy court was not prevented, in a wage earner plan proceeding, from entering a general adjudication of bankruptcy when it became apparent that attempted solutions would fail even though the debtor was not actually in default under the wage earner plan. Rice v. Mims, 291 F.2d 823 (10th Cir. 1961).

Chapter XIII was added to the Bankruptcy Act by the Chandler Act in 1938. The general objective of Chapter XIII is to provide
a means through which wage earners can effectuate a composition with their creditors, or gain an extension of time in which to pay, or both. Great elasticity is permitted in the terms and manner of carrying out any plan so devised. 9 Remington, Bankruptcy § 3747 (6th ed. 1955). Liquidation of the debtor's property is not contemplated under Chapter XIII, rather the future earnings of the debtor are submitted to the supervision and control of the court for the purpose of enforcing the plan. 9 Collier, Bankruptcy § 24.01 (14th ed. 1942).

In order to be eligible to file a petition under Chapter XIII, the debtor must meet certain requirements. Although there formerly was a dollar limit on the debtor's annual income, a 1959 amendment makes it sufficient if the debtor's "... principal income is derived from wages, salary or commissions." 11 U.S.C.A. § 1006 (Supp. 1960). Also, the petitioner must state that he is either insolvent or unable to pay his debts as they mature. 11 U.S.C. § 1023 (1940).

Of the approximately 98,000 filings in bankruptcy for the fiscal year 1960 by employees and other nonbusiness groups, only 13,599 were wage earner proceedings under Chapter XIII. 1960 Director of the Administrative Office of United States Courts Ann. Rep. 165. In the Federal District Courts of West Virginia, Chapter XIII proceedings were used only thirty-one times in the fiscal year 1960. 1960 Director of the Administrative Office of United States Courts Ann. Rep. Table F2.

The obvious question, then, is: why is Chapter XIII so rarely used? Several reasons have been advanced, the chief of which is the fact that the debtor and the bar are generally unaware of the chapter's existence, or, at least, are unfamiliar with its provisions and procedures. Banks, The Forgotten Remedy: Wage Earners' Plans Under the Bankruptcy Act, 33 N.C.L. Rev. 439 (1955); Nadler, Relief for Wage Earners: A New Way to Pay Old Debts, 60 Com. L.J. 33 (1955). Another, and more valid, reason for not using Chapter XIII is that the proceedings are often too complicated and expensive. However, it has been suggested that the use of standardized, simplified forms and procedures, as have been effectively used in Kansas, minimizes both the cost and the complications. Rice, Practical Applications of Wage Earners' Plans, 28 J.B.A. Kan. 165 (1959).
The advantages of Chapter XIII to the debtor are impressive: (1) the debtor avoids the stigma attached to straight bankruptcy; in fact, a petitioner under Chapter XIII is not adjudicated a bankrupt, but is referred to as a debtor; 11 U.S.C. §§ 1002, 1006 (1940); (2) the remedy is flexible so as to meet the debtor's individual needs; 11 U.S.C. § 1046 (1940); (3) Chapter XIII results in the coercion of a minority of disapproving unsecured creditors; 11 U.S.C. § 1052 (1940); (4) the debtor's executory contracts may be rejected; 11 U.S.C. § 1013 (1940); and, (5) garnishment actions are voidable since the court has all jurisdiction over the debtor's assets and future earnings; 11 U.S.C. §§ 1011, 1058 (1940).

While Chapter XIII is designed for the wage earner-debtor, it is also of advantage to creditors. Chapter XIII contemplates full, or nearly full, payment of the debts; this is in contrast to straight bankruptcy which contemplates the liquidation of assets and the pro rata distribution of the proceeds therefrom which may or may not approximate full payment. Also, it is believed that the use of Chapter XIII can protect the existing creditors from inroads on the future earnings by subsequent creditors. Rice, Practical Applications of Wage Earners' Plans, 28 J.B.A. KAN. 165, 173 (1959).

The decision in the principal case probably should be recognized as a correct analysis of Chapter XII's provisions. The Bankruptcy Act provides that a debtor can not be adjudged a bankrupt during a Chapter XIII proceeding except in certain instances including default in the terms of the Chapter XIII plan. 11 U.S.C. §§ 1066, 1068 (1940). But, when it is clearly obvious that default under the plan is imminent, then to require such a default before honoring the voluntary petition in straight bankruptcy would be to require a useless act. This case would appear to be an illustration of the fact that Chapter XIII cannot succeed when the petitioner is hopelessly indebted, but it is the hope of Chapter XIII that such situations are not prevalent.

The alternatives to Chapter XIII do not appear to be very helpful. The debtor might consolidate his debts by a small loan, but if his debts are so large that he cannot pay them as they mature, then it is probable that he will not be able to repay the loan, disregarding any consideration of the interest involved. He might try individually to adjust his debts, but such private adjustments lack the coercive features of Chapter XIII. Or, he might file straight bankruptcy, but it would appear that the typical debtor does want
to pay his debts in full, and he does not want his reputation to suffer by his becoming known as a bankrupt. Chapter XIII seems to avoid these major pitfalls, and it seems to be a logical and sensible solution to the harassed debtor's problems in the typical case.

Charles Henry Rudolph, Jr.

Constitutional Law—Protected Freedoms and Rights—Enforced Organization Dues

Two recent decisions of the Supreme Court of the United States present identity of issues which the dissimilarity of aggrieved parties, a group of Georgia railway workers and a Wisconsin lawyer, fails to obscure.

In *International Ass'n of Machinists v. Street*, 81 Sup. Ct. 1784 (1961), the majority of the Court relied on legislative history and the doctrine of avoiding constitutional questions to construe the Railway Labor Act § 2, Eleventh, 64 Stat. 1238 (1951), 45 U.S.C. § 152, Eleventh (1952), as not affording authority to a union to use the employees' dues in financing political causes opposed by them where membership was compelled by a union shop contract. In deciding this case, the justices divided as to whether the constitutional issue was properly avoided. In *Lathrop v. Donohue*, 81 Sup. Ct. 1826 (1961), the Court in a seven to two decision affirmed the judgment of the Wisconsin Supreme Court, holding the integrated bar of that state constitutional, and dismissed the appeal. However, the Court reserved opinion on whether compulsory contribution by a lawyer to an integrated bar, which financially supported political activities opposed by him, was constitutional. The basis of the decision was the failure of the record to present with sufficiency or clarity political activities supported by the state bar which the complainant opposed.

The question of law posed by these two cases and first suggested five years before in *Railway Employees' Dep't v. Hanson*, 351 U.S. 225 (1956), ostensibly remains undecided. The *Hanson* case, like the *Street* case, developed when a group of railway employees contested the constitutionality of the union shop provision of the Railway Labor Act, *supra*, but, unlike the *Street* case, it was brought before the railway workers of the particular state had