UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

FILED
2001 DEC -6 AM 10: 38
DISTRICT OF SOUTH CAROLINA

IN RE:	) **Chapter 13**
	) **Bankruptcy No. 00-11188/W**
Bonita Koenig,	)
	)
Debtor.	)
	)

ENTERED
DEC 07 2001
V.L.D.

ORDER GRANTING RELIEF FROM STAY

This matter came before the Court on the Amended Motion of Savannah River Plant Federal Credit Union ("SRP") for relief from the automatic stay of 11 U.S.C. §362(d),[1] filed on November 14, 2001. Debtor filed her Objection to the Motion on November 20, 2001. Having considered the pleadings, arguments of counsel for both parties, and cases cited, the Court makes the following findings of fact and conclusions of law; and to the extent one is deemed to be the other, they are incorporated into each other.

FINDINGS OF FACT

1. SRP is the holder of a secured claim against Debtor's estranged husband Allan A. Koenig, evidenced by a Loanliner Note and Disclosure Statement dated December 5, 1997 ("Agreement"), a copy of which was attached to SRP's motion. The property securing the Agreement is a 1998 Dodge Durango, VIN 1B4HS28Z0WF122551 ("Vehicle"). Debtor signed this Agreement only as an "owner of collateral"; she is not obligated on the note itself.

2. The title to the Vehicle states as follows: "FULL NAME OF OWNER(S): KOENIG ALLAN OR BONITA."

3. The Vehicle has a fair market value of approximately $13,675.00. SRP's lien is in the approximate amount of $13,415.49.

[1]Further references to the United States Bankruptcy Code will be by section number only.

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4. Debtor filed a petition for relief under Chapter 13 of the U.S. Bankruptcy Code on December 8, 2000.

5. Debtor's Chapter 13 Plan does not propose to pay the secured indebtedness owed to SRP; instead, Paragraph 4(d) of Debtor's plan dated January 25, 2001, provides as follows:

> Other secured debt to be treated as follows: SRP Federal Credit Union: Pursuant to Civil action no. 2000-DR-02-1335 in the Aiken County Family Court, the estranged husband, Allan A. Koenig responsible for paying this debt which is solely in his name, but secured by Debtors [sic] interest in the 1998 Dodge Durango. The debt will be paid outside of the plan.

Mr. Koenig, who is not in bankruptcy, has failed to make payments since March 22, 2001.

6. The Chapter 13 plan was confirmed on February 7, 2001.

7. There is no equity in the collateral, and Debtor continues to use the Vehicle without paying SRP directly, and without provisions in the chapter 13 plan proposing payments to SRP through the bankruptcy plan.

CONCLUSIONS OF LAW

Debtor has argued that SRP is barred from seeking relief from the automatic stay now, since SRP did not object to its treatment in the plan and the plan was confirmed ten months ago. In support of this argument, Debtor cites two cases: In re Wallace, 259 B.R. 646 (Bankr. E.D. Tenn. 2001) and In re Fowler, 1998 WL 748648 (Bankr. E.D. Va.). However, both these cases stand for the proposition that creditors who are subject to plans whereby third parties are to make payments on the claims outside of the plan are barred from seeking claims for any deficiencies against the debtors. This proposition is inapplicable to the current situation, where SRP is seeking relief from the stay to enforce its lien against its collateral in Debtor's possession, not to assert a deficiency claim.

In addition, Debtor argues the *res judicata* effect of the confirmation of the plan on SRP's claim, in accordance with In re Durham, 260 B.R. 383 (Bankr. D. S.C. 2001). However, in Durham, this Court acknowledged that the pivotal issue to consider in cases such as these is whether or not the Creditor received adequate notice that its rights would be modified by the Plan's treatment of its claim. As defined in Cen-Pen Corp. v. Hanson, 58 F.2d 89 (4th Cir. 1995), "a plan 'provides for' a claim or interest when it acknowledges the claim or interest and makes explicit provision for its treatment." Cen-Pen at 94 (citing In re Work, 58 B.R. 868, 871 (Bankr. D. Or. 1986)). In the present case, the plan's language is not sufficient to extinguish SRP's lien, nor does it clearly prohibit SRP from foreclosing its lien against the vehicle. It merely provides that a non-debtor third party will make the payments. Therefore, *res judicata* or the binding effect of confirmation does not prohibit relief from stay in this case.

Finally, Section 362(d) provides in part as follows:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
>
> (2) with respect to a stay of an act against property under subsection (a) of this section, if –
>
> (A) the debtor does not have an equity in such property; and
>
> (B) such property is not necessary to an effective reorganization.

In this case, the Court concludes that SRP is not adequately protected as contemplated by §362, as it is undisputed that the vehicle is depreciating, no payments are being made either through the plan or outside it, and there is no equity cushion.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED that the Motion to Modify the 11 U.S.C. §362 Stay as to the Vehicle filed by SRP is granted; that Debtor's objection is overruled; and that the stay is modified to permit SRP to take action under applicable law and the parties' agreements to repossess and/or sell the Vehicle. After disposing of the Vehicle, SRP may file an Amended Proof of Claim for any deficiency balance owed (if applicable); and it is further

ORDERED that this Order shall be effective immediately upon its entry, and the 10-day stay of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is waived, as requested by SRP in its motion.

AND IT IS SO ORDERED.

John E. Waites
Judge, United States Bankruptcy Court

Columbia, South Carolina

December 6, 2001

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

DEC 7 2001

Holland for cr

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE via bnc

VANNA L. DANIEL

Deputy Clerk