In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

RICHARD KEITH TURPEN and
MARCIA ANN TURPEN
Debtor(s).

Bankruptcy No. 97-02407M

Chapter 13
Contested No.3222

MOTION FOR RELIEF FROM STAY

The matter before the court is the motion for relief from stay filed by Family Community Credit Union. Final hearing was held July 21, 1998 in Mason City. Appearing for the movant was William M. Frye. David A. Morse appeared for debtors Richard Turpen and Marcia Turpen. This is a core proceeding under 28 U.S.C. § 157(b)(2)(G).

Findings of Fact

On or about March 21, 1996, Credit Union loaned Richard Turpen $5,000. Exhibit D. The note was secured by a security interest in his 1987 Chevrolet S-10 Blazer.(1) The principal balance of the loan is $3,480.30. The payoff figure as of July 21, 1998 was $3,937.98. Interest accrues at a rate of $1.1442 per day. Exhibit C. Marcia Turpen uses this vehicle in the debtors' rental business.

On or about May 16, 1996, Credit Union loaned $12,500 to Marcia Turpen. Exhibit B. The note was secured by a security interest in the Turpens' 1992 Chevrolet Blazer. The principal balance is $9,743.95. The payoff figure for July 21, 1998 was $10,758.39. Interest accrues at $2.5361 per day. Exhibit A. The Turpens' daughter, Katherine, a college student in Cedar Falls, drives the vehicle.

The last payment on each note was made on or about June 16, 1997. On August 8, 1997, the Turpens filed a Chapter 13 petition.

Discussion

Credit Union argues that it is entitled to relief from the automatic stay because its interest in the two vehicles is not adequately protected. 11 U.S.C. § 362(d)(1). Alternatively, it contends that Turpens do not have equity in the vehicles and that they are not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Credit Union has the burden of proof to show lack of equity; Turpens have the burden on all other issues. 11 U.S.C. § 362(g).

Credit Union offered testimony by its manager, Michael Schear, in an effort to show that the Turpens have no equity in their vehicles. Schear presented figures based on average retail and average wholesale values listed in the Midwest edition of the July 1998 N.A.D.A. guide book. Exhibit E. Schear said the retail value of the 1987 Blazer is $4,625; the wholesale value is $3,000. He valued the 1992 Blazer at $10,325 retail and $8,275 wholesale.

Richard Turpen testified as to the value of the vehicles, based upon his familiarity with them, consultation with a local auto dealer, and information in value guide books. He sees the vehicles at least weekly. Turpen purchased the 1987

Blazer new. It has a V-6 engine and 4-wheel drive, and has approximately 80,000 miles of use. Turpen referred to the CPI Value Guide to Cars of Particular Interest for July through September, 1998. Exhibit 2. The CPI guide lists the value of a 1987 S-10 Blazer with 4-wheel drive as $3,000 for a vehicle in fair condition, $4,100 for good condition, and $5,625 for excellent condition. Turpen said his vehicle was on the upper end of this range, and valued it at $5,500.

Turpens purchased the 1992 Blazer new for more than $20,000. It now has approximately 50,000 miles. The vehicle was in an accident a couple of years ago, but was repaired. Richard Turpen said that its general condition is excellent. Turpen referred to the N.A.D.A. used car guide, Midwest edition, for July 1998. Exhibit 1. The N.A.D.A. guide lists a base price for each model and price adjustments for various features. Turpen did not explain in detail how he used this guide. He said that the guide gave a range of values from $9,500 to $11,000. He valued his vehicle at approximately $11,000.

The court concludes that Credit Union has not proved by a preponderance of evidence that the Turpens lack equity in the vehicles. Schear's testimony was based entirely on average values from the N.A.D.A. guide book. N.A.D.A. publications are relevant evidence on the value of used cars. In re Roberts, 210 B.R. 325, 330 (Bankr. N.D. Iowa 1997). The N.A.D.A. values are not conclusive, however; it is preferable to supplement the N.A.D.A. guide with testimony as to the vehicle's condition. Id. at 330-31. Schear has not seen the 1992 Blazer for more than a year. He admitted he had no personal knowledge of its mileage or present condition. He did not adjust the value of either vehicle for mileage or condition. Turpen, on the other hand, is personally familiar with both vehicles; his was the better evidence. Based upon the Credit Union's claim of approximately $10,760 and the 1992 Blazer's value of approximately $11,000, the Turpens have about $240 of equity in that vehicle. The Credit Union's claim of about $3,940 secured by the 1987 Blazer worth approximately $5,500 leaves the Turpens with equity of about $1,560.

Because the Credit Union has not met its burden of proving lack of equity, it is not entitled to relief from the stay under 11 U.S.C. § 362(d)(2). It is unnecessary, therefore, for the court to determine whether the vehicles are necessary to an effective reorganization that is in prospect within a reasonable time. See United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd., 108 S.Ct. 626, 632 (1988). It seems likely, however, that the 1992 Blazer is not necessary for reorganization because the debtors do not use the vehicle.

Under 11 U.S.C.§ 362(d)(1), a creditor may obtain relief from the stay upon a showing of "cause," including lack of adequate protection. A creditor may show its interest in property is not adequately protected by proof that the collateral is depreciating. Timbers of Inwood Forest, 108 S.Ct. at 629; In re Hinckley, 40 B.R. 679, 681 (Bankr. D. Utah 1984).

The Credit Union contends that the 1992 Blazer has depreciated by about $3,000 between August 1997, the date of the petition, and July 1998, and that the value of the 1987 Blazer has decreased by about $300 over the same period. Exhibit E. The amount of depreciation was calculated by comparing the average values from the N.A.D.A. guide for the two dates. As discussed above, the N.A.D.A. guide is not conclusive evidence of a vehicle's value at a particular time. The Credit Union's evidence is, however, sufficient to show that the vehicles have depreciated in the one-year period since the date of filing. According to the N.A.D.A. averages, the extent of the drop in retail value has been approximately the same as the decline in wholesale value for each vehicle. The Turpens did not offer anything to counter Credit Union's evidence of depreciation. They admit that both vehicles are being used regularly.

The motion for relief from stay will be denied as to the 1987 Blazer. Marcia Turpen drives the vehicle for the debtors' business. The vehicle lost approximately $300 in value over the last year, but the Turpens have equity in it of about $1,560. The court concludes that the Credit Union is adequately protected by the equity cushion. The motion will be granted, however, as to the 1992 Blazer. The 1992 Blazer has lost significant value over the last year. The vehicle is driven regularly. The Turpens have only $240.00 of equity in it. Interest is accruing. The court concludes, therefore, that the Credit Union's interest in the 1992 Blazer is not adequately protected.

Turpens argue that the Credit Union is adequately protected because they intend to propose a plan that would pay unsecured claims in full. The funds for plan payments would come from sale of property including exempt property. Turpens stated that it is their intention to pay the Credit Union's claim in full from proceeds of their homestead, 105 Blunt Street, Charles City. They have obtained authority from this court to sell the property. They expected to close the sale within about ten days of the hearing on Credit Union's motion.

Although Credit Union would be satisfied to receive full payment of its claim, nothing presently ensures such a result. Counsel for the Turpens conceded that their proposal is not an offer of adequate protection within the meaning of 11 U.S.C. § 361. Turpens have not given the Credit Union a lien on their house. It is not clear whether the Turpens are proposing to pay the Credit Union immediately upon sale of their home or through a plan. If they intend the latter, the delay in obtaining confirmation of a plan would further erode the Credit Union's secured position. The Turpens filed a Chapter 13 plan August 26, 1997, and an amended plan November 14, 1997. Confirmation was denied January 21, 1998 (docket no. 64). There is no plan pending.

The court finds and concludes that, as to the 1992 Blazer, the Credit Union is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for lack of adequate protection. As to the 1987 Blazer, however, the motion should be denied.

ORDER

IT IS ORDERED that the motion for relief from stay filed by Family Community Credit Union is granted in part and denied in part. The automatic stay is modified to permit the Credit Union to pursue its rights against the 1992 Blazer, VIN 1GNDT13Z9N2117216.

IT IS FURTHER ORDERED that the motion for relief from stay, as to the 1987 Blazer, is denied.

SO ORDERED THIS DAY OF AUGUST 1998.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed by U.S. mail a copy of this order to David Morse, William Frye, Carol Dunbar, 2002 list, and the U.S. trustee.

1. Credit Union attached to its motion copies of Turpens' notes, security agreements, and certificates of title relating to the two loans at issue. It did not offer them as exhibits at the final hearing. See Local Rule 4001-1(b)(4) ("Notwithstanding reliance on the attachment of [notes and security documents to the motion], movant shall offer separate copies of the attachments, marked as exhibits, at any final hearing on the motion for relief.") Turpens have not disputed the allegations of the motion or testimony at the hearing as to Credit Union's status as a creditor secured by two vehicles.