

In re Abaunza
10-37575-BKC-LMI

Above-median debtors may use their “discretionary income” to pay an unsecured creditor outside of a Chapter 13 Plan so long as all of the debtors’ projected disposable income is committed to paying unsecured creditors under the plan. In arriving at this determination, the Court first held that payment made by a debtor to a creditor outside the plan constitutes a de facto separate classification of such creditor. However, the treatment of the separately paid creditor does not constitute unfair discrimination even if the creditor is being paid more than other unsecured creditors when the sole allegation of unfair discrimination arises from a payments made to a creditor outside the plan based on funds the debtor has in excess of the statutorily calculated projected disposable income. The debtors are entitled to use these “discretionary funds” as they see fit since the unsecured creditors are receiving all they are entitled to under the Bankruptcy Code.