

MAR 12 2008

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No. AZ-07-1317-PaJuK
)	
7	JEFFREY A. KING and JOYCE)	Bk. No. 06-04089
	L. KING,)	
8)	
	Debtors.)	
9)	
	_____)	
10	JOSEPH P. ROCCO,)	
)	
11	Appellant,)	
)	
12	v.)	MEMORANDUM¹
)	
13	JEFFREY A. KING and JOYCE)	
	L. KING,)	
14)	
	Appellees.)	
15)	
	_____)	

Argued and Submitted on February 21, 2008
at Phoenix, Arizona

Filed - March 12, 2008

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable James M. Marlar, Bankruptcy Judge, Presiding

Before: PAPPAS, JURY, and KLEIN, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 Creditor Joseph P. Rocco ("Rocco") appeals the bankruptcy
2 court's order denying his motion to dismiss the chapter 13²
3 bankruptcy case, and the order confirming the plan, of debtors
4 Jeffrey A. King ("King") and Joyce L. King (collectively
5 "Debtors"). We AFFIRM.

6
7 **FACTS**

8 Rocco and King were formerly law partners. For reasons not
9 appearing in the record,³ the partnership dissolved. Rocco,
10 alleging that King owed him money pursuant to an oral agreement
11 to share overhead and operating expenses for their law firm, sued
12 King in Arizona state court. On November 7, 2006, Rocco was
13 awarded a judgment against King for \$64,192.25. King appealed
14 the state court judgment to the Arizona Court of Appeals (the
15 "State Appeal").

16 Soon after the judgment was entered, Rocco attempted to
17 enforce the judgment by serving several garnishments. Some of
18 the garnishments were answered, and some amounts have been held
19 by the garnishees, but were not remitted to Rocco.

20 On December 5, 2006, Debtors filed a chapter 13 petition and
21 accompanying schedules. They also filed a proposed chapter 13
22 plan, although the filing date is unclear. Their proposed plan
23 provides for full payment of all allowed claims, including

24 _____
25 ² Unless otherwise indicated, all chapter, section and rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

27 ³ The record is somewhat sparse. Debtors filed excerpts of
28 the record; Rocco did not, a violation of Rule 8009(b).

1 Rocco's judgment.⁴

2 On January 18, 2007, Debtors filed an Application to Employ
3 Special Counsel to prosecute the State Appeal; on January 22,
4 2007, Debtors filed a motion for relief from the automatic stay
5 to allow the State Appeal to proceed.⁵ Rocco objected to both
6 motions, but each was granted.

7 On February 9, 2007, Rocco filed an objection to
8 confirmation of Debtors' chapter 13 plan. Rocco argued that the
9 Debtors' plan failed to disclose certain transfers of property
10 out of the bankruptcy estate, that Debtors would be subject to
11 additional attorney's fees and costs if the State Appeal proved
12 unsuccessful, and that Debtors failed to establish that certain
13 tax obligations to be paid under the plan had actually been
14 assessed.

15 On June 20, 2007, Rocco filed a motion to dismiss Debtors'
16 case based upon their alleged pre- and post-petition bad faith.
17 Specifically, Rocco cited the following as evidence of King's bad
18

19 ⁴ According to Debtors' bankruptcy schedules, the balance
20 due on the Rocco judgment at the time the petition was filed was
\$73,952.

21 ⁵ On January 5, 2007, Rocco had filed his own motion for
22 relief from the automatic stay so that he could pursue collection
23 efforts. Debtors opposed the motion. The bankruptcy court
24 denied Rocco's motion. The court reasoned that the "automatic
25 stay is one of the most fundamental protections in bankruptcy
26 cases. . . ." which prevents "a 'race to the courthouse' and a
27 piecemeal dismemberment of a debtor's estate." The court was not
28 persuaded that Rocco had shown adequate cause under § 362(d)(1),
and declined to allow stay relief "which would allow a single
unsecured creditor to (1) deplete the Debtors' estate for its
sole benefit, and (2) prefer itself over the pro rata payment
policy implicit in a chapter 13 term payout." The bankruptcy
court's order was not appealed.

1 faith: 1) Debtors had the means to pay all creditors without a
2 plan, and hence the bankruptcy filing was unnecessary and done
3 solely as a delay tactic; 2) the filing was an attempt to
4 circumvent the state law requirement that King file a supersedeas
5 bond securing Rocco's judgment during the State Appeal; 3) King
6 made false statements and claims both post-petition and during
7 the state court litigation; and 4) Debtors failed to produce
8 their 2002 and 2005 tax returns when ordered to do so.

9 Thereafter, on July 24, 2007, the bankruptcy court conducted
10 an evidentiary hearing concerning both plan confirmation and
11 Rocco's motion to dismiss. King testified, and Debtors submitted
12 several documentary exhibits into evidence. Although Rocco
13 cross-examined King, he offered no additional evidence. At the
14 conclusion of the hearing, the bankruptcy court took the issues
15 under advisement.

16 The bankruptcy court entered its Memorandum Decision on
17 August 16, 2007 ("Memorandum"). It found that Debtors' chapter
18 13 petition and plan had each been filed in good faith.
19 Specifically, the bankruptcy court found that the secured claims
20 on Debtors' residence would be paid in the normal course outside
21 of the plan; that unsecured creditors would receive 100 percent
22 of their claims; that most of Debtors' assets were exempt or
23 otherwise not subject to liquidation, such that in a liquidation
24 proceeding, unsecured creditors would receive only 17-33 percent
25 of the value of their claims; that Rocco's post-judgment
26 collection activities prompted Debtors' bankruptcy filing; that
27 the bankruptcy filing was a method by which Debtors could pay
28 their creditors 100 percent of their claims, while retaining both

1 exempt and non-exempt assets and not be subject to the "ongoing,
2 emotionally draining" collection activities; and, finally, that
3 filing the bankruptcy petition would allow Debtors to "continue
4 to prosecut[e] an appeal of the state court judgment held by Mr.
5 Rocco, without posting a supercedeas [sic] bond. Instead the
6 automatic stay of 11 U.S.C. § 362(a) serves that purpose."
7 Memorandum at 2-3. The bankruptcy court considered each of the
8 eleven "good faith factors" announced in Fid. & Cas. Co. of N.Y.
9 v. Warren (In re Warren), 89 B.R. 87 (9th Cir. BAP 1988), as well
10 as the four factors announced in Leavitt v. Soto (In re Leavitt),
11 171 F.3d 1219, 1224 (9th Cir. 1999), and concluded that all
12 requirements for confirmation of Debtors' plan were satisfied.

13 In an order entered on August 16, 2007, the bankruptcy court
14 denied Rocco's motion to dismiss and confirmed Debtors' chapter
15 13 plan. Rocco filed a timely appeal on August 27, 2007.

16

17 JURISDICTION

18 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
19 §§ 1334 and 157(b) (2) (A) and (L). The Panel has jurisdiction
20 pursuant to 28 U.S.C. § 158.

21

22 ISSUES

23 I.

24 Whether the bankruptcy court abused its discretion when it
25 declined to dismiss Debtors' chapter 13 case for bad faith.

26 II.

27 Whether the bankruptcy court abused its discretion in
28 confirming Debtors' chapter 13 plan.

1 Rocco's sole challenge to confirmation of Debtors' plan is
2 his contention that their petition was filed in bad faith, which
3 would taint any proposed plan. As he stated to the bankruptcy
4 court,

5 [M]y position is that this is a motion to
6 dismiss the bankruptcy for a bad faith filing
7 of the bankruptcy itself. My attack is not on
8 the plan itself. . . . [M]y objection is not
to the plan. My position is not regarding the
plan. My position is that the Chapter 13 was
filed as a bad faith litigation tactic. . .

9 Tr. hr'g at 5:9 - 11 and 47:23 - 48:1 (emphasis added). Rocco
10 reaffirmed this position at oral argument. As a result, in this
11 case, resolution of Rocco's bad faith argument is determinative
12 of both the dismissal and confirmation issues.⁶

13 Furthermore, under our case law, the analytical steps are
14 the same for evaluating the good faith of the debtor for both the
15 issues of dismissal and denial of confirmation:

16 [Goeb v. Heid (In re Goeb), 675 F.2d 1386,
17 1391 (9th Cir. 1982)] involved a determination
18 of good faith in the context of confirmation
19 of a chapter 13 plan. "To determine if a
20 petition has been filed in bad faith courts
are guided by the standards used to evaluate
whether a plan has been proposed in bad
faith."

21 Ho, 274 B.R. at 876 (quoting Eisen, 14 F.3d at 470).

22 To determine whether a chapter 13 petition has been filed in
23

24 ⁶ The Panel acknowledges that it is at least conceivable,
25 in the face of a debtor's bad faith, that confirmation may be
denied, but the case not dismissed. Marrama v. Citizens Bank of
26 Mass., ___ U.S. ___, 127 S.Ct. 1105, 1112 n.11 (2007) (observing
27 that "[b]ecause dismissal is harsh . . . the bankruptcy court
should be more reluctant to dismiss a petition . . . for lack of
28 good faith than to reject a plan for lack of good faith under
Section 1325(a)") (quoting In re Love, 957 F.2d 1350, 1356 (7th
Cir. 1992)).

1 bad faith, a bankruptcy court must consider the "totality of the
2 circumstances." Eisen, 14 F.3d at 470 (quoting Goeb, 675 F.2d at
3 1391). The court "must make its good-faith determination in the
4 light of all militating factors." Goeb, 675 F.2d at 1390. "We
5 emphasize that the scope of the good-faith inquiry should be
6 quite broad." Id. at n.9. To this end, a bankruptcy court
7 should consider the following factors: (1) whether the debtor
8 misrepresented facts in his or her petition or plan, unfairly
9 manipulated the Bankruptcy Code or otherwise filed the chapter 13
10 petition or plan in an inequitable manner; (2) the debtor's
11 history of filings and dismissals; (3) whether the debtor's only
12 purpose in filing for chapter 13 protection is to defeat state
13 court litigation; and (4) whether egregious behavior is present.
14 Leavitt, 171 F.3d at 1224.⁷

15 II.

16 Rocco argues that Debtors commenced this chapter 13 case
17 solely as a litigation tactic. He notes that the bankruptcy
18 filing enabled Debtors to avoid posting a supersedeas bond,
19 required by state statute to secure the state court judgment
20 while on appeal. Rocco insists that utilizing a bankruptcy
21 filing for this purpose amounts to bad faith, and therefore,
22 either the case must be dismissed or confirmation of the proposed
23 plan denied, or both.

24
25 ⁷ In its decision, the bankruptcy court correctly noted
26 that the eleven-point test announced by the BAP in Warren, 89
27 B.R. at 93, has never been expressly adopted by the Ninth
28 Circuit. Rather, over a decade after Warren, the circuit
announced its own four-pronged test in Leavitt. 171 F.3d at
1224. The bankruptcy court weighed the facts of this case under
both tests.

1 For support, Rocco cites Marsch v. Marsch (In re Marsch), 36
2 F.3d 825 (9th Cir. 1994). He argues that Marsch stands for the
3 proposition that use of a chapter 13 bankruptcy filing as a
4 litigation tactic to avoid posting an appeal bond is prohibited.⁸
5 Though not explicitly arguing that the totality of the
6 circumstances test does not apply, Rocco suggests that this one
7 consideration must, in this instance, trump all other factors.

8 In Marsch, Carol Marsch obtained a judgment against John
9 Marsch in their divorce action in state court. Acting pursuant
10 to that judgment, John Marsch transferred certain shares of stock
11 to Carol Marsch. The state appellate court reversed the judgment
12 and remanded the case for further proceedings. The state trial
13 court thereafter issued a tentative decision requiring Carol
14 Marsch to return the value of the stock and instructed John
15 Marsch's counsel to prepare a formal judgment for restitution.
16 Before the court entered the proposed judgment, Carol Marsch
17 filed a chapter 11 petition.

18 John Marsch moved to dismiss the petition, arguing that
19 Carol Marsch filed the bankruptcy case in bad faith solely to
20 avoid paying the restitution judgment or posting an appeal bond.
21 The bankruptcy court agreed, dismissed the petition, and
22 sanctioned Carol Marsch and her counsel pursuant to Rule 9011
23 because "neither the debtor nor her attorney could have formed a
24 reasoned belief that the filing was well grounded in fact,
25 warranted by existing law or a good faith argument for the
26

27 ⁸ To be precise, in Marsch, the debtor sought relief under
28 chapter 11, not chapter 13, of the Bankruptcy Code. That
distinction is not significant in this case, however.

