

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 13 Case
)	Number <u>94-60005</u>
DONNA KENDALL)	
)	
Debtor)	
_____)	
)	
GENERAL MOTORS ACCEPTANCE)	
CORPORATION)	
)	
Movant/Objecting)	
Claim Holder)	
)	
vs.)	
)	
DONNA P. KENDALL, Debtor)	
AND BARNEE C. BAXTER,)	
CHAPTER 13 TRUSTEE)	
)	
Respondents)	

ORDER

General Motors Acceptance Corporation (GMAC) alternatively seeks relief from the stay of 11 U.S.C. §362(a) in order to foreclose its security interest in property of the debtor, One (1) 1991 Pontiac Firebird automobile manufacturer's ID No. 1G2FW23F2ML204120 and objects to the confirmation of the debtor's proposed plan disputing the proposed valuation of \$7,000.00 on the

collateral securing its claim, the proposed rate of interest of 2.9% per annum to be paid on the allowed secured claim to provide GMAC with present value of its allowed secured claim as of the date of filing, the good faith of the debtor, the plan's feasibility and claims the proposed plan violates Bankruptcy Local Rule 8.¹ Based upon the evidence presented at hearing and relevant authority, I make the following findings of fact and conclusions of law overruling the objection to confirmation and denying the motion for relief from stay.

The debtor, Donna Kendall, first filed for relief under Chapter 7 of Title 11 on September 7, 1993, In re: Donna Kendall, Chapter 7 case No. 93-60424. The debtor's schedules indicated an intent to reaffirm the debt due GMAC but the parties could not reach an agreement. By motion filed October 14, 1993 GMAC sought relief from the stay of \$362 in order to foreclose its security interest in the above referenced automobile which was granted at final hearing December 30, 1993. The discharge of the debtor was entered January 5, 1994 which discharge released the debtor from all personal liability for debts existing on the date of the commencement of the case including the debt due GMAC.

¹At hearing, the parties announced an agreement to value the collateral at \$8,000.00 and an interest rate of 4.8% to provide present value on the claim of GMAC.

On January 5, 1994, the date of the entry of the debtor's discharge in the Chapter 7 case, this Chapter 13 case was filed. Under the debtor's proposed Chapter 13 plan, the debtor will retain the automobile securing the claim of GMAC and from disbursements made by the Chapter 13 trustee GMAC will receive the now agreed to value of \$8,000.00 together with future interest at the agreed rate of 4.8%. At the confirmation hearing the debtor agreed to increase payments to \$171.00 monthly for 60 months to pay the now allowed secured claim of \$8,000.00 together with future interest to GMAC in full. GMAC is the only claimant in the case.

The debtor is employed as a paralegal and has been so employed for 15 years. As of the confirmation hearing payments to the Chapter 13 trustee were current, the amended budget submitted by the debtor appears reasonable and the debtor appears capable of making the required monthly plan payment.

GMAC contends that this Chapter 13 filing is an impermissible attempt by the debtor to circumvent the requirements of the initial Chapter 7 case that the debtor either reaffirm, redeem or surrender collateral securing an allowed claim by the subsequent filing of a plan under Chapter 13 proposing to retain and pay the value of the collateral by disbursements through the Chapter 13 trustee without reaffirming the debtor's personal obligation to pay the indebtedness. Taylor v. AGE Federal Credit Union (In re:

Taylor) 3 F.3d 1512 (11th Cir. 1993), Goldsby v. First Union National Bank (In re: Goldsby) Chapter 7 case No. 88-10215 Adversary Proceeding No. 88-1041 (Bankr. S.D. Ga. Dalis, J. March 2, 1989), Dossett v. First Union National Bank (In re: Dossett) Chapter 7 case No. 90-11841 Adversary Proceeding No. 91-1017 (Bankr. S.D. Ga. Dalis, J. July 15, 1991). In the context of a Chapter 7 case, GMAC is correct; however, nothing in the Bankruptcy Code prevents the debtor from filing a subsequent Chapter 13 case, reimposing the stay of §362(a) and proposing a plan, meeting the requirements of Chapter 13, to satisfy the now nonrecourse claim of the creditor. Johnson v. Home State Bank 501 U.S. 78, 111 S.Ct. 2050, 115 L.Ed.2d 66 (1991); In re: Saylor, 869 F.2d 1434 (11th Cir. 1989).

