

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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DEC 21 1999
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (6)

IN RE:

James Robert Madden, Sr. and Donna Marie
Madden

Debtors.

C/A No. 99-08282-W

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Consumer Finance Corporation's Motion for Relief from the Automatic Stay is denied.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
December 21, 1999.

FILED
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J.G.S.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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BRENDA K. ANDERSON, CLERK
United States Bankruptcy Court
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IN RE:

James Robert Madden, Sr. and Donna Marie
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Debtors.

C/A No. 99-08282-W

ORDER

Chapter 13

THIS MATTER comes before the Court upon the Motion for Relief from Automatic Stay ("Motion") filed by Consumer Finance Corporation on November 17, 1999. Based upon the arguments of counsel and the evidence presented by the parties at the hearing on this matter, including the testimony of Debtor, this Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Debtors filed a Petition for Relief under Chapter 13 of the Bankruptcy Code on September 29, 1999.
2. Consumer Finance Corporation is the holder of a security interest in a 1998 Ford F-150 truck. On October 12, 1999, Consumer Finance Corporation filed a Proof of Claim in the amount of \$19,892.26 for the money loaned to Debtors to buy the vehicle.
3. Debtors purchased the truck on July 31, 1999, almost two months prior to filing bankruptcy. Prior to entering into a contract for the purchase of the 1998 vehicle, Debtors had not consulted a lawyer in regard to the bankruptcy filing.
4. The purchase price for the vehicle was \$22,248.26. In the Chapter 13 Plan filed with the

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Court on October 15, 1999, Debtors value the vehicle at \$16,900.¹

5. Debtors have made no payments on the vehicle.

6. Debtors are both employed at the same place of business; however, they work different shifts. Their place of employment is approximately ten to twelve miles away from their residence.

CONCLUSIONS OF LAW

The disjunctive language in 11 U.S.C. §362(d)² allows a court to grant relief from the automatic stay if a claim is established under either §362(d)(1) or §362(d)(2). See Walter Heller Western, Inc. v. Faires (In re Faires), 34 B.R. 549, 553 (Bankr. W.D. Wash. 1983).

Section 362(d)(2) provides that relief from the automatic stay shall be granted if “(A) the debtor does not have an equity in such property; and such property is not necessary to an effective reorganization.” (Emphasis added). Pursuant to §362(g), the party requesting relief from stay bears the burden of proof on the issue of equity in the subject property; whereas the opposing party bears the burden of proof on all the other issues. It is unclear from the Certification of Facts filed by the parties and the evidence introduced at the hearing on the Motion, whether Debtors have any equity in the vehicle in question. However, the evidence introduced by Debtor at trial shows that the vehicle is necessary for an effective reorganization; thus precluding relief from the stay pursuant to §362(d)(2).

In order to meet the requirement set forth in §362(d)(2)(B) that the property be “necessary for an effective reorganization,” the party opposing the relief must show: “(1) that the

¹ In the Certification of Facts filed by the parties, it is unclear whether Debtors have any equity in the vehicle.

² Further references to the Bankruptcy Code shall be by section number only.

property is essential to the reorganization effort; and (2) that there is a reasonable possibility of a successful reorganization in a reasonable time.” In re Trius Corp., 47 B.R. 3, 5 (Bankr. D.S.C. 1984) (citing First Federal Savings & Loan v. Shriver (In re Shriver), 33 B.R. 176, 187 (Bankr. N.D. Ohio 1983)); see also United Saving Assoc. of Tex. v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 375-76 (1988). In the case now before this Court, it is clear that in order for the Chapter 13 Plan to work, it is necessary for Debtors to keep the truck. Debtors own two vehicles, including the one in question; however, their work and family situation requires that both vehicles be kept. Even though Debtors work for the same company, they work different shifts. Furthermore, their place of employment is approximately ten to twelve miles distant from their home, thus requiring them to drive to work. The Court further finds that reorganization appears feasible within a very short time.³ Therefore, the Court concludes that relief from the automatic stay cannot be granted under §362(d)(2).

Section 362(d)(1) provides that the court shall grant relief from the automatic stay “for cause, including the lack of adequate protection of an interest in property of such party in interest.” The Bankruptcy Code provides no guidance for what constitutes “cause;” therefore, such determination is left to the discretion of the bankruptcy judge. See Robbins v. Robbins (In re Robbins), 964 F.2d 342, 345 (4th Cir. 1992) (“Because the Code provides no definition of what constitutes “cause,” courts must determine when discretionary relief is appropriate on a

³ On the same date of the hearing on this Motion, the Court held a Confirmation Hearing. Consumer Finance Corporation did not file a timely objection to the plan which valued the truck at \$16,900. The Chapter 13 Plan that Debtors filed with the Court on October 15, 1999 was not approved at that hearing; however, the Court entered an Order which allowed Debtors to file an amended plan within ten days of the hearing; and, upon filing of such amended plan, it will be confirmed without further notice or hearing. Furthermore, the Trustee indicated that the amendment will not effect the claim of Consumer Finance.

case-by-case basis.”). Movant argued that relief from the automatic stay should be granted because Debtors filed the Chapter 13 case in bad faith as indicated by their recent purchase of the vehicle and failure to make any payments on it; and because, due to the quick depreciation of the vehicle in question, Consumer Finance Corporation is not adequately protected.

