

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF: )  
)  
STEPHANIE A. SAUNDERS-MANN, ) CASE NO. BK98-83161  
)  
DEBTOR. ) CH. 13

MEMORANDUM

This matter concerns an objection to a specific provision in a Chapter 13 plan. Appearances: Albert Burnes for the debtor, Donald Pavelka for Norwest Bank, and Kathleen Laughlin as Chapter 13 Trustee. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(L).

Background

Debtor Stephanie Saunders-Mann filed a Chapter 13 bankruptcy petition on December 11, 1998. On December 14, 1998, the debtor filed her plan which listed Norwest Bank ("Norwest") as a secured creditor, with a lien on her 1995 Dodge Intrepid. The debtor listed the claim as contingent, unliquidated and disputed, and stated that, although the creditor's claim was in the amount of \$9,600, the market value of the vehicle was only \$8,000. The debtor proposed to pay Norwest \$8,000, plus eight percent simple interest over the course of the plan. The debtor further proposed that Norwest only retain a lien on the vehicle until Norwest had been paid the full amount of its secured claim.

Norwest initially objected to confirmation of the plan based upon both of these proposals, maintaining that the vehicle was worth at least \$9,000, and that Norwest could not be required to release its lien on the vehicle anytime prior to receipt by the debtor of her Chapter 13 discharge. Norwest subsequently settled the valuation portion of its objection and allowed the plan to be confirmed, subject to the Court's determination of the validity of the provision requiring release of the lien upon payment in full of Norwest's secured claim. As a result, there is no factual issue in dispute and the only legal issue remaining is whether Norwest must release its lien upon full payment of the secured portion of its claim.

Discussion

Section 1325 of the Code provides that the court shall confirm a Chapter 13 plan over the objection of a holder of a secured claim if:

(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim.

11 U.S.C. § 1325(a)(5)(B)(i & ii).

There is disagreement among the courts whether, under this provision, a creditor is allowed to retain its lien rights until the debtor receives a discharge, or only until all payments to that creditor, on the secured portion of its claim, have been completed under the plan. As of the date of this opinion, the only circuit court of appeals decision even arguably related to this issue was that of In re Burba, 42 F.3d 1388 (6th Cir. 1994) (addressing the issue only briefly in dicta).

The courts which have held that the collateral may vest in debtors free and clear of the lien prior to completion of the plan and discharge, have based their decisions in large part upon a strict textualist reading of § 1325(a)(5)(B)(i & ii). See, e.g., In re Johnson, 213 B.R. 552 (Bankr.N.D.Ill. 1997), In re Lee, 156 B.R. 628 (Bankr.D.Minn.), aff'd, 162 B.R. 217 (D.Minn.1993); In re Nicewonger, 192 B.R. 886 (Bankr.N.D.Ohio 1996); In re Mandrayar, 174 B.R. 289 (Bankr.S.D.Cal.1994); In re Campbell, 160 B.R. 198 (Bankr.M.D.Fla.1993), aff'd sub nom., IRS v. Campbell, 180 B.R. 686 (M.D.Fla.1995); In re Murry-Hudson, 147 B.R. 960 (Bankr.N.D.Cal.1992).

The better reasoned view, which gives effect to the entire Bankruptcy Code including 11 U.S.C. § 349 rather than just § 1325 in isolation, is that the collateral may not vest in debtors free and clear of the lien prior to completion of the plan. See, e.g., In re Zakowski, 213 B.R.1003, (Bankr.E.D. Wis. 1997); In re Pruitt, 203 B.R. 134

(Bankr.N.D.Ind.1996); In re Scheierl, 176 B.R. 498  
(Bankr.D.Minn.1995); In re Gibbons, 164 B.R. 207  
(Bankr.D.N.H.1993); In re Jones, 152 B.R. 155 (Bankr.E.D.  
Mich.1993).

As well articulated by Bankruptcy Judge Gregory Kishel in In re Scheierl, Chapter 13 is a collective proceeding in which debtors deal with all of their creditors together, not with individual creditors in isolation. A virtual contract is formed between the parties, both obligating and benefitting them. In exchange for completion of all Chapter 13 payments, the debtor receives a discharge and a permanent adjustment of pre-petition debts. In exchange for observing the automatic stay and accepting the possible strip down of liens to the value of collateral, creditors receive an orderly and equitable distribution of whatever the debtor is required to pay into a plan.

Allowing a debtor to obtain a release of a lien prior to completion of the plan in full would be both asymmetrical and unjust because debtors have an essentially unrestricted right to dismiss without showing cause. If a voluntary dismissal occurred after the lien was released, but before the plan was completed, 11 U.S.C. § 349(b) arguably would restore the parties' property rights to their prepetition status. That section reinstates liens avoided under 11 U.S.C. § 506(d), which is the statutory section that allows a Chapter 13 plan to bifurcate a claim into secured and unsecured portions. However, if the collateral had been transferred to a bona fide purchaser for value prior to the dismissal, such restoration might not be possible. In other words, there is no guaranty that a secured creditor would in fact be able to reinstate its lien.

Courts favoring a release of the lien upon payment of the secured portion of the claim focus upon the fact that such a creditor would have received the actual value of the property, thus not being prejudiced by a release of lien requirement. This view both presupposes depreciation and ignores the fact that a lien on property insufficient to cover a given debt is nonetheless a property interest that merits protection until a plan is completed.

As a conclusion of law, the debtor must complete all of her Chapter 13 plan payments before Norwest Bank must release its lien on the debtor's 1995 Dodge Intrepid.

Conclusion

Creditor Norwest Bank's objection to the particular plan provision relating to its lien is sustained. The debtor shall either amend her plan to remove the requirement that Norwest Bank release its lien prior to the completion of the plan or submit an amended confirmation order to reflect this decision. Failure to do so within twenty days will result in dismissal.

Separate journal entry to be filed.

DATED: July 16, 1999.

BY THE COURT:

/s/Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:  
56 PAVELKA JR., DONALD

Copies mailed by the Court to:  
Albert Burnes, Attorney  
Kathleen Laughlin, Trustee  
United States Trustee

Movant (\*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

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FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	
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STEPHANIE A. SAUNDERS-MANN,	)	CASE NO. BK98-83161
	)	A
<u>DEBTOR(S).</u>	)	CH. 13
	)	Filing No. 6, 21
Plaintiff(s)	)	
vs.	)	<u>JOURNAL ENTRY</u>
	)	
	)	DATE: July 16, 1999
<u>Defendant(s)</u>	)	HEARING DATE:

Before a United States Bankruptcy Judge for the District of Nebraska regarding objection to a specific provision in a Chapter 13 plan.

APPEARANCES

Albert Burnes for the debtor  
Donald Pavelka for Norwest Bank  
Kathleen Laughlin, Trustee

IT IS ORDERED:

Creditor Norwest Bank's objection to the particular plan provision relating to its lien is sustained. The debtor shall either amend her plan to remove the requirement that Norwest Bank release its lien prior to the completion of the plan or submit an amended confirmation order to reflect this decision. Failure to do so within twenty days will result in dismissal. See memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney  
Chief Judge

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