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

In the matter of:)	
)	Chapter 13 Case
CONNIE FRAZIER HASTY)	
)	Number <u>99-41596</u>
<i>Debtor</i>)	

ORDER ON MOTION TO SUBSTITUTE COLLATERAL

Debtor's case was filed on June 4, 1999. On November 3, 1999, Debtor filed a Motion to Substitute Collateral held to secure a loan to the Fort Stewart Federal Credit Union ("Credit Union"). The automobile which served as collateral on the Credit Union debt has been declared a total loss and Debtor wishes to use the insurance proceeds to buy a comparable vehicle and grant a substitute security interest in that vehicle to secure the Credit Union's note. The Credit Union filed an objection to the motion and the matter was heard by the Court on December 2, 1999.

Debtor relies on a number of cases which have permitted substitution of collateral over the objection of the lienholder. See In re Carey, 202 B.R. 796 (Bankr. M.D.Ga. 1996)(relying on the terms of the insurance policy and holding that if the payment of proceeds may be made to the creditor and the insured then proceeds are property of the estate, but recognizing contrary authority holding that proceeds payable directly to a lender pursuant to a loss payable clause are not property of the estate); In re Niles, Case No. 99-41877-JDW (S.D.Ga., filed Nov. 1, 1999) (holding that because the

terms of the insurance contract were not admitted in evidence the lienholder did not have the exclusive right to the proceeds. Debtor's motion to substitute collateral granted) ("The mere fact that a party has a security interest in collateral does not mean that it is automatically entitled to possession of insurance proceeds . . . In many cases the parties' security agreement will spell out their respective rights with respect to insurance proceeds.") (quoting JCS Enterprises, Inc., v. Vanliner, Ins., 227 Ga. App. 371, 376, 489 S.E.2d 95, 99 (1997)); In re Coker, 216 B.R. 843 (Bankr. N.D.Ala. 1997) (holding that the policy documents did not list the creditor as loss payee, sole payee, sole beneficiary, or owner of the proceeds and no wording in any of the insurance documents before the Court conveyed such sole ownership to the lender, thus finding that the proceeds constituted estate property and could be used by the debtor subject to providing adequate protection in the form of a substitute vehicle). *But see* In re Suter, 181 B.R. 116 (Bankr. N.D.Ala. 1994) (holding that the creditor, as loss payee of the insurance policy, is entitled to proceeds at least to the extent of the interest in the property secured).

In essence the Court's inquiry turns on an examination of whether insurance proceeds constitute property of the estate of the debtor. When property of the estate, such as an automobile, is destroyed and there are insurance proceeds to cover that loss, the characterization of those proceeds as estate property depends on the terms of the insurance policy. If the policy makes the proceeds jointly payable, or if it is silent, or if the policy terms are not admitted into evidence, even when the creditor's security agreement extends to proceeds, the creditor does not hold absolute title. In that set of circumstances the debtor has the right to use the property, i.e., the proceeds, subject to providing adequate

protection. 11 U.S.C. §§ 363 and 361.

However, when the creditor's interest in proceeds is absolute because the terms of the insurance policy grant to a creditor, via a loss payable or similar clause, title to the proceeds rather than merely a security interest in it, the result is different. The debtor's estate has no interest in the proceeds until the note or obligation is fully extinguished and then the estate's interest attaches only to the equity or the excess proceeds. See In re Suter, *supra*; Beasley v. Agricredit Acceptance Corp., 224 Ga. App. 372, 480 S.E. 2d 257 (1997); Rice v. State Farm Fire & Casualty Co., 208 Ga. App. 166, 430 S.E.2d 75 (1993).

In this case, the Credit Union asserts that the contract language grants the Credit Union the exclusive right to the proceeds by reference to language in the contract: "If the property is lost or damaged, the Credit Union can use the insurance settlement to repair the property or apply it to what you owe." (Exhibit A, p.2). This language, however, is found in the security agreement. The insurance policy language was not made part of the record. I therefore hold that the Credit Union holds only a security interest in, and not absolute title to, the proceeds. Since the Credit Union holds only a security interest in these proceeds, they remain property of the estate which Debtor may use, subject to providing adequate protection to the Credit Union.

IT IS THE ORDER OF THIS COURT that the Debtor's Motion to Substitute Collateral is GRANTED. Debtor may purchase a substitute vehicle of

comparable value and pledge same to the Credit Union. Fort Stewart Federal Credit Union shall have the right to approve the make and model, which approval shall not be unreasonably withheld.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of February, 2000.