

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
HARLEY & BEVERLY PATTERSON,)	CASE NO. BK97-81035
)	A
<u>DEBTOR(S).</u>)	
)	CH. 12
)	Filing No. 55, 56
Plaintiff(s))	
vs.)	
)	
)	
<u>Defendant(s)</u>)	

MEMORANDUM

Hearing was held on March 30, 1999, regarding Motion for Release of Collateral, Release of Cross-Collateralization, and Motion for Entry of Order of Discharge filed by the Debtors; Objection by Cozad State Bank and Trust Co. Appearances: Richard Lydick, Trustee, Scott Trusdale, Attorney for Cozad State Bank and Trust Co., and Jason White, Attorney for debtor. 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)(A).

Background

This Chapter 12 plan was confirmed in February of 1998. At the time of confirmation, and on the date of the petition, the debtors were indebted to the Cozad State Bank on numerous loans secured by various parcels of real and personal property. Two of the loans were secured by vehicles, a 1990 Plymouth Voyager Van and a 1989 Ford Ranger 1/2 Ton Pickup. The security documents apparently provided that these vehicles also were collateral for other loans which had additional collateral.

The plan rewrote one or more loans and the vehicles remained as collateral for the loans recognized under the plan.

The debtors now move for a release of the vehicles from the collateral package. It is the position of the debtors that the bank is a fully secured creditor without including either vehicle and, therefore, the bank should release its

lien on each of the vehicles so that the debtors may trade them at the appropriate time. The bank objects to a release of its liens without the granting of a substitute lien in equivalent property.

Discussion

A. Vehicles

The Bankruptcy Code at 11 U.S.C. § 1225(a)(5)(B) directs the court to confirm a plan if the plan provides that the holder of a secured claim retains the lien securing the claim.

This plan was confirmed on the basis that the Cozad State Bank retained its lien on these vehicles and on other assets of the debtors. There is no evidence of any change in circumstances from the confirmation date to today, other than the vehicles are getting older. There is nothing in the plan that provides for a release of collateral without a substitution of equivalent collateral.

There is nothing in the Bankruptcy Code that provides for such a post-confirmation change in the lien status of a creditor, even if it is oversecured. The Code at 11 U.S.C. § 1229 permits post-confirmation modification to increase or reduce payments; to extend or reduce the time for payment; or to alter the amount of distribution to a creditor whose claim is provided for by the plan, but is paid other than pursuant to the plan. There is nothing in the modification provisions of the Code from which one could even infer that a creditor holding an oversecured claim should be required to release any collateral prior to full payment.

Since confirmation, the debtors and the bank have been operating as if they had entered into a new loan arrangement, the terms of which are included in the original loan documents as modified by the plan terms and the order of confirmation. There is no authority in the statute, in the plan, or in the order confirming the plan which would authorize the granting of the motion. Therefore, that portion of the motion which refers specifically to a release of collateral is denied.

B. Real Estate

The motion also requests that cross-collateralization provisions in various loans and concerning various parcels of collateral be eliminated if payment on one particular loan is

completed pursuant to its terms as modified by the plan within eleven years from confirmation.

Once again, there is nothing in the Bankruptcy Code, the plan or the order confirming the plan which would permit or authorize the court to enter an order at this date concerning a change in the lien status of the creditor ten or eleven years hence. Therefore, that portion of the motion is denied.

C. Discharge

The debtors also request a discharge of their personal liability on all debts provided for under the plan. In support of that portion of the motion, the debtors state that all payments required to be made under the plan and during the term of the plan have been paid. The bank objects to the granting of a discharge at this time.

The Code, at 11 U.S.C. § 1228(a) provides that a discharge should be granted "as soon as practicable after completion by the debtor of all payments under the plan, other than payments to holder of allowed claims provided for under Section 1222(b)(5) or 1222(b)(10)."

The plan itself deals with secured claims, such as those held by the bank and others, to be paid over a period of time which extends beyond the maximum length of any Chapter 12 plan and beyond the maximum length of this specific plan. Therefore, it is clear that at some point in time the debtors would be entitled to a discharge of their personal liability on the secured claims even if the case should be closed prior to full payment on those long-term debts.

The plan provides treatment of the unsecured creditors by payment of all disposable income up to and including March 1, 1998. There appears to be no disagreement that the debtors either paid disposable income as of March 1, 1998, or that there was no disposable income to be paid as of that date. Therefore, that plan provision has been complied with. Concerning the absolute length of the plan, the specific language is as follows:

III. The debtors propose to close this Plan of Reorganization within three (3) years after confirmation of the Plan of Reorganization.

It is in the best interests of the debtor and the farming organization that due to land payments, in order to successfully reorganize,

some payments of secured creditors continue beyond the closing of the Plan or Reorganization.

With regard to a discharge, the plan provides:

IV. After completion by the debtors of all payments through the Trustee as stated in Article III, under the Plan of Reorganization, the court shall grant a discharge to the debtors of all debts provided for in the Plan of Reorganization, except debts of kind specified in 11 U.S.C. § 523(a).

The language is relatively clear. Disposable income is to be paid as of March 1, 1998, and that is all that is to be paid to the unsecured claim holders. The plan is not required to run a total of three years, but may be closed within three years. The payments on the long-term debts may continue beyond the date of closing of the case. Finally, a discharge shall be entered if the debtors have made the payments required within three years after confirmation.

The evidence is that the debtors have made all payments required since confirmation and there is no reason why they should not be granted a discharge at this time. Therefore, the request for discharge shall be granted. The debtors are directed to prepare the appropriate discharge order and submit it to the Chapter 12 Trustee who is then directed to forward it to the court. With regard to the issue of discharge, this journal entry is not a final order and the final, appealable order shall be the entry of a discharge order.

DATED: May 6, 1999

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

TRUSDALE, SCOTT	308-784-2312
WHITE, JASON	308-872-2255
LYDICK, RICHARD	4

Copies mailed by the Court to:

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.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK97-81035
) CH. 12
HARLEY & BEVERLY PATTERSON,)
) Filing No. 55, 56
DEBTOR(S).)
) JOURNAL ENTRY
)
Plaintiff(s))
vs.) DATE: May 6, 1999
) HEARING DATE: March 30, 1999
)
)
Defendant(s))

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Release of Collateral, Release of Cross-Collateralization, and Motion for Entry of Order of Discharge filed by the Debtors; Objection by Cozad State Bank and Trust Co.

APPEARANCES

Richard Lydick, Trustee
Scott Trusdale, Attorney for Cozad State Bank and Trust Co.
Jason White, Attorney for debtor

IT IS ORDERED:

- a) Request for immediate release of collateral denied.
- b) Request for relief of land collateral in ten years or so, denied.
- c) Request for discharge granted upon submission of order.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

TRUSDALE, SCOTT 308-784-2312
WHITE, JASON 308-872-2255
LYDICK, RICHARD 4

Copies mailed by the Court to:

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.