

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>87-11306</u>
DAVID DANIEL)	
CAROLYN M. DANIEL)	
)	
Debtors)	
_____))	
)	
DAVID DANIEL)	FILED
CAROLYN M. DANIEL)	at 9 O'clock & 35 min. A.M.
)	Date: 5-14-90
Movants)	
)	
vs.)	
)	
C & S BANK))	
)	
Respondent)	

ORDER

David Daniel and Carolyn M. Daniel, debtors in this Chapter 13 proceeding have objected to the allowance of an unsecured claim of C & S Bank ("C & S"). The facts are not in dispute. The debtors filed their petition for relief under Chapter 13 on December 4, 1987. By order of this court dated April 14, 1988 the debtors' proposed plan was confirmed. The allowed claim of C & S was split with Eight Thousand Eight Hundred Twenty-Two and No/100 (\$8,825.00) Dollars secured and the balance Five Thousand Two Hundred Sixty and 09/100 (\$5,260.09) Dollars unsecured. The plan as confirmed would pay a 15.3% dividend to the unsecured creditors. Some time subsequent to the confirmation, C & S's collateral, an automobile, was destroyed and insurance proceeds were received by C & S in a sum sufficient to satisfy the balance of the secured claim. Additionally, One Thousand One Hundred Fifty-One and No/100 (\$1,151.00) Dollars was received in insurance proceeds above the amount necessary to satisfy the secured claim. C & S has withdrawn its secured claim but has not

withdrawn or modified its unsecured claim. By objection, the debtors seek credit for this additional sum against C & S's unsecured claim. While it may have been procedurally clearer for the debtors to have sought modification of their confirmed plan pursuant to 11 U.S.C. 1329(a)(3)¹ to reduce the distribution to C & S provided for under the plan by the amount received in insurance proceeds, as no party in interest has raised this issue, the matter will be resolved in its present posture as an objection to claim.

C & S opposes any reduction in distribution from the Chapter 13 trustee or reduction in its unsecured claim contending that its security interest extends to not only the automobile but also the insurance proceeds derived from the loss of the collateral. C & S asserts a claim to the entire insurance proceeds without reduction of its unsecured claim contending that the plan as confirmed undervalued the collateral and failed to provide to it value as of the effective date of the plan. As it pertains to C & S's assertion of a security interest in the insurance proceeds, it is correct. However, as of the effective date of the plan, the date of confirmation, this court determined the secured portion of C & S's claim to be limited to Eight Thousand Eight Hundred Twenty Five and No/100 (\$8,825.00) Dollars. The status of the claim of C & S and its treatment were established by the order of confirmation of the debtor's plan and, so long as the plan continues in

¹11 U.S.C. §1329(a)(3) provides:

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified upon request of the debtor, the trustee, or the holder of an allowed unsecured claim to-

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan, to the extent necessary to take account of any payment of such claim other than under the plan.

effect, C & S is bound by the plan. 11 U.S.C. 1327(a).² In re: Tucker, 35 B.R. 35 (Bankr. M.D. Tn. 1983). "Upon becoming final, the order confirming a Chapter 13 plan represents a binding determination of

the rights and liabilities of the parties as ordained by the plan. Absent timely appeal, the confirmed plan is res judicata and its terms are not subject to collateral attack. 5 Collier on Bankruptcy ¶1327.01 at 1327-2 (L. King 15th ed. 1989). The order of confirmation established the value of the collateral, established that C & S was receiving the value of its allowed claim as of the effective date of the plan and established the extent of the allowed claims. The confirmation order is final and not subject to collateral attack. The fact that the insurance carrier paid a sum greater than the remaining balance on the secured claim is irrelevant. At the time of the loss, the claim had been reduced by payments through the Chapter 13 trustee. Value as of the effective date of the plan, date of confirmation was determined and the payment whether through distributions of the Chapter 13 trustee or from insurance proceeds to the extent of that value is all that is required to satisfy the provisions of a confirmed plan. The objection requests that the additional insurance proceeds received by C & S be retained by it and applied to the unsecured claim. Credit must be given for this payment against the unsecured portion of the obligation reducing the amount of the allowed unsecured claim.

It is therefore ORDERED that the allowed amount of the unsecured claim of C & S is reduced by One Thousand One Hundred Fifty One and No/100 (\$1,151.00)

²11 U.S.C. §1327 (a) provides:

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.

Dollars. The trustee shall

recalculate the percentage of dividend to the unsecured creditors based upon this reduced unsecured claim and make future disbursements accordingly.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 14th day of May, 1990.