

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|-----------------------|---|---------------------|
| IN THE MATTER OF: |) | CASE NO. BK02-81116 |
| |) | |
| PATRICIA A. SANABRIA, |) | CH. 7 |
| |) | |
| Debtor(s). |) | Filing No. 27, 31 |

MEMORANDUM

Hearing was held in Omaha, Nebraska on May 25, 2004, before a United States Bankruptcy Judge for the District of Nebraska, regarding Filing No. 27, Motion for Relief from Stay, filed by American National Bank, and Filing No. 31, Resistance, filed by the debtor. David Hicks appeared for the debtor and David Koukol appeared for American National Bank. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(G).

In this Chapter 7 case, creditor American National Bank filed a motion for relief from stay with regard to an automobile. The value of the automobile is less than the debt. The debtor has not attempted to redeem the vehicle or reaffirm the debt, nor has the debtor surrendered the vehicle or claimed the vehicle as exempt.

The creditor takes the position that the Bankruptcy Code at 11 U.S.C. § 521(2)(A) requires the debtor to file a statement of intention with respect to the retention or surrender of the motor vehicle and requires that the debtor specify either that the vehicle is claimed as exempt, that the debtor intends to redeem the property, or that the debtor intends to reaffirm the debt secured by the property.

It is the position of the debtor that the provisions of Section 521(2)(A) are not the exclusive methods by which the debtor can deal with the vehicle. The debtor suggests that, in addition to the procedure suggested in Section 521(2)(A), the debtor, if she is current on her payments on the promissory note to the creditor, may retain possession of the vehicle and continue to make payments pursuant to the terms of the promissory note.

The circuit courts of appeal are in disagreement with regard to this issue. The most recent decision was published earlier this month. The Third Circuit Court of Appeals in Price v. Delaware State Police Fed. Credit Union (In re Price), ___ F.3d ___, 2004 WL1208295 (3d Cir. June 3, 2004), sides with four other courts of appeal that agree with the debtor's position and rejects the position of four courts of appeal that have determined that the debtor must comply with Section 521(2)(A) as the exclusive method for dealing with the vehicle. In Price, the court made a detailed analysis of each of the other opinions and then, in an obviously thoughtful and logical opinion, construed the statutory language in favor of the debtor's position.

With all due respect to the opinion of the circuit court in Price, and in an absence of circuit authority in the Eighth Circuit, I come down on the side of those circuit court decisions which limit the debtor to the statutory provisions in Section 521(A)(2). It seems to me that the statute lists the

various means by which a debtor in a Chapter 7 case can deal with property which is subject to a lien. The list appears to be exclusive. The additional option that the debtor suggests is available to debtors, that is, to continue to make payments on the promissory note and retain possession of the vehicle, even though the personal liability of the debtor had been extinguished, is absent from Section 521. It is not the job of a bankruptcy judge to write in statutory language that Congress left out.

Relief from the automatic stay will be granted by separate order. If the debtor decides to surrender the vehicle, redeem the vehicle, or reaffirm the debt prior to the discharge being entered, the creditor shall not need to take additional action. However, if the debtor does not exercise one of those options prior to the discharge being entered, the creditor is not prohibited by either the automatic stay or the discharge injunction from repossessing the vehicle.

DATED: June 22, 2004

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
David Hicks
*David Koukol
U.S. Trustee

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

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ORDER

Hearing was held in Omaha, Nebraska on May 25, 2004, before a United States Bankruptcy Judge for the District of Nebraska, regarding Filing No. 27, Motion for Relief from Stay, filed by American National Bank, and Filing No. 31, Resistance, filed by the debtor. David Hicks appeared for the debtor and David Koukol appeared for American National Bank.

IT IS ORDERED: For the reasons set forth in the memorandum filed contemporaneously herewith, relief from the automatic stay is granted. If the debtor decides to surrender the vehicle, redeem the vehicle, or reaffirm the debt prior to the discharge being entered, the creditor shall not need to take additional action. However, if the debtor does not exercise one of those options prior to the discharge being entered, the creditor is not prohibited by either the automatic stay or the discharge injunction from repossessing the vehicle.

DATED: June 22, 2004

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

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