Bad faith filing may constitute sufficient “cause” for relief from the automatic stay. See Little Creek Dev. Co. v. Commonwealth Mortgage Corp. (In re Little Creek Dev. Co.), 779 F.2d 1068, 1074 (5th Cir. 1986); see also Carolin Corp. v. Miller, 886 F.2d 693, 699 (4th Cir. 1989) (“[Section] 362(d)(1)’s ‘for cause’ language authorizes the court to determine whether, with respect to the interests of a creditor seeking relief, a debtor has sought the protection of the automatic stay in good faith.”). In the case now before this Court, there is no indication that Debtors filed the Chapter 13 bankruptcy in bad faith.

In Carolin, the Fourth Circuit Court of Appeals concluded that “bad faith” involves a consideration of both objective futility and subjective bad faith.⁴ See Carolin, 886 F.2d at 700. The subjective bad faith inquiry involves a determination of whether Debtors’ motivation for filing bankruptcy is “to abuse the reorganization process” and cause hardships and delays on the creditors by “invoking the automatic stay, without an intent or ability to reorganize his financial activities.” Id. at 702 (quoting In re Thirtieth Place, Inc., 30 B.R. 503, 505 (9th B.A.P. 1983)). In this case, Debtors filed for relief under Chapter 13 of the Bankruptcy Code approximately two months after they purchased the truck that is the subject matter of the Motion;

⁴ Even though Carolin deals with the dismissal of a Chapter 11 bankruptcy pursuant to §1112, the section of the Code dealing with dismissal of Chapter 11s also provides that a court may convert a case from Chapter 11 to Chapter 7 or may dismiss it “for cause.” Thus, the test that the court in Carolin applied to determine if dismissal was warranted due to bad faith, also can be applied to determine if Debtors in this case filed in bad faith, thus warranting the relief from the automatic stay “for cause” pursuant to §362(d)(1).

however, the evidence presented at the hearing showed that Debtors had not consulted with an attorney to discuss the possibility of filing bankruptcy prior to the purchase of the vehicle. Debtor testified and the record reflects that the bankruptcy case was filed because they had defaulted on their home mortgage payments and because they wanted to protect their home from foreclosure. The creditor failed to prove that Debtors bought the vehicle knowing that bankruptcy was imminent.

Furthermore, the evidence presented at the hearing also shows that the objective futility inquiry is satisfied. “The objective futility inquiry is designed to insure that there is embodied in the petition ‘some relation to the statutory objective of resuscitating a financially troubled [debtor].’” *Id.* at 701 (quoting *In re Coastal Cable TV, Inc.*, 709 F.2d 762, 765 (1st Cir. 1983)). In this case, there is a realistic ability to effectuate a reorganization. Debtors have filed a Chapter 13 Plan on October 15, 1999. The only creditors that objected to the Chapter 13 Plan, as originally filed, were Redi-Crafts, Inc. and Fort Motor Credit Company; Consumer Financial Corporation did not object to the Chapter 13 Plan which valued its claim at \$16,900. Pursuant to the Order entered by the Court, an amended plan is to be filed, and upon the filing of such plan, it will be confirmed without a hearing or notice. As the Chapter 13 Trustee reported at the hearing on the Motion, the Chapter 13 Amended Plan will be confirmed without any variation in treatment of Consumer Finance Corporation’s Claim from the first Chapter 13 Plan.⁵ Therefore, the Court concludes that there is a reasonable possibility of success in Debtors’ reorganizational efforts. The Court also finds that the Movant, who bears the burden to prove that the relief of the automatic stay should be granted “for cause,” has failed to prove that Debtors filed the Chapter

⁵ The Trustee also did not indicate any objection to Debtor’s retention of the vehicle in question or any objection to its valuation.

13 petition in bad faith.

Consumer Finance Corporation also argued that Debtors are using the vehicle in question without providing adequate protection because the vehicle has depreciated greatly between the time of the purchase of the truck on July 31, 1999, when Debtors paid \$22,248.26; and the filing of the Chapter 13 petition, when the vehicle was valued at \$16,900.⁶ The Fourth Circuit Court of Appeals and this Court have both taken the position that rapid depreciation of a vehicle used as collateral cannot “support a creditor’s claim of inadequate protection.” *In re Coates*, 180 B.R. 110, 119 (Bankr. D.S.C. 1995). As the Fourth Circuit Court of Appeals emphasized, “[w]e can muster even less sympathy for institutional lenders; they are fully cognizant of the risks inherent in the making of loans, default among them, and receive substantial interest payments to help offset those risks.” *Riggs v. Nat’l Bank v. Perry (In re Perry)*, 729 F.2d 982, 985 (4th Cir. 1984). Thus, the Court finds that relief from the automatic stay cannot be granted under §362(d)(1).

CONCLUSION

Based upon the foregoing, it is

ORDERED that Consumer Finance Corporation’s Motion for Relief from the Automatic Stay is denied.

AND IT IS SO ORDERED.

Columbia, South Carolina,
December 21, 1999.


UNITED STATES BANKRUPTCY JUDGE

⁶ At the hearing, Debtors argued that the reason that the truck depreciated so much in the span of a couple of months was due to the fact that they had purchased the truck for an inflated price that did not reflect the true value of the vehicle.

w/ judgment

CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States
Bankruptcy Court for the District of Columbia hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date indicated below:

DEC 21 1999

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH
Deputy Clerk

*Maddox
Cooper
RFA
WCS*