1 extension, modification, or reversal of existing law, or that it
2 was filed for a proper purpose." Marsch, 36 F.3d at 827. On
3 appeal, the BAP held that the bankruptcy court abused its
4 discretion in dismissing the petition for bad faith and in
5 awarding sanctions.

6 The Ninth Circuit reversed. It noted that courts have
7 dismissed cases that had been filed by debtors for a variety of
8 tactical reasons unrelated to reorganization. Marsch, 36 F.3d at
9 828. "One limitation some courts have implied under section
10 1112(b) involves Chapter 11 cases filed to stay a state court
11 judgment against the debtor pending appeal." Id. (emphasis
12 added). However, the Circuit declined to adopt this limitation,
13 stating, "[w]e need not decide whether bankruptcy laws can be
14 used to skirt state court procedural rules in this manner." Id.
15 at 829. Rather, in Marsch, the Circuit answered only the narrow
16 question of whether the bankruptcy court's finding of bad faith
17 was clearly erroneous.⁹

18 The bankruptcy court had found that Carol Marsch's petition
19 was filed in bad faith and was not a legitimate invocation of the
20 bankruptcy laws. The court found that she had the financial
21 means to pay the judgment, but that she filed the chapter 11
22 petition solely to delay collection of the restitution judgment
23 and to avoid posting an appeal bond. Moreover, the court found
24

25 ⁹ The scope of its review was clearly explained by the
26 court: "We review for abuse of discretion the bankruptcy court's
27 decision to dismiss a case as a 'bad faith' filing. Stolrow v
28 Stolrow's (In re Stolrow's, Inc.), 84 B.R. 167, 170 (9th Cir. BAP
1988). We review the finding of 'bad faith' for clear error.
See In re Eisen, 14 F.3d 469, 470 (9th Cir. 1994)." Marsch, 36
F.3d at 828.

1 that because Carol Marsch was not involved in a business venture,
2 the judgment did not pose any danger of disrupting business
3 interests. Id. Because the court of appeals concluded that the
4 bankruptcy court's "factual findings are clearly supported by the
5 record[,] the bankruptcy court thus correctly held that the
6 debtor's petition was filed in bad faith" and therefore
7 dismissal was proper. Id.

8 Marsch does not compel a similar outcome in this case. As
9 noted above, the scope of a bankruptcy court's good faith inquiry
10 is necessarily broad. While a debtor's resort to bankruptcy to
11 improve his or her position in pending litigation is relevant to
12 the analysis, that single factor is not determinative in
13 resolving the good faith issue. In re Powers, 135 B.R. 980, 992
14 (Bankr. C.D. Cal. 1991) ("No one factor predominates in finding
15 bad faith").

16 Rocco refers to the "legion of cases citing [Marsch]" with
17 approval, but fails to explain the relevance and utility of those
18 decisions in the instant appeal.¹⁰ See Brief of Appellant Joseph
19

20 ¹⁰ Though Rocco is technically correct in that these cases
21 all cite Marsch, it is difficult to understand how that fact
22 alone assists him here. For example, one of the cases listed by
23 Rocco, In re Serano, 222 B.R. 251 (Bankr. E.D. Pa. 1998), cites
24 Marsch solely because it found that because FED. R. Civ. P. 11 and
25 Rule 9011 have similar language, courts often rely on cases
26 interpreting the former when construing the latter. Id. at 254.
27 Serano did not deal with the lack of good faith in filing a
28 bankruptcy petition, but rather examined sanctions for other
improper conduct. (Interestingly, Serano was withdrawn from the
bound volume of the Bankruptcy Reporter at the request of the
court). Another of the cases cites Marsch only because it
indicated that the clearly erroneous standard applies in
reviewing findings of bad faith - a standard with which we do not
disagree. Melkersen v. Ray Const. Co., 315 B.R. 45, 48 (D. Md.
2004).

