UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In re:	)	
	)	
WILLIE E. TART and DIAN TART,	)	Case No. 93-30599
	)	
	)	
Debtors.	)	

O P I N I O N

Willie E. Tart and Diane Tart ("Debtors") filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code in May 1993. They proposed to retain their 1987 Ford Econoline 150 Van, which was subject to a lien of Telephone Credit Union ("Creditor"), by making monthly installment payments through the Chapter 13 Trustee. In June 1994, the vehicle was surrendered, after Creditor filed a motion for relief from stay due to Debtors' failure to make plan payments. Creditor subsequently sold the van and applied the net sale proceeds to its debt. Trustee objected to Creditor's secured claim on the basis that the collateral had been sold and maintains that any deficiency balance should be allowed only as an unsecured claim. Creditor admits that the van has been surrendered and sold, but claims entitlement to a secured claim in the amount of the fair market value of the vehicle at the time of filing of Debtors' petition herein, less any payments received through the plan and sale proceeds, with the remainder of the debt to be paid as an unsecured claim.

This Court cites with approval the case of In re White, 169 B.R. 526 (Bankr. W.D. N.Y. 1994), which addresses the issue of when a creditor seeks to hold debtors to their promise to pay the creditor's secured claim in full despite the fact that the creditor has repossessed the collateral and sold it at a value less than the total of allowed secured claims as fixed by the plan and order of confirmation, whereby the debtor agreed to pay the secured claim in full.

Quoting extensively from Judge Kaplan's insightful analysis in White,

> When debtors utilize 11 U.S.C. § 1325(a)(5)(B) they are electing to retain their home (or car, or boat, or other collateral) and to pay the present value of the full fair value of the collateral to the creditor over the life of the plan, also acknowledging that the lender is to retain the lien on the property. The debtor could alternatively surrender the collateral to the secured creditor in full satisfaction of the creditor's "secured" claim, relegating the creditor only to "unsecured" status as to any deficiency (11 U.S.C. § 1325(a)(5)(C)). Because 11 U.S.C. § 1327 states that the provisions of the confirmed plan and the Order of Confirmation "bind the debtor" (as well as the creditor), the creditor here objects to the Debtors' effort to "switch" from (a)(5)(B) treatment of the creditor to (a)(5)(C) treatment years into the Plan, after the repossession and resale of the manufactured home.
>
> What is omitted in the creditor's analysis at bar, and overlooked in the Debtors' analysis, (footnote omitted) is the fact that when a 11 U.S.C. § 362(d) motion is properly made and granted, it is usually explicitly recognized (and always implicitly recognized) that the grant of the motion relegates the parties to their State Law rights. Plans and Orders confirming them do not extinguish all pre-existing contractual rights and remedies between the Debtor and a secured creditor.
>
> When this Court grants motions to lift stay to permit repossession or foreclosure it does not direct the Debtor to turn over the property to the lender, and does not supplant State Law protections for the Debtor regarding notice, redemption, or the like. Contract terms that

govern the relationship between the Debtor and the creditor, that might enure to the benefit of either, are not abrogated. It is at least implicit, if not explicit, in orders lifting the stay, that (1) the Debtor has lost the anticipated benefit of retention of the collateral - which was the "quid pro quo" for the Debtors' promise to pay 100 cents on the dollar on the full fair market value of the collateral (regardless of how much lower than that value the creditor might have received had the Debtor simply surrendered it to the creditor at the time of confirmation) - and (2) the intentions of the Plan cannot be realized, and that (3) the Plan or the Order confirming it, must be adjusted accordingly.

When a debtor elects to retain the property and therefore provide for the lienor to "retain its lien," all incidents of the lien and the relationship between the parties (e.g. duty to maintain insurance) remain intact. It is only the right to enforce the lien that is impaired, as well as the payment conditions that trigger the right of enforcement. A good faith debtor does not thereby become a guarantor of the full amount of the debt or of the value set at the time of confirmation (which value is largely dependent on such measures as NADA book value). At the time of repossession, the value of the collateral might be higher or lower. If the creditor had succeeded in obtaining higher than that estimated value upon repossession and resale, the Debtor could not claim entitlement to that excess unless the creditor would be paid more than in full on the total outstanding balance secured by that collateral. The lien that the secured creditor retains by virtue of 11 U.S.C. § 1325(a)(5)(B) is precisely what a lien is expected to be at common law. It is a lien on the property, nothing more and nothing less, which lien is defined by the contract terms and by state or federal non-bankruptcy law.

The Debtors' promise to pay 100 cents on the dollar on the creditor's claim does not supplant these rights; it merely recognizes them. Thus, it is a promise that is conditioned on the Debtors' ability to retain the collateral. When an order of this Court denies the Debtors such retention, or acknowledges the Debtors' inability

> to retain the collateral, it is necessarily implicit and understood that the creditor's claims will be "deemed amended" accordingly.

169 B.R. 529-530

For the reasons set forth above, Trustee's Objection to Claim is sustained.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: March 24, 1995

/s/ BASIL H. COUTRAKON
UNITED STATES BANKRUPTCY JUDGE