

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE;	)	Chapter 13 Case
	)	Number <u>89-11840</u>
ARTHUR WASHINGTON	)	
BRENDA DAVIS WASHINGTON	)	
	)	
Debtors	)	
	)	
BARNETT BANK OF ATLANTA	)	FILED
	)	at 4 O'clock & 59 min. P.M.
Movant	)	Date: 4-2-90
	)	
vs.	)	
	)	
ARTHUR WASHINGTON	)	
BRENDA DAVIS WASHINGTON	)	
AND SYLVIA FORD DRAYTON, TRUSTEE	)	
	)	
Respondent	)	

**ORDER**

Barnett Bank of Atlanta (the "Bank") seeks relief from the automatic stay established pursuant to 11 U.S.C. §362(a) in order to foreclose its security interest in a 1989 Dodge Omni automobile which is property of the debtors. The facts necessary to resolve the motion are not in dispute. On July 28, 1989 the debtor, Arthur Washington, purchased a 1989 Dodge Omni automobile for a purchase price of Twelve Thousand Eight and 69/100 (\$12,008.69) Dollars. The Bank financed the purchase of the vehicle and has a first priority

lien on the vehicle. The loan contract provided for an annual percentage rate of Thirteen (13%) percent and called for sixty (60) equal monthly payments beginning September 11, 1989 in the amount of Two Hundred Thirty Four and 73/100 (\$234.73) Dollars per month. The debtors filed their petition for relief under Chapter 13 on November 22, 1989 and proposed a plan which in pertinent part dealing with the debt due the Bank provided that the Bank was to be paid the lesser of the amount of their claim or the value of their collateral as proposed by the debtors Five Thousand Fifty and No/100 (\$5,050.00) Dollars. The balance of any claim due the Bank shall be treated as an unsecured claim paid pro rata from remaining funds after the payment of priority payments as required by 11 U.S.C. §507 and secured claims. The debtors proposed to make monthly payments in the amount of Two Hundred Fifty and No/100 (\$250.00) Dollars for a period of thirty-six (36) months. At the hearing on the motion, the Chapter 13 trustee reported that the trustee has received One Thousand and No/100 (\$1,000.00) Dollars in regular payments by payroll deduction. This case is scheduled for confirmation April 26, 1990.

The Bank seeks relief from stay pursuant to 11 U.S.C. §362(d)(1) alleging a for cause basis of lack of adequate protection. The Bank bases its claim of lack of adequate

protection on the debtors' proposed valuation of Five Thousand Fifty and No/100 (\$5,050.00) Dollars and the trustee's payment of interest at a rate

of only twelve (12%) percent per annum on the allowed secured claim of the Bank pursuant to Bankruptcy Local Rule 8, part of the Local Rules of the United States District Court for the Southern District of Georgia. The Bank contends that by virtue of the debtors' valuation and the trustee's directive to pay interest at the rate of Twelve (12%) percent, the Bank's interest in the collateral, the automobile, is inadequately protected.

Pursuant to 11 U.S.C. §1325(a)(5)(B)(ii) with respect to the allowed secured claim of the Bank provided for by the plan, the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim may not be less than the allowed amount of such claim. According to the Bank, the "effective date of the plan" is the date of filing, November 22, 1989, and therefore, the value of Five Thousand Fifty and No/100 (\$5,050.00) Dollars placed upon the vehicle is inadequate. As to this contention, the Bank is in error. A plan under Chapter 13 does not take effect until it is confirmed following a confirmation hearing required pursuant to 11 U.S.C. §1324. See Collier on Bankruptcy §1325.06 (L. King 15th ed. 1989). As it pertains to the determination of value of property to

be distributed under the plan, that determination will be made at confirmation. If the Bank disputes the value asserted by the debtors, it may object to confirmation. 11 U.S.C. §1324.

Regarding the contention of the Bank that the trustee's interest rate of twelve (12%) percent fails to provide adequate protection, the Bank's apprehensions are misplaced. Bankruptcy Local Rule 8 provides guidance to the Chapter 13 trustee in the situation where neither the debtor through the plan, nor the holder of an allowed secured claim by motion, proposes an interest rate to ensure that the plan as confirmed complies with §1325(a)(5)(B)(ii). In the event that a debtor under a confirmed plan provides for an interest rate other than the twelve (12%) percent rate provided in Bankruptcy Local Rule 8, the order of confirmation meets the "unless otherwise ordered by the Bankruptcy Judge" requirement referenced in the local rule. Likewise, should the holder of an allowed secured claim seek through motion an interest rate other than the rate provided by the local rule, the order of the court on the motion meets the "unless otherwise ordered by the Bankruptcy Judge" provision. Bankruptcy Local Rule 8 only applies in the situations where the Chapter 13 trustee lacks guidance from any party in interest as to the rate of interest to be applied. In the event that this court is required to determine a rate of interest, that determination will be guided

by this court's prior determination in In re: Corley, 83 B.R. 848 (Bankr. S.D. Ga. 1988). Under Corley, from the evidence presented at confirmation on the motion of a holder of a secured claim for interest, an appropriate interest rate will be determined without reference to Bankruptcy Local Rule 8.

It is therefore ORDERED that the Bank's motion for relief from stay is denied without prejudice to its right to object to confirmation or upon just cause to refile its motion for relief.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 2nd day of April, 1990.