1 P. Rocco at 22-23; Reply Brief of Appellant Joseph P. Rocco at
2 14. Aside from the fact that none of the cited cases originate
3 with either the Supreme Court, the Ninth Circuit Court of
4 Appeals, or the BAP (and therefore are not binding on this
5 Panel), Rocco fails to appreciate that in determining whether a
6 petition is filed in good faith, a bankruptcy court must consider
7 the totality of the circumstances. While many of these cases
8 include as a common thread the interjection of a bankruptcy
9 filing while state court litigation between the parties is
10 pending, which filing therefore stays the state court action and
11 avoids the necessity of a supersedeas bond, that fact alone was
12 not dispositive of the question of bad faith in filing.

13 Rocco argues that one such case, In re Collins, 250 B.R. 645
14 (Bankr. N.D. Ill. 2000), requires a finding that Debtors'
15 petition was "merely a litigation tactic and therefore, filed in
16 bad faith." Reply Br. at 13. In that case, the bankruptcy court
17 ultimately found that the debtor was attempting to use the
18 bankruptcy process for an improper purpose. However, that court
19 cautioned "[t]he mere fact that [Debtor] achieved the protection
20 of the automatic stay does not mean that he filed for an improper
21 purpose." Collins, 250 B.R. at 663. The court reasoned that the
22 debtor "did not merely invoke the shield of the automatic stay"
23 but rather "converted it to a sword for the sole purpose of
24 frustrating a single creditor whom he is able, but unwilling to
25 pay." Id.

26 Here, the bankruptcy court found that Debtors did not file
27 their petition for an improper purpose, or in Collins' words,
28 they did not attempt to use the bankruptcy process as a "sword."

1 Rather, the bankruptcy court found that Debtors filed the
2 petition to avoid the emotional turmoil associated with Rocco's
3 aggressive collection efforts, and as a means to pay their debts
4 in full through the chapter 13 plan. In contrast to the debtor
5 in Collins who was able, but unwilling to pay his creditor,
6 Debtors are willing, but are unable to pay Rocco and their other
7 creditors - at least immediately - with Rocco seeking to seize
8 their income and assets. In this case, Debtors' chapter 13 plan
9 provided the necessary vehicle to allow Debtors to pay all their
10 creditors, not just Rocco, in full. The bankruptcy court
11 explained, "[t]hat a side benefit of the [bankruptcy filing] is
12 to gain the automatic stay does not lessen the legitimate aim of
13 retaining assets while paying debt in full, over time."
14 Memorandum at 8. The bankruptcy court discerned no improper or
15 unfair purpose with respect to Debtors' filing. On the contrary,
16 the court compared it to the numerous cases in which the
17 bankruptcy laws allow debtors some breathing room "to enable them
18 to gain back financial equilibrium without undue sacrifice to
19 their emotional well-being." Id.

20 In addition to Collins, it is true that other courts have
21 dismissed bankruptcy cases in which the debtor has filed a
22 bankruptcy petition, in part, as a litigation tactic to avoid
23 posting a supersedeas bond. In those cases, however, the courts
24 considered that fact in connection with all of the other evidence
25 in the case to determine that the various filings were done in
26 bad faith. See, e.g., In re Paolini, 312 B.R. 295 (Bankr. E.D.
27 Va. 2004) (holding that, based upon the totality of the
28 circumstances, including debtor's subjective bad faith and the

1 futility of reorganization, cause existed under § 1112(b) to
2 dismiss the petition); In re Harker, 1996 WL 905910 (Bankr. S.D.
3 Iowa 1996) (considering the totality of the circumstances,
4 including potential nondischargeability of debtor's only
5 unsecured debt, filing bankruptcy on eve of judgment, and meager
6 plan payments, cause existed under § 1307 to dismiss).¹¹

7 III.

8 Thoughtfully working through each factor bearing upon the
9 totality of the circumstances as required by Leavitt, the
10 bankruptcy court found that Debtors filed the chapter 13 petition
11 in good faith, and proposed their plan in good faith.
12 Specifically, the Court found,

13 In the case at bar, the evidence did not
14 show any significant or misleading
15 inaccuracies in the schedules or required
16 information. In addition, there was no prior
17 history of any bankruptcy proceeding by the
18 Debtors, nor was there any showing of
19 dishonesty or unfair manipulation. To the
20 contrary, rather than liquidate, these Debtors
21 have chosen to attempt to repay all of their
22 debts over a five-year period of commitment.
No egregious behavior is present in choosing
this legal course of action which pays
creditors 100% of their debts, rather than 17-
33% only.

The only hook upon which the objecting
creditor here hangs his argument is that the
Debtors only intend to defeat his state court

23 ¹¹ With respect to Harker, Rocco does not cite the
24 underlying decision wherein the bankruptcy court determined the
25 petition was filed in bad faith. Rather, Rocco cites the
26 decision of the Eighth Circuit BAP which does not discuss the
27 issue of bad faith. While that panel mentions that the
28 bankruptcy court dismissed the initial chapter 13 case for bad
faith, the focus of the appellate opinion concerns other,
separate issues. Indeed, Rocco's citation to this case, "Harker
v. United States, 286 B.R. 84, 87 (8th Cir. 2002)", is somewhat
misleading, in that the citation form suggests it is a decision
of the Eighth Circuit rather than the BAP.

1 collection efforts. This argument also fails,
2 however, because the Debtor's plan does not
3 seek to defeat or thwart collection of the
4 judgment. Instead, the Debtors' plan
5 schedules it out in a [sic] orderly fashion,
6 on a par with all other creditors of the same
7 class. And, happily, the plan proposes to pay
8 100% of any such allowed claim.

9 Memorandum at 5 (emphasis in original).

10 Moreover, the bankruptcy court found that, over the term of
11 Debtors' plan, they proposed to pay \$138,000 to the trustee, a
12 sum which would be adequate to pay trustee's statutory fees and
13 all allowed claims in full.¹² In addition, the court found that
14 Debtors' chapter 13 filing was precipitated by Rocco's
15 garnishments and collection efforts, and that Debtors commenced
16 the bankruptcy in order to pay all creditors in full, unhampered
17 by ongoing and emotionally draining collection activities while
18 retaining exempt and non-exempt assets.

19 The fact that Debtors propose to pay all their creditors in
20 full is particularly telling, though not determinative, in the
21 good faith analysis. If Debtors' plan had proposed to discharge
22 unsecured claims without paying any significant amounts to them,
23 the bankruptcy court's view of their motivations may have been
24 different. However, given that Debtors proposed a 100 percent
25 payment, and the bankruptcy court discerned no improper motive or
26 unfair purpose in the filing, we are not "left with the definite
27 and firm conviction that a mistake has been committed." United

28 ¹² In their brief and in oral argument before the Panel,
Debtors indicate that since this appeal was filed, the confirmed
plan has been amended to increase funding from \$138,000 to
\$149,500 in order to accommodate full payment of all
administrative expenses and allowed claims. Indeed, Debtors may
need to amend their plan again to accommodate payment of the
significant attorneys fees incurred in defending their position.

1 States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948).

2 Each of the bankruptcy court's factual findings are clearly
3 supported by the record. Thus, there is no basis to disturb the
4 bankruptcy court's conclusion that Debtors' petition was filed in
5 good faith. In sum, the bankruptcy court did not abuse its
6 discretion when it denied Rocco's motion to dismiss pursuant to
7 § 1307.

8 Furthermore, there is also no reason to question the
9 bankruptcy court's decision to confirm Debtors' plan. Rocco's
10 sole objection to confirmation, and the focus of the bankruptcy
11 court's discussion, was Debtors' alleged bad faith under
12 § 1325(a) (3) and (7); no other grounds to oppose confirmation
13 were raised, and thus they have been waived. Andrews, 49 F.3d at
14 1409; Lawrence Tractor Co. v. Gregory (In re Gregory), 705 F.2d
15 1118, 1121 (9th Cir. 1983).

16
17 **CONCLUSION**

18 The bankruptcy court's findings that Debtors filed their
19 petition and proposed plan in good faith were not clearly
20 erroneous. The court did not abuse its discretion in denying
21 Rocco's motion to dismiss and confirming Debtors' plan. We
22 therefore AFFIRM the decisions of the bankruptcy court.
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