

Hamilton v. Lanning, 130 S.Ct. 2464 (2010)

8-1 decision: J. Alito for the majority, J. Scalia dissenting.

Facts: Woman filed for Chapter 13 after receiving a one time buyout from her employer within the six month lookback period for the means test. With the bonus, debtor was above median income with current monthly income of \$5,343.70. Expenses under Form 22C were \$4,228.71, leaving disposable income of \$1,114.98. Under Schedules I and J, however, her income going forward with her new job resulted in monthly income of \$1,922 and monthly expenses of \$1,772.97, leaving disposable income of \$149.03 per month. Debtor proposed a three year plan contributing \$144 per month. The Chapter 13 trustee objected on the basis that debtor was not contributing all of her projected disposable income. The Bankruptcy Court approved the \$144 plan payment, but required a 5 year term. The Tenth Circuit affirmed.

Operative Statute: 11 U.S.C. § 1325(b)(1)(B):

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

* * *

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Defined Terms:

Disposable Income - § 1325(b)(2).

For purposes of this subsection, the term “disposable income” means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

(A)(I) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

- (ii) for charitable contributions (that meet the definition of “charitable contribution” under section 548 (d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548 (d)(4)) in an amount not to exceed 15 percent of 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.

Current Monthly Income - § 101(10A)

The term current monthly income”

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor’s spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(I) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section [521 \(a\)\(1\)\(B\)\(ii\)](#); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section [521 \(a\)\(1\)\(B\)\(ii\)](#); and

Milavetz, Gallop & Milavetz, P.A. v. United States, 130 S.Ct. 1324 (2010); 8-1 decision: J. Sotomayor delivered the opinion, J. Scalia and J. Thomas concurring in part and concurring in the judgment.

Holding: “... we reject the Eighth Circuit’s conclusion and hold that a debt relief agency violates § 526(a)(4) only when the impetus of the advice to incur more debt is the expectation of filing for bankruptcy and obtaining the attendant relief.” *Id.* at 1339.

Operative Statute: 11 U.S.C. § 526(a)

(a) A debt relief agency shall not—

(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue or misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

(A) the services that such agency will provide to such person; or

(B) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer a fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

11 U.S.C. § 528

(a) A debt relief agency shall –

* * *

(4) clearly and conspicuously use the following statement in such advertisement: “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.” or a substantially similar statement.

* * *

(b) (2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt shall—

(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

(B) include the following statement: “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.” or a substantially similar statement.

Defined Terms

Assisted Person - 101(3).

The term “assisted person” means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$150,000.

Bankruptcy Assistance - § 101(4A)

The term “bankruptcy assistance” means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors’ meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.

Debt Relief Agency - § 101(12A).

The term “debt relief agency” means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

(A) any person who is an officer, director, employee,

or agent of a person who provides such assistance or of the bankruptcy petition preparer;

(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.