

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings
Under Chapter 13

AUDY FENTON
BRANDY FENTON

Case No. 00-40382

Debtor(s).

OPINION

Ford Motor Credit Company ("Ford") objects to confirmation of the debtors' Chapter 13 plan, which proposes to pay the secured amount of Ford's claim on a vehicle owned by debtor, Audy Fenton, and the balance as unsecured, with Ford to release its lien upon completion of the plan.¹ Ford objects that it should not be required to release its lien until the balance of its claim is paid in full because the loan on the vehicle was co-signed by the debtor's ex-wife, who has not filed bankruptcy. Accordingly, Ford maintains that its lien should not terminate upon completion of the debtors' plan.

Although Ford's argument is initially compelling, the Court finds that the fact there is a non-debtor co-signor on the debtor's obligation to Ford does not change the status of Ford's claim in this bankruptcy proceeding or cause its lien to survive

¹ Paragraph V of the debtors' plan provides that "holders of secured claims will retain their liens until completion of the plan."

following payment of Ford's secured claim. Section 1327, which provides for the vesting of property of the estate in the debtor upon confirmation, specifies that "property vesting in the debtor . . . is free and clear of any claim or interest of any creditor provided for by the plan." 11 U.S.C. § 1327(c) (emphasis added). In the present case, the debtor is required under § 1325(a)(5)(B) to make payments over the life of the plan that will provide Ford with the present value of the vehicle securing its claim.² However, once such payments have been made, the debtor is entitled to retain the vehicle at the completion of the plan "free and clear" of Ford's lien.

At hearing, debtor's counsel stated that the non-debtor co-signor gave up all rights to the vehicle at the time of the parties' divorce and that the debtor is the sole owner of the vehicle. Thus, the debtor's ex-wife has no interest in the collateral securing the obligation to Ford. The fact, as Ford notes, that the debtor's ex-wife is still listed as an owner on the vehicle's title does not change her ownership interest or

² Section 1325(a)(5) allows a debtor to keep property subject to a creditor's lien over the objection of the creditor, but only if the creditor retains its lien until completion of the plan, 11 U.S.C. § 1325(a)(5)(B)(i), and the debtor proposes to pay the creditor an amount equal to the present value of the property subject to the lien. 11 U.S.C. § 1325(a)(5)(B)(ii). The value of the creditor's secured claim is determined under 11 U.S.C. § 506(a). See Associates Commercial Corp. v. Rash, 117 S.Ct. 1879 (1997).

give Ford, as a secured creditor in this bankruptcy proceeding, any greater rights regarding the vehicle than it would have if no co-signor existed. While Ford may pursue the non-debtor co-signor for the deficiency remaining on its account after the debtors' satisfaction of Ford's secured claim, Ford's rights to the collateral itself will be satisfied through the Chapter 13 plan and will not continue following bankruptcy.³

For the reasons stated, the Court finds that Ford's rights as a secured creditor are not prejudiced by the debtors' plan proposing that Ford's lien be released upon completion of plan payments. Ford has, however, raised further issues regarding valuation of its claim and the amount of debtors' payment of unsecured claims. Accordingly, Ford's objection to confirmation will be overruled in part, and the Court will schedule an additional hearing on Ford's remaining objection.

SEE WRITTEN ORDER.

ENTERED:

³ A creditor with a lien on estate property has two essential rights prior to confirmation of a Chapter 13 plan: first, the right to payment of the amount specified in its note and security agreement and, second, the right to repossess and liquidate the collateral securing the note in the case of nonpayment by the debtor. Section 1325(a)(5)(B) preserves and protects both of these preconfirmation rights of the secured claim holder. See Norton, 5 Bankruptcy L. & Prac. 2d, § 122:8 (1997).

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE

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ORDER

Pursuant to the Court's opinion entered this date, IT IS ORDERED that Ford's objection to confirmation of the debtors' plan is OVERRULED in part. IT IS FURTHER ORDERED that hearing is scheduled on Ford's remaining objection to confirmation on June 20, 2000, at 9:00 a.m., at the U.S. Courthouse, 301 West Main St., Benton, Illinois.

No further notice to issue.

ENTERED: June 9, 2000

/s/ KENNETH J. MEYERS
UNITED STATES BANKRUPTCY JUDGE