'A petition filed under §301, 302 or 303 of this Title . . . operates as a stay, applicable to all entities' 11 U.S.C. §362(a). There is no provision in §362 or elsewhere in the Bankruptcy Code for an exception to §362(a) that prevents invocation of the stay by the filing of a Chapter 13 petition where stay relief was granted in a prior case. The relief from the automatic stay obtained . . . [in the prior case] . . . does not affect invocation of the stay by the debtor's subsequent Chapter 13 petition. 'The . . . order . . . [granting relief from stay in the Chapter 7 case] merely lifted the automatic stay [in that] case. In no way did the order purport to be a permanent injunction of [the creditor's] right to foreclose' In re: Saylor, supra at 1438. The stay relief obtained in [the prior case] did not as a matter of law carry over to the debtor's current Chapter 13 case as the stay

invoked by each petition . . . is separate and distinct. Id.

Federal National Mortgage Association v. Price (In re: Price), Chapter 13 case No. 92-10834 (Bankr. S.D. Ga. Dalis, J. September 11, 1992).

Although the collateral securing the claim of the creditor in both Johnson and Saylor was real property, the basic principles enunciated by the Supreme Court apply equally in this case.

[W]e have no trouble concluding that a mortgage interest that survives the discharge of a debtor's personal liability is a 'claim' within the meaning of §101(5). Even after the debtor's personal obligations have been extinguished, the mortgageholders still retain a 'right to payment' in the form of its right to the proceeds from the sale of the debtor's property. Alternatively, the creditor's surviving right to foreclose on the mortgage can be viewed as a 'right to an equitable remedy' for the debtor's default on the underlying obligation. Either way, there can be no doubt that the surviving mortgage interest corresponds to a 'enforceable obligation' of the debtor.

. . . Insofar as the mortgage interest that passes through a Chapter 7 liquidation is enforceable only against the debtor's property, this interest has the same properties as a nonrecourse loan. It is true . . . that the debtor and creditor in such case did not conceive of their credit agreement as a nonrecourse loan when they entered it. [citation omitted] However, insofar as Congress did not expressly limit §102(2) to nonrecourse loans but rather chose general language broad enough to encompass such obligations, we understand Congress' intent to be that §102(2) extend to all interests having

the relevant attributes of nonrecourse obligations regardless of how these interests come into existence.

Johnson, supra, at 111 S.Ct. at 2154-55.

Chapter 13 of the Bankruptcy Code provides a reorganization remedy for consumer debtors and proprietors with relatively small debts. So long as a debtor meets the eligibility requirements for relief under Chapter 13, he may submit for the bankruptcy courts confirmation a plan that 'modif[ies] the rights of holders of secured claim . . . or . . . unsecured claims', and that 'provide[s] for the payment of all or any part of any [allowed] claim'. [citations omitted]

Johnson, supra, at 2153.

Congress enacted Chapter 13 to 'provide[] a highly desirable method for dealing with the financial difficulties of individuals. It creates an equitable and feasible way for the honest and conscientious debtor to pay off his debts rather than having them discharged in bankruptcy.' In the absence of statutory language or legislative history indicating that Congress intended otherwise, a per se rule that bars an entire category of debtors from using this procedure as not warranted. The good faith requirement of 11 U.S.C. §1325(a)(3) is sufficient to prevent **undeserving** debtors from using this procedure, yet does not also prevent **deserving** debtors from using this procedure. (citations omitted, emphasis original).

Saylor, supra, at 1436.

This case was brought in good faith. In the original Chapter 7 case the debtor proposed to reaffirm the debt due GMAC. Reaffirmation is a voluntary undertaking between the debtor and creditor. The debtor could not agree with GMAC on terms for

reaffirmation. Faced with the requirement under the Taylor decision and prior precedent in this district, the debtor chose to seek relief under Chapter 13 in order to pay GMAC the full value of the automobile securing its claim, \$8,000.00, and to provide the creditor with future interest sufficient to provide present value on the allowed secured claim paid over time. The interest of GMAC is adequately protected by the retention of its lien during the pendency of the Chapter 13 case, the requirements that the debtor maintain full comprehensive and collision coverage on the collateral and fund the Chapter 13 plan by monthly payments to the trustee in the amount of \$171.00 which plan proposes to pay the allowed secured claim in full. I find that the plan was proposed in good faith and the proposed plan is feasible. The interest of GMAC is adequately protected under the proposed plan.

It is therefore ORDERED that the objection to confirmation of GMAC is ORDERED overruled and the motion for relief from stay is ORDERED denied.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this _____ day of September, 1994.