

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

IN RE:)
)
TRACY WILLIAMS,) Bankruptcy Case No. 95-32322
)
Debtor.)
)
and)
)
TRACY WILLIAMS,)
)
Plaintiff,)
)
vs.) Adversary Case No. 95-3302
)
)
RANDOLPH-BROOKS FEDERAL)
CREDIT UNION, and)
JAMES W. McROBERTS, Trustee,)
)
Defendants.)

OPINION

This matter having come before the Court on a Motion for Relief from Automatic Stay filed by Randolph-Brooks Federal Credit Union, in Debtor's case file, and upon a Complaint for Turnover filed by the Debtor in the above-captioned adversary proceeding; the Court, having heard arguments of counsel and sworn testimony and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The material facts in this matter are not in dispute and are, in pertinent part, as follows:

1. The Randolph-Brooks Federal Credit Union (Credit Union) is the holder of a loan and security agreement dated February 29, 1992,

and a certain Mastercard agreement, which loans are secured by a 1992 Toyota Camry which is titled in the name of the Debtor.

2. The Credit Union's security interest in the collateral is properly perfected as is evidenced by the Credit Union's lien noted on the Certificate of Title.

3. On November 14, 1994, the Debtor filed for relief under Chapter 13 of the Bankruptcy Code in Case No. 94-31224 (first petition date). As of the first petition date, the Debtor was indebted to the Credit Union pursuant to his two accounts in the amount of \$11,406.90.

4. On October 16, 1995, the Court dismissed Debtor's first Chapter 13 case due to the Debtor's failure to make plan payments. During the pendency of the Debtor's first Chapter 13 case, the Credit Union only received the sum of \$556.40 on its claim. A sum which is well below the actual amount that was due from the period of November 14, 1994, through October 16, 1995.

5. On or about November 13, 1995, subsequent to the dismissal of the Debtor's first Chapter 13 case, the Credit Union repossessed the vehicle in question. On November 16, 1995, approximately three days after the Credit Union repossessed the subject vehicle, the Debtor filed a second Chapter 13 bankruptcy proceeding, being the instant case.

6. As of the filing of his second Chapter 13 bankruptcy, the Debtor was indebted to the Credit Union, pursuant to his accounts, in the amount of \$12,187.61. The Credit Union accurately points out that the debt to it has actually increased by nearly \$1,000 since the date of Debtor's first Chapter 13 filing.

7. The parties agree that, as of the date of Debtor's second Chapter 13 filing, the fair market value of the vehicle in question was approximately \$11,400.

8. On December 14, 1995, Debtor filed the subject Complaint for Turnover seeking return of the collateral in question as property of the Debtor's bankruptcy estate arguing that the vehicle was necessary to his reorganization and that the Credit Union would be adequately protected by his plan payments proposed in his second Chapter 13 Plan of Reorganization.

9. On December 21, 1995, the Credit Union filed the instant Motion for Relief from Automatic Stay arguing that the Debtor had no equity in the vehicle in question and that, given the increase of its debt from the first Chapter 13 filing to the second Chapter 13 filing and the decrease in the value of the automobile, the Credit Union is not adequately protected pursuant to 11 U.S.C. § 362(d)(1).

Conclusions of Law

By agreement of the parties, sworn testimony was taken from the Debtor and argument was heard both upon the Motion for Relief from Automatic Stay and the Complaint for Turnover even though the Complaint was only set for a pre-trial. As a matter of house-keeping, the Debtor, as Plaintiff in the adversary proceeding, agreed to the dismissal of James W. McRoberts, Trustee, as a Defendant in the adversary.

The main issue before the Court is whether the second Chapter 13 Plan proposed by the Debtor herein adequately protects the interests of the Credit Union as to its collateral, given the other facts

surrounding this matter. After a complete review of the facts and the arguments of the parties, the Court must conclude that the Plan proposed by the Debtor herein does not adequately protect the Credit Union. As such, the Motion for Relief from Automatic Stay should be granted. In reaching this conclusion, the Court notes that, from the time of the Debtor's first Chapter 13 bankruptcy filing in November 1994, to the time of dismissal of that case on October 16, 1995, the Debtor was only able to make payments in the sum of \$556.40 to the Credit Union, a sum far less than the normally scheduled payments on the Debtor's Credit Union accounts. Additionally, the Court notes that, during the term of the Debtor's first Chapter 13 filing, the debt to the Credit Union actually increased by nearly \$800 at the same time that the fair market value of the vehicle was declining due to the passage of time and the normal wear and tear on the vehicle, such that, at present, the fair market value of the vehicle is less than the secured indebtedness against it.

In opposition to the Motion for Relief from Automatic Stay, the Debtor argues that his second Chapter 13 Plan will adequately protect the Creditor in that he intends to make all payments to the Creditor as scheduled while clearing up the default arrearage on his debt with the Credit Union. The Debtor's history in his first Chapter 13 bankruptcy filing, his history with this Creditor, and the history of the present case belie the Debtor's statements that his Chapter 13 Plan will remedy all the past problems. The record of Debtor's payments in his first Chapter 13 Plan show that the Debtor was unable to make the Plan payments in a timely manner, which resulted in the dismissal of the

first Chapter 13 case. The Debtor's history on the loans in question with the Credit Union show that the Debtor has made very few payments since the inception of the loans in 1992, to the extent that the Debtor has not even made enough payments to cover the normal expected depreciation on the vehicle in question. In the Debtor's present Chapter 13 case, the Court is informed by the Trustee that the Debtor is slightly behind in his payments. This fact, taken with the history of the Debtor's first case and history of the Debtor with the loans in question lead the Court to conclude that the Debtor will be unable to provide adequate protection to the Credit Union to the extent necessary to allow him to regain possession of the vehicle as requested in the Complaint for Turnover.

ENTERED: February 13, 1996.

/s/ Gerald D. Fines
United States Bankruptcy Judge