

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

HAROLD A. OLSEN and)
DIANE L. OLSEN,)

DEBTORS)

CASE NO. BK80-1641

MEMORANDUM AND ORDER

In this Chapter 13 proceeding, Finance America Corporation objects to confirmation of the plan. Finance America is owed approximately \$3500.00 and holds a security interest in a Kimball organ. The parties apparently agree that the Kimball organ has a fair market value of \$2500.00. The debtors' plan proposes under §1325(a)(5)(B) that secured creditors retain the lien on their collateral and the fair market value will be distributed to the creditor under the plan.

However, Finance America points to the fact that it purchased the paper and security interest from a retailer who had sold the organ to the debtor and that their purchase of the security interest and paper is with recourse. Accordingly, Finance America argues under §1325(a)(5)(B)(ii) that the value of property to be distributed under the plan is no less than the amount the retailer would have to pay to Finance America under full recourse.

Nevertheless, §1325(a)(5)(B) provides only for distribution of the "allowed amount of such claim". Section 506 of the Code provides:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

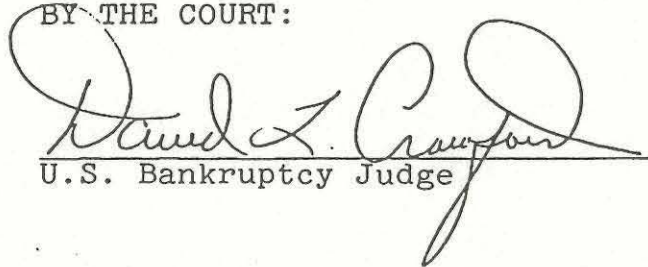
Accordingly, the value of the secured claim is only to the extent of the estate's interest in the collateral. That is the fair market value of the collateral. Accordingly, it is

ORDERED that the objection to confirmation filed herein by Finance America Corporation be, and the same hereby is, denied; and it is further

ORDERED that the trustee submit an order of confirmation within ten days from the date of this order.

DATED: December 2, 1980.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

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