

In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)	
)	Chapter 13 Case
ROZELL MITCHELL)	
)	Number <u>01-21624</u>
<i>Debtor</i>)	

ORDER ON MOTION FOR TURNOVER OF PROPERTY

When the Debtor filed this case on October 25, 2001, he owed Glynn Teachers Federal Credit Union (“GTFCU”) over \$25,000.00, which was secured by a security interest in the Debtor’s Certificate of Deposit (“C.D.”) with GTFCU. The C.D. had a balance of \$8,400.00 at the time of filing. Accordingly, when the plan was confirmed in May 2002, the GTFCU claim was bifurcated into a secured portion of \$8,400.00 (representing the value of the collateral held by GTFCU) and an unsecured portion of \$16,982.87, which represented the balance of the debt not secured by the C.D. Since that time, the Debtor has made periodic plan payments to the Trustee. On December 13, 2004, he requested that the C.D. (with accrued interest, it is now worth \$9,041.13) be turned over to him because GTFCU’s secured claim established at the confirmation of his Chapter 13 plan in the amount of \$8,400.00 had been paid in full. While the unsecured portion of the claim has been slightly reduced, there is still an outstanding balance on that claim of nearly \$16,000.00. The remaining estimated dividend based on the anticipated pro rata dividend in the case is approximately \$3,200.00 that will be paid out if the Debtor continues making payments until the conclusion of the plan and receives a discharge.

GTFCU objected to the Debtor's request and took the position that either it or the Trustee should hold the C.D. until the Debtor completes his plan. GTFCU claimed that if the case was dismissed prior to the time the Debtor receives a discharge, it would retain a state law claim for the unpaid balance of the debt in full. If the case is dismissed prior to discharge, under state law, the provisions of the C.D. and the Debtor's obligation to GTFCU are such that whatever value the C.D. then has can be applied as a setoff against the Debtor's obligation. The Debtor argued that because disbursements under the plan had already reduced the \$8,400.00 secured claim to zero, any remaining security interest of GTFCU should be released and the C.D. should be turned over to the Debtor.

By Order dated March 23, 2005, I denied the Debtor's motion for turnover of the C.D. Then on August 1, 2005, the Debtor filed the present Motion for Turnover seeking the same relief. This Motion was triggered because the Debtor faced a motion for stay relief on his personal residence and needed the cash represented by the C.D. to cure his mortgage arrearages. Again, GTFCU asserts that it is entitled to retain its security interest in the C.D. under state law until such time as the Debtor is granted a discharge.

DISCUSSION

Under the Bankruptcy Code, 11 U.S.C. § 1327¹ governs the effect of a debtor's confirmed Chapter 13 plan:

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

Section 1327 makes clear that the terms of a debtor's confirmed plan will bind both the debtor and his creditors as well as govern their property interests and rights. Furthermore, Section 1327(c) frees the property that vests in a debtor pursuant to Section 1327(b) from all liens held by creditors provided for by the plan, *except as otherwise provided by the plan or the order confirming the plan*. Collier on Bankruptcy, ¶ 1327.04[2], at 1327-13 (emphasis added).

Therefore, to resolve this matter, the Court must look to the Debtor's confirmed Chapter 13 Plan. Under the terms of the Plan, "Secured creditors shall retain liens securing their claims." Dckt. No. 14; April 12, 2002 (emphasis added). Pursuant to this

¹ Hereinafter, all section references are to Title 11 of the United States Code.

language, GTFCU retains its lien over the C.D. until completion of the Plan and the Debtor receives a discharge of all claims filed in the case. Although GTFCU's claim was originally bifurcated by Section 506(a) into a secured claim and unsecured claim at the beginning of the case, this bifurcation is for classification purposes. Rather, GTFCU's lien is retained until the completion of the Debtor's Plan, as stated by the Plan's language. The treatment of GTFCU's lien in this context is supported by the court's decision in In re Sadala:

To protect creditor's interests in the event a debtor defaults in payments under a Chapter 13 plan before the conclusion of his or her case, the Court will treat any secured claim valued at zero as an unsecured claim during the Chapter 13 case. *If the debtor completes all required payments and receives a discharge, then the lien related to this unsecured claim shall be declared void upon the entry of the discharge.* The order confirming the debtor's Chapter 13 plan or order granting the motion to value can provide for this treatment and the automatic extinguishment of the lien upon the entry of the discharge.

294 B.R. 180, 185 (Bankr. M.D. Fla. 2003)(emphasis added).

The collateral securing GTFCU's lien are the funds represented by the C.D., the subject of the Debtor's Motion for Turnover. Because of the collateral's liquidity, permitting the Debtor to receive the funds in the C.D. would have the practical effect of prematurely voiding GTFCU's lien, which the Plan permits GTFCU to retain until discharge. It would also render meaningless the provisions of Section 349(b)(1)(C), which provide that upon dismissal of a case prior to discharge, any liens provisionally avoided are reinstated. The Debtor's use of the funds prior to discharge would render GTFCU's lien worthless and

the Plan's language meaningless. Therefore, the only way to preserve the value of GTFCU's lien, the meaning of the Plan's terms, and the intent of Section 349(b)(1)(C) is to allow GTFCU to retain the funds represented by the C.D.

ORDER

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that the Debtor's Motion for Turnover is DENIED.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This _____ day of January, 2006.