

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Brunswick Division

IN RE:) Chapter 13 Case
) Number 96-20041
LEIGH J. PERRY)
)
Debtor)
_____)
PEOPLES STATE BANK & TRUST) FILED
) at 11 O'clock & 37 min. A.M.
Movant) Date: 12-18-96
)
vs.)
)
LEIGH J. PERRY)
)
Respondent)
)

ORDER

Peoples State Bank & Trust ("State Bank") objects to confirmation of the Debtor's Chapter 13 plan asserting a failure to pay State Bank the value of its collateral as required under 11 U.S.C. §1325(a)(5)(B)(ii)¹. The objection is sustained.

¹11 U.S.C. §1325 provides in part:

(a) Except as provided in subsection (b), the court shall confirm a plan if—

...

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the

On June 29, 1995, the Debtor financed the purchase of a 1987 Honda CRX automobile ("CRX") by borrowing \$4,158.27 from State Bank and executing a note ("Note 1") and security agreement pursuant thereto. Note 1 provided, inter alia, that the Debtor granted State Bank a security interest in the CRX, and that this interest secured all of the Debtor's debts and obligations to State Bank "...whether now existing or created or incurred in the future... ." State Bank duly perfected its security interest in the vehicle under Georgia law.

On December 30, 1995, the Debtor executed a note ("Note 2") in favor of First Franklin Corporation ("First Franklin"), and granted First Franklin a second lien on the CRX, which lien First Franklin perfected under Georgia law. On January 12, 1996, the Debtor filed the instant Chapter 13 case. Without first requesting or obtaining leave of court, the Debtor refinanced the debt with State Bank, executing another note ("Note 3") on January 18, 1996.

In his Schedule B, the Debtor valued the CRX at \$3,625.00. In

plan;
(B) (i) the plan provides that the holder of such claim retain the lien securing such claim; and
(ii) **the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim;** or
(C) the debtor surrenders the property securing such claim to such holder; and
... (Emphasis added).

his amended plan, the Debtor valued State Bank's secured claim at \$140.00 and First Franklin's secured claim at \$800.00, and proposed to pay through his Chapter 13 plan these amounts respectively. State Bank filed Proof of Claim ("Claim No. 11") for \$3,489.02, the amount allegedly owing under Note 1. State Bank also filed Claim No. 10 for \$4000.79, the amount allegedly due under Note 3. First Franklin filed Claim No. 2 for \$2725.80, the alleged balance due under Note 2. State Bank objected to confirmation of the plan based upon the Debtor's proposed \$140.00 distribution.

At the confirmation hearing, the Debtor sought to pay Note 1 as fully secured, to pay \$135.98 of Note 2 as secured (\$3,625.00 value - \$3,489.02 first in priority debt) with the remainder unsecured, and to treat the entire balance of Note 3 as unsecured. This treatment supposes that State Bank holds two separate claims against the Debtor. In fact, the Debtor testified that Note 3 fully satisfied Note 1, leaving State Bank only one claim against the Debtor for \$4,000.79. This unrebutted testimony is supported by Note 3 which specified that \$3,856.52 of the amount financed was paid to State Bank on the Debtor's previous loan account. The only remaining issue is whether Note 3 or Note 2 maintains first priority lien status, to be determined by whether perfection of State Bank's security interest under Note 3 relates back to the date of perfection of State Bank's security interest under Note 1.

Perfection of security interest in a motor vehicle is governed

by Official Code of Georgia Annotated (O.C.G.A.) §40-3-50.² This perfection statute, unlike Georgia's Uniform Commercial Code ("U.C.C."), provides no rules governing the perfection of future advances by secured creditors. See, O.C.G.A. §11-9-204.³

²O.C.G.A. §40-3-50 provides:

(a) Except as provided in Code Section 11-9-103, relating to accounts, contract rights, general intangibles, and equipment governed by the laws of another jurisdiction, and incoming goods already subject to a security interest, the security interest in a vehicle of the type for which a certificate of title is required shall be perfected and shall be valid against subsequent creditors of the owner, subsequent transferees, and the holders of security interests and liens on the vehicle by compliance with this chapter.

(b) (For effective date, see note) A security interest is perfected by delivery to the commissioner or to the county tag agent of the county in which the seller is located, of the county in which the sale takes place, of the county in which the vehicle is delivered, or of the county wherein the vehicle owner resides of the existing certificate of title, if any, and an application for a certificate of title containing the name and address of the holder of a security interest and the required fee. The security interest is perfected as

of the time of its creation if the initial delivery to the commissioner or local tag agent is completed within 20 days thereafter, regardless of any subsequent rejection of the application for errors; otherwise, as of the date of the delivery to the commissioner or local tag agent. The local tag agent shall issue a receipt or other evidence of the date of filing of such application. When the security interest is perfected as provided for in this subsection, it shall constitute notice to everybody of the security interest of the holder.

³O.C.G.A. §11-9-204 provides:

(1) Except as provided in subsection (2) of this Code section a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (Code Section 11-9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are

Furthermore, the U.C.C. rules of perfection are not engrafted upon the motor vehicle statute, and are therefore inapplicable. Barnes v. General Motors Acceptance Corp., 191 Ga. App. 201, 381 S.E.2d 146, 148 (The statutory procedure for perfecting security interests in motor vehicles does not incorporate the complex and multi-faceted procedures of the U.C.C.)

However, Georgia courts have enforced future advance clauses in security agreements at common law prior to the enactment of the U.C.C. Barksdale v. Peoples Fin. Corp., 393 F.Supp. 112, 119 (N.D. Ga. 1975), rev'd on other grounds, 543 F.2d 568 (5th Cir. 1976) vacated and remanded to panel, 571 F.2d 948 (5th Cir. 1978), aff'd on remand, 578 F.2d 1185 (5th Cir. 1978), citing, Vaughn v. Kincade, 227 Ga. 553, 181 S.E.2d 843 (1971); Rose City Foods, Inc. v. Bank of Thomas County, 207 Ga. 477, 62 S.E.2d 145 (1950); Hamlin v. Timberlake Grocery Co., 130 Ga. App. 648, 204 S.E.2d 442 (1974). Under the "future advancements" doctrine, a security agreement may provide that subsequent credit advances are automatically subject to the initial security agreement, and the date of perfection of the latter security interest relates back to the original security agreement for purposes of lien priority analysis. Barksdale, at 119. Therefore, if Note 3 constitutes a future advance as contemplated under Note 1, then State Bank enjoys continuous perfection of its security agreement, giving its lien under Note 3

given pursuant to commitment (subsection (1) of Code Section 11-9-105). (Emphasis added).

priority over First Franklin's lien under Note 2.

Whether a subsequent transaction constitutes a future advance or an entirely new transaction is a question of fact based upon the nature of the two transactions. In this case, Note 3 refinanced the Debtor's obligation under Note 1. State Bank did not advance any new funds to the Debtor under Note 3, nor did it require any additional collateral or security agreement, relying instead upon State Bank's previously perfected security interest in the CRX. Note 3 therefore constitutes a "future advance" covered by the original security agreement, perfection of which relates back to perfection of the security interest under Note 1. Compare, Safeway Fin. Co., Inc. v. Ward (In re Ward), 14 B.R. 549 (S.D. Ga. 1981) (Clear intent of the parties was to supersede the initial security agreement through entirely new security agreements, and therefore "future advancement" doctrine was inapplicable.)

It is therefore ORDERED that State Bank holds a claim secured to \$3,625.00, the value of the collateral, and an unsecured claim for the balance of its claim, and that First Franklin's claim is entirely unsecured. It is further ORDERED that Claim No. 11 of Peoples State Bank in the amount of \$3,489.02 is superseded by Claim

No. 10 and is ORDERED stricken. It is further ORDERED that the Debtor amend the Chapter 13 plan in accordance with this Order within thirty (30) days.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 18th day of December, 1996