

In the United States Bankruptcy Court
for the Northern District of Iowa

SHERILYN KAE COOK
Debtor(s).

Bankruptcy No. 95-12544KC
Chapter 13

ORDER RE CONFIRMATION

This matter came on for hearing before the undersigned on March 27, 1996 on the Objection to Confirmation filed by Creditor Mark A. Chapman. Mr. Chapman appeared at the hearing pro se. Debtor Sherilyn Kae Cook appeared represented by Attorney Joseph Peiffer. Having considered the evidence and arguments presented, the Court makes the following ruling. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

STATEMENT OF THE CASE

Creditor Mark Chapman objects to the treatment of his claim and claims of two other judgment creditors in Debtor's Chapter 13 Plan. These three creditors hold judgments as follows: (1) Mark Chapman, \$1,900; (2) Stephanie Hassler, \$2,000; (3) Mark Roeder, \$1,800. All of these judgments arose from proceedings dissolving the marriage between Mr. Chapman and Debtor as well as subsequent modification proceedings brought by Debtor. Ms. Hassler's \$2,000 judgment arises from Debtor's obligation to pay for her services as Mr. Chapman's attorney. Mr. Chapman states that if Debtor fails to pay the judgment to Ms. Hassler, he would be personally liable for the \$2,000. Mr. Roeder's judgment arises from Debtor's obligation to pay for his services as attorney for the parties' minor child. The \$1,900 judgment held by Mr. Chapman arises from the parties' property settlement in the dissolution proceedings.

Debtor's Plan proposes to use her interest in business property she owns jointly with her current husband, Timothy Cook, to apply toward these judgment debts. The Plan values the property at \$25,700. Community Savings Bank holds a mortgage loan on the property with a 2/26/96 payoff amount of \$22,170.81. See Exhibit "B". Debtor proposes in the Plan to sell her interest in the property to Mr. Cook for \$1,500 and utilize that amount, subject to the Trustee's fee, to make payment to the three judgment creditors, in the order they are listed above.

Mr. Chapman objects to this proposal. He asserts that Debtor's interest in the property is larger than \$1,500. He states that the property has undergone extensive remodeling which raises its value.

Debtor and Mr. Chapman disagree as to the actual value of the property. An appraisal conducted in March 1994 when Debtor entered into the mortgage with Community Savings Bank values the property at \$25,700. See Exhibit "E". Frank Fergesen, the appraiser, stated in the appraisal that the appraisal was based on remodeling being done as Debtor had anticipated. The record reveals that \$4,500 of the \$25,700 loaned by the Bank was for improvements. See Exhibit "3". Debtor received building permits in August 1994 and July 1995 to reshingle and reroof, remodel the front of the building with new door, windows and siding, and install a fence in the rear of the property. Id. Debtor filed an affidavit of financial status in Iowa District Court on March 30, 1995 in regard to application for appointment of counsel in proceedings regarding custody of the parties' minor child. The affidavit lists the market value of the property as \$20,500. See Exhibit "2". The most recent valuation of the property is Exhibit "F", a Comparative Market Analysis dated March 12, 1996, which estimates the value of the property to be between \$20,000 to \$22,000.

Debtor asserts that the value of her property is decreasing because of changes to the route of the local highway. She asserts that there is a recession in the realty market on the east side of Manchester where this property is located. She also points out that the street in front of her building is being repaved and argues that this also decreases the value

because of her loss of business.

At the hearing, Debtor argued that hypothetical costs of sale should be deducted from the value of her interest in the property to arrive at the true value of Mr. Chapman's security interest. She essentially asserts that if she has any equity as owner of a one-half interest in the property encumbered by a debt of more than \$22,000, that equity would be extinguished by costs of liquidating the property to satisfy Mr. Chapman's lien. Therefore, she argues, Mr. Chapman is not entitled to payment of his judgment.

On a collateral point, Debtor's Plan states that Mr. Chapman received \$468 garnished from Debtor's checking account and surrenders that amount in partial satisfaction of his claim. Mr. Chapman's objection attaches a copy of the Sheriff's Return on Execution, which appears authentic, which shows that he received \$400, not \$468, towards the judgment. The Court concludes that the correct amount to be applied against Mr. Chapman's judgment from the garnishment is \$400.

Mr. Chapman filed the only objection to Debtor's Plan. The Trustee has filed a Report of No Objections.

CONCLUSIONS OF LAW

Section 1325(a)(5)(B) provides that, if a debtor in Chapter 13 intends to retain property subject to a lien, the secured creditor must receive the present value of its allowed secured claim. Confirmation cannot occur over the creditor's objections unless the creditor's present value is preserved. 11 U.S.C. § 1325(a)(5)(B). The amount of the allowed secured claim is determined by § 506(a), which provides that an allowed claim

is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . 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.

