

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

IN RE:

In Proceedings
Under Chapter 13

RENDALL B. KNIGHT
MARIA E. KNIGHT

Case No. 03-42763

Debtor(s).

OPINION

This matter is before the Court on a motion to reconsider filed by Peoples National Bank ("Bank"). The Bank previously filed an objection to confirmation and after hearing arguments from counsel, the Court entered an order overruling the objection. In the instant motion, the Bank asks the Court to reconsider its ruling.

Debtors' chapter 13 plan provides that debtors will retain part of the Bank's collateral and surrender part of the collateral. At the hearing on the objection to confirmation, the Bank contended that under 11 U.S.C. § 1325(a)(5), debtors must either retain all of the collateral or surrender all of the collateral.¹ The Bank argued, *inter*

¹ Section 1325(a)(5) provides that the Court shall confirm a plan if...

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of *property to be distributed under the plan* on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder....

alia, that the phrase “property to be distributed under the plan” encompasses cash payments only and does not include other property (in this case, the collateral). Neither party presented any authority addressing the meaning of the phrase “property to be distributed under the plan.” In the absence of any authority supporting the Bank’s position and after considering all relevant arguments, the Court overruled the Bank’s objection to confirmation.

In its motion to reconsider, the Bank now argues that if sections 1325(a)(5) and 1306(a)² are read together, “property to be distributed under the plan” refers only to post-petition property. The Bank cites no authority in support of its interpretation, and the Court finds the Bank’s argument to be without merit. Moreover, *Collier on Bankruptcy* suggests a much broader interpretation:

The phrase “property to be distributed under the plan” plainly and significantly indicates that cram down may be accomplished in a chapter 13 plan merely by proposing to distribute property during

11 U.S.C. § 1325(a)(5) (emphasis added).

² Section 1306 (a) expands the definition of “property of the estate” found in section 541 and provides:

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case....

11 U.S.C. § 1306(a).

the course of the extension period. The property may be property of the estate in existence at the date of confirmation "Property is not a defined term, but it is altogether unrestricted in scope and unquestionably encompasses any and all kinds of property of the estate and property of the debtor 'to be distributed under the plan.'" . . . The crucial import of the phrase . . . lies in its connotation of permission to satisfy allowed secured claims through future distributions of property of equivalent present value.

8 *Collier on Bankruptcy* ¶ 1325.06[2][b][ii], at 1325-32 to 33. The Court agrees with *Collier's* interpretation.

For these reasons, IT IS ORDERED that the Bank's motion to reconsider is DENIED.

ENTERED: July 29, 2004

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE