

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>91-11576</u>
CLARENCE L. WRIGHT)	
JANE A. WRIGHT)	
)	
Debtors)	
_____)	
)	
TRANSAMERICA FINANCIAL)	FILED
SERVICES, INC.)	at 4 O'clock & 01 min. P.M.
)	Date: 9-16-92
Objecting Creditor)	
)	
vs.)	
)	
CLARENCE L. WRIGHT)	
JANE A. WRIGHT, AND)	
BARNEE C. BAXTER, JR.)	
CHAPTER 13 TRUSTEE)	
)	
Respondents)	

ORDER

Transamerica Financial Services, Inc. ("Transamerica")
the holder of an allowed claim in this Chapter 13 proceeding¹
objects to the confirmation of the debtors' amended proposed plan.

Based upon the evidence presented at hearing and argument of
counsel, I make the following findings of fact and conclusions of

¹By order dated March 12, 1992 I overruled the objection of
the debtors to the claim of Transamerica which ruling is now on
appeal.

law. The debtors, Clarence L. Wright and Jane A. Wright filed for relief

under Chapter 13 of title 11 United States Code on August 30 1991. The debtors initially proposed a composition plan to pay less than 100% to the unsecured creditors by paying Thirty and No/100 (\$30.00) Dollars weekly for a period of sixty (60) months to the Chapter 13 trustee. In response to the notice of filing, Transamerica filed a proof of claim asserting secured status in the amount of Eighteen Thousand Five Hundred Forty-Eight and 51/100 (\$18,548.51) Dollars. The claim is based upon a promissory note dated September 30, 1988, security agreement and related documentation establishing perfection of a security interest in real property that is the debtors' homeplace, a motor vehicle and life insurance proceeds.

The original proposed plan as it pertains to Transamerica provided:

2. From the payments so received, the Trustee shall make disbursements as follows: . . .
(b) secured creditors shall retain liens securing their claims. Creditors who file claims and whose claims are allowed as secured claims shall be paid the lesser of (1) the amount of their claims or (2) the value of their collateral as set forth here: the value of debtors' home is \$31,000.00.

Transamerica objected to confirmation. At the initial confirmation hearing and pursuant to 11 U.S.C. §1325(b)(1)(B), I determined, based upon the schedules filed by the debtors

and testimony presented at hearing, that the debtors had Six Hundred and No/100 (\$600.00) Dollars per month in projected disposable income which could be used to pay creditor claims. At hearing, the debtors agreed to increase payments to six Hundred and No/100 (\$600 00) Dollars per month and further agreed to pay all creditor claims in full. At the continued confirmation hearing Transamerica continued its objection disputing the valuation proposed by the debtors and raising an objection based upon a failure of adequate protection.

By motion, the debtors seek to establish a value of their residence at Thirty-One Thousand and No/100 (\$31,000.00) Dollars pursuant to 11 U.S.C. 506(a) for 1325(a) confirmation purposes. Transamerica holds a second security deed interest in the property. The Thirty-One Thousand and No/100 (\$31,000.00) Dollars valuation asserted by the debtors roughly approximates the amount due on the first outstanding deed to secure debt held by Colonial Mortgage Company. The debtors urge that pursuant to §506(a) upon determining the value of the property at Thirty-One Thousand and No/100 (\$31,000.00) Dollars the claim of Transamerica must be treated as unsecured. Transamerica asserts a value of Fifty-One Thousand Five Hundred and No/100 (\$51,500.00) Dollars. In support of the valuations, the debtors both testified. No expert testimony was offered by the debtors. Regarding Transamerica's asserted value, the testimony of Henry

Garrett, a real estate appraiser who has testified as an expert witness on residential real estate valuations before this court on several occasions, was offered. Mr. Garrett set the value in an as-is condition at Fifty-One Thousand Five Hundred and No/100 (\$51,500.00) Dollars and I find his testimony to be credible and set the value pursuant to §506(a) for §1325(a) confirmation purposes at Fifty-One Thousand Five Hundred and No/100 (\$51,500.00) Dollars. This valuation renders the claim of Transamerica fully secured.

Regarding the adequate protection objection, following the determination that Transamerica was fully secured, the debtors proposed a modification to their plan as it pertains only to Transamerica to provide that following the payment of court costs the funds held by the Chapter 13 trustee during the preconfirmation pendency of this case be disbursed to Transamerica and that the balance of the obligation be amortized over a period of sixty (60) months with a balloon payment due following the sixtieth (60th) monthly payment of the balance outstanding to Transamerica with payment of all other claims paid in full.

According to the analysis of the Chapter 13 trustee this modification will result in an initial distribution to Transamerica of Two Thousand One Hundred Ninety and 79/100 (\$2,190.79) Dollars, representing a principal payment of Two Thousand Five and 30/100 (\$2,005.30) Dollars plus interest of One Hundred Eighty Five and 49/100 (\$185.49) (see Local Bankruptcy

Rule 8). The balance due Transamerica of Sixteen Thousand Five Hundred Forty-Three and 21/100 (\$16,543.21) Dollars will be paid over sixty (60) months at 12% interest (See Bankruptcy Local Rule 8) providing for monthly installments disbursed from the trustee of Three Hundred One and

32/100 (\$301.32) Dollars through payment of August, 1996 with a payment for September, 1996 of Four Hundred Twenty-Five and 71/100 (\$425.71) Dollars and from October, 1996 through August 1997 a monthly payment of Five Hundred Fifty-Eight and No/100 (\$558.00) Dollars. This will result in a balloon payment due following the sixtieth (60th) payment of Two Thousand Eight Hundred Twenty-Three and 95/100 (\$2,823.95) Dollars. The balance of the monthly payment received by the trustee will be disbursed in accordance with the priorities established pursuant to 11 U.S.C. §507 to pay the remaining claims in full. As a part of the amended plan, Mr. Long, debtors' counsel has waived his attorney's fees.

This proposed modification is more than sufficient to adequately protect the interest of Transamerica. Under the proposed modified plan, The debtors are to maintain payments as they come due on the first outstanding deed to secure debt.

The first mortgageholder is receiving its payments and its claim is being | reduced. The second mortgageholder, Transamerica, will receive regular monthly payments in an amount

sufficient to reduce its claim from Eighteen Thousand Five Hundred Forty-Eight and 31/100 (\$18,548.31) Dollars to a final payment due after the sixtieth (60th) month of Two Thousand Eight Hundred Twenty-Three and 95/100 (\$2,823.95) Dollars. From the evidence presented it appears unlikely that the collateral will depreciate at a rate in excess of repayment of this debt and the first mortgage. The plan is feasible

and the debtors are meeting the Six Hundred and No/100 (\$600.00) Dollars per month obligation to the trustee. All confirmation criteria of 11 U.S.C. §1325 having been met, the objection is ORDERED overruled and order of confirmation shall issue.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 15th day of September, 1992.