11 U.S.C. § 506(a).

In order to determine whether Mr. Chapman is entitled to a larger payment under Debtor's Chapter 13 Plan, the Court must value his secured claim pursuant to § 506(a). In making this valuation, the Court relies on existing 8th Circuit case authority which holds that the proper analysis is to value the property as a going concern and not under a liquidation analysis when the debtor anticipates retaining the property. In In re Trimble, 50 F.3d 530 (8th Cir. 1995), the court recently considered §§ 506(a) and 1325(a)(5)(B) in valuing a creditor's security interest in a vehicle a Chapter 13 debtor intended to retain. In so doing, the 8th Circuit stated as follows:

We adopt the reasoning of the Fifth Circuit in In re Rash, [31 F.3d 325, 329 (5th Cir. 1994),] and other courts that have focused on the second sentence of Section 506(a) and we now conclude that the value of [the creditor's] lien interest is properly based on the retail value of the collateral without deduction for costs of sale. We agree with the Fifth Circuit that the retail valuation method is the only method that gives full effect to the entire language of Section 506(a). "If the first sentence of § 506(a) were interpreted to mean that the value must be fixed at the amount which the creditor would receive on foreclosure, then the last sentence of the statute which provides that the value should be determined in light of the purpose of the valuation and of the proposed disposition or use of the property, would be surplusage." In re Rash, 31 F.3d at 329 (quoting In re Courtright, 57 B.R. 495, 497 (Bankr. D. Or. 1986)). Under the wholesale valuation method, the creditor's interest would always be valued at the amount the creditor would receive upon disposition of the collateral, regardless of the purpose of the valuation or of the proposed disposition or use of the property. The wholesale method would not be affected by whether the debtor intended to release the property or intended, instead, to retain and use the property. Rather, where a debtor intends to retain and use the collateral, the purpose of the valuation is to determine the amount an undersecured creditor will be paid for the debtor's continued possession and use of the collateral, not to determine the amount such creditor would receive if it hypothetically had to repossess and sell the collateral. Such an interpretation ignores the express dictates of Section 506(a).

Id. at 531-32. The court held that the amount of the creditor's secured claim was the lesser of the principal balance of the debt or the retail value of the encumbered vehicle, without deduction for costs of repossession or sale. Id. at 532; see also In re Simon, No. 94-21591KD, slip op. at 4 (Bankr. N.D. Iowa Dec. 7, 1995) (applying Trimble in Chapter 12 valuation of dairy herd); In re National Cattle Congress, Inc., No. 93-61986KW, slip op. at 13 (Bankr. N.D. Iowa Oct. 10, 1995) (applying Trimble in Chapter 11 valuation of secured claim).

The Court concludes that the value of the property is \$25,700. The appraisal report prepared at the time Debtor entered into the mortgage with the Bank is the most credible and reliable of the various values for the property found in the record. Subtracting the remaining loan amount of approximately \$22,150, the total equity in the property is \$3,550. Debtor's one-half interest in this equity totals \$1,775. Pursuant to Trimble, the Court refuses to deduct hypothetical costs of sale from this amount. The value of the judgment creditors' security interest in the property equals the value of the estate's interest in the property, which equals Debtor's one-half interest, or \$1,775.

Debtor's plan applies the amount garnished from her checking account to Mr. Chapman's judgment claim. Subtracting the correct amount garnished (\$400) from the amount of the claim of Mr. Chapman (\$1,900) reduces Mr. Chapman's claim to \$1,500. Under § 1325(a)(5)(B), Mr. Chapman is entitled to the lesser of the principal balance of the debt, \$1,500, or the retail value of the encumbered property, \$1,775 minus the normal Trustee fee. It appears that this will provide sufficient funds to pay Mr. Chapman's judgment claim in full. The remainder must be applied toward Ms. Hassler's judgment claim which has second priority. Debtor's Plan provides that, to the extent the judgments are not paid in full, the balance of the claims shall be treated as unsecured debts.

The Court concludes, therefore, that Debtor must amend her Plan. Paragraph 6 on page 3 should be amended to acknowledge that Mr. Chapman garnished \$400 rather than \$468 from Debtor's checking account. Paragraph 5 on page 2 should be amended to provide for payment of \$1,775, less Trustee fee, toward the three judgment claims. The remainder of Debtor's Plan appears to meet the requirements of § 1325 for confirmation.

WHEREFORE, confirmation of Debtor's Chapter 13 Plan is DENIED.

FURTHER, the Objection to the Plan Filed is SUSTAINED.

FURTHER, Debtor is granted until April 8, 1996 within which to amend her Plan to address the objections sustained in this ruling, or this case will be automatically dismissed without further order, notice, or hearing.

SO ORDERED this 1st day of April, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge