

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>89-11537</u>
JACKIE DEAN BULLOCK)	
LINDA DALE BULLOCK)	
)	
Debtors)	
_____))	
GENERAL MOTORS ACCEPTANCE)	Filed
CORPORATION) at 11 O'clock & 49 min AM)	Date: 4-18-90
)	
Movant)	
)	
vs.)	
)	
JACKIE DEAN BULLOCK)	
LINDA DALE BULLOCK)	
)	
Respondents)	

ORDER

General Motors Acceptance Corporation (GMAC) seeks relief from the automatic stay established under 11 U.S.C. §362 or in the alternative dismissal of this bankruptcy petition pursuant to 11 U.S.C. §1307. The debtors brought this Chapter 13 petition on October 10, 1989. GMAC is the holder of a perfected purchase money security interest in a 1989 Chevrolet Fleetside S-10 pickup truck, property of the debtor. The debtor purchased the vehicle with financing from GMAC on April 20, 1989. At the time of the purchase and financing, the debtors were debtors in a previous Chapter 13

proceeding in this court Chapter 13 case No. 89-10297 filed March 3, 1989. Debtor, Jackie Dean Bullock, was voluntarily dismissed as a debtor in the previous Chapter 13 case on May 15, 1989. Debtor Linda Dale Bullock, was dismissed by court order on June 19, 1989, based upon the failure of the debtor to make payments to the Chapter

13 trustee.

GMAC contends that at the time the financing was extended to the debtors for the purchase of the vehicle, the debtors defrauded GMAC by intentionally concealing the then pending bankruptcy proceeding. Additionally, GMAC contends that the credit transaction was in direct violation of the order of this court and the Bankruptcy Code's provision against postpetition credit transactions without prior approval. As it pertains to the latter, GMAC now acknowledges that the order of the court prohibiting postconfirmation debt transactions is contained in the order of confirmation, and the prior Chapter 13 proceeding was never confirmed. GMAC further acknowledges that 11 U.S.C. §1305 does not per se prohibit post-confirmation debt transactions.

The debtors contend that the prior bankruptcy was disclosed to the automobile dealer at the time the vehicle was purchased and that the dealer represented to the debtors that the higher than usual interest rate of 17.6% being charged was required based upon the debtors' bankruptcy history. GMAC denies any knowledge of the prior pending bankruptcy. According to the debtor, prior to the purchase of the vehicle, they requested that their previous counsel dismiss the previous Chapter 13 proceeding. They admit they were informed by their previous counsel not to incur any debts during the pendency of the Chapter 13 proceeding without prior court approval, but contend that they thought their case had been dismissed before the purchase.

As it pertains to the for cause basis for relief from stay under 11 U.S.C. §362(d)(1), pursuant to subsection (g), the debtors must carry the burden of proof on all issues in opposition to the relief requested other than the issue of debtor's equity in the collateral. As the debtors' equity is not an issue in this proceeding, the debtors bear the full burden of proof in opposition to the relief requested. GMAC contends that relief from stay should be granted based upon the willful and intentional misrepresentation by the debtors to GMAC of their financial condition and pendency of their prior bankruptcy. According to the un rebutted

testimony of the debtors, their financial condition and the prior bankruptcy was not misrepresented, but disclosed. From the evidence presented, the debtors have carried the burden of proof necessary to defeat the motion for relief from stay.

GMAC, however, bears the burden of proof on its motion to dismiss under 11 U.S.C. §1307(c). The basis of the motion appears to be the contention that the debtors filed the pending Chapter 13 case in bad faith. Such a determination of bad faith, however, is

best made at the time of the hearing on confirmation of the debtors Chapter 13 plan. See 11 U.S.C. §1324. See also In re: Robinson, 18 B.R. 891 (Bankr. D. Conn. 1982); In re: Kosenka, 104 B.R. 40 (Bankr. N.D. Ind. 1989). The "Good faith" criteria set out in Kitchens v. Georgia Railroad Bank and Trust Co. (In re: Kitchens), 702 F.2d 885 (11th Cir. 1983) can then be considered in conjunction with the confirmation criteria of 11 U.S.C. 1325.

At this point in this proceeding a bad faith filing determination to support a section 1307 dismissal motion is premature. No basis for dismissal on the grounds of bad faith is included in section 1307. "The causes for dismissal pursuant to 11 U.S.C. 1307, however, are inclusive, not exclusive. Clearly, if the filing of a petition involves a blatant abuse of judicial process, the court need not wait until the confirmation hearing to provide a remedy." In re: Robinson, supra, at 893. However, the court in Robinson went on to note that "dismissal of a petition for lack of good faith prior to consideration of the plan should be ordered only under extraordinary circumstances." In re Robinson, supra at 893. GMAC has failed to present evidence of such extraordinary circumstances to warrant dismissal on the grounds of bad faith at this time. A determination of the debtors' good faith will be made at the time of the confirmation hearing, and GMAC may raise an objection to confirmation on those grounds at that hearing.

It is therefore ORDERED that the motion of GMAC for relief from stay or in the alternative dismissal is ORDERED denied.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 18th day of April, 1990.