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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:

WILLIAM LEROY MCDONALD
BONNIE KAYE MCDONALD,

Case No.: 14-40529-13

Debtors.

CHAPTER 13 TRUSTEE'S REPLY BRIEF

NOW COMES before the Court for consideration the Debtors' Plan, the Trustee's Objection to Confirmation / Motion to Dismiss, and the Trustee's Objection to Debtors' Schedule C. Jan Hamilton appears as Chapter 13 Trustee. For his reply, the Trustee asserts as follows:

I. Application to Debtor William Leroy McDonald

Debtors assert, in a single sentence, that Debtor William McDonald is not "affected" by the Trustee's Motion to Dismiss, Objection to Confirmation, and Objection to Schedule C because (a) the case has not been "consolidated" under 11 U.S.C. 302(b), and Mr. McDonald has no claim to the per capita distribution. This argument is disingenuous, as the Debtors themselves, the Court, and the Trustee have always treated this case as it was filed – a joint case. Debtors filed neither separate schedules nor a separate plan. A plan in a joint case is either confirmable or not confirmable – it cannot be confirmed as to one debtor and

denied confirmation as to the co-debtor. It cannot be administered separately by the Trustee, nor presumably by the Court. The power to file separate cases was held by the Debtors. If Debtors seek to separate themselves from one another in bankruptcy, then a motion to deconsolidate could be filed.

II. Local Law

Debtors assert that “domicile” is complicated due to the history of forced removal of Indian tribes by the federal government. This historical reference, although significant to our nation’s history, is of no bearing on the issue before this Court. Debtors provide no basis in law to support their notion that the Court can claim “extra-territorial” jurisdiction over per capita funds. Moreover, this statement is rebutted by the Debtors’ own references to tribal immunity and sovereignty.

What Debtors miss is that even if the Tribal Code is considered “local law” for purposes of §522(b)(3)(A), *it doesn’t help the Debtors*. When the PBPN amended the Tribal Code in July of 2013, the Tribe *removed* subsection “H,” which was the only exemption reference to gaming revenue. The exemption section of the Tribal Code in its current form asserts no exemption of per capita payments at all. See Tribal Code, Section 4-10-16. So, no per capita exemption exists under Tribal law for the Debtors to claim. Even if it still existed, the section would not rescue the Debtors’ argument. As noted in *Hutchinson*, when this Court addressed the now deleted section, regardless of the other legal issues, the bare

text of Tribal Code, Section 4-10-16 provided for an exemption only upon any judgment of the Tribal Court. No such judgment exists here.

Moreover, Debtors cannot cherry pick exemptions. Debtors claim, in large part, Kansas exemptions. §522(b)(3) permits alternative exemptions under certain circumstances, but it does *not* permit Debtors to stack state *and* local exemptions. U.S.C. 522(b)(3)(A) provides:

“(3) Property listed in this paragraph is—

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, *or* State *or* local law that is applicable on the date of the filing of the petition to the place in which the debtor’s domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor’s domicile has not been located in a single State for such 730-day period, the place in which the debtor’s domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place”.

(Emphasis added.) If Tribal Law is “local” law applicable to the Debtors in this bankruptcy, and Debtors elect to use Tribal exemptions, then they must use *only* Tribal exemptions.

III. Debtor’s Disability

It is true that the Trustee has stipulated that Debtor Bonnie McDonald receives Social Security Disability payments. The Trustee has no facts to suggest that Debtor is not disabled. Debtors attempt to use the Debtor’s disability to convince the Court that the spendthrift trust reference in §541(c)(2) is triggered. See the Trustee’s opening brief for a complete discussion of that section. However, Debtors ignore the fact that Bonnie McDonald’s disability has absolutely no impact upon the

issue before this Court. The Per Capita Ordinance has not changed in any relevant part since the Court's prior rulings. Per capita distributions are made to all enrolled tribal members in accordance with the PBPN Per Capita Ordinance without regard for need or disability.¹ Under the Ordinance, the PBPN's net gaming revenues are divided *equally among all enrolled members of the tribe on a per capita basis* - period.² Although Debtor may be disabled – that fact has no impact at all upon whether or not she is entitled to a per capita distribution. No suggestion of any authority to the contrary has been made by debtors.

IV. CONCLUSION

For the reasons stated herein and in the Trustee's opening brief, the Debtors' Plan does not comply with §1325(a)(4) and therefore confirmation must be denied. The per capita payments are not exempt, and the Trustee's Objection to Schedule C must be sustained.

Respectfully submitted,

s/ Jan Hamilton
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¹ "The Prairie Band of Potawatomi Indians of Kansas Tribe (the "Tribe") owns a casino on its reservation located approximately 15 miles north of Topeka, Kansas. A portion of the net quarterly revenue realized by this casino is divided among the enrolled members of the tribe on a per capita basis. Whether to make distributions to members of the Tribe, as well as the exact amount of any distributions, is in the discretion of the governing body of the Tribe. Once the Tribe makes a determination that a distribution will be made and decides the amount of the total distribution, each member of the Tribe is entitled to receive an equal distribution, as fixed by tribal ordinance. Members of the Tribe are not required to provide any services, or to exchange any property of value, to receive their per capita distributions." *In re McDonald*, 353 B.R. at 289.

²PBPN Per capita Ordinance, Article V, Calculation and Disbursement of Per Capita Payments, Section 1. See also, *In re McDonald*, supra.

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CERTIFICATE OF SERVICE

I certify that I electronically filed the Chapter 13 Trustee's Reply Brief with the Court via the CM/ECF system, which notifies all interested parties using the CM/ECF system on this date: **October 2, 2014.**

s/ Teresa L. Arnold
Teresa L. Arnold