

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE: ) Chapter 13 Case  
 ) Number 187-01265  
KENNETH KELLY )  
 ) FILED  
Debtor ) at 4 Oclock & 00 min P.M.  
Date: 6-20-88

**MEMORANDUM AND ORDER**

In conjunction with the confirmation hearing in this Chapter 13 proceeding objection to confirmation filed by First Federal of Columbus was considered. Regarding the objection to confirmation, this court makes the following findings.

On November 23, 1987 this debtor filed for relief under Chapter 13 of the Bankruptcy Code. The proposed plan now under consideration for confirmation at paragraph 2(b) provides "secured creditor shall retain the lien securing their claims. Creditors who file claims and whose claims are allowed as secured shall be paid the lesser of (1) the amount of their claim, or (2) the value of their collateral as set forth here: First Fed. S & L Ass'n: \$6,900.00". This reference to "First Fed. S & L Ass'n" is to First Federal of Columbus, hereinafter "First Federal". First Federal filed its proof of claim claiming a purchase money security interest in one (1) 1986 Pontiac Grand Am automobile, Manufacturer's ID #1G2NE69U8GC599789. The amount of the proof of claim totalled \$9,153.85 and set forth a secured portion of the claim of \$8,940.00 and an unsecured balance of \$213.85. First Federal has objected to confirmation objecting to the value assigned to its collateral of \$6,900.00. At the hearing on confirmation, counsel for First Federal and the debtor stipulated that the wholesale value of First Federal's collateral is \$6,900.00 and the retail value is \$8,940.00. No further evidence was offered as to value.

From the limited evidence presented this court is faced with choosing between wholesale or retail value in determining whether the proposed plan meets the confirmation criteria of 11 U.S.C. §1325(a)(5)(B)(ii).<sup>1</sup>

In asserting that the wholesale value of the collateral meets the confirmation criteria debtor asserts that the nature of the creditor must be considered in determining value. Debtor asserts that value as of the effective date of the plan as used in Section 1325 should be value to the creditor. Debtor asserts that as this creditor is a lending institution not a dealer which sells directly to the general public, in the event that the

creditor obtains the collateral it must wholesale the collateral to a dealer who in turn markets the collateral to the general public at the retail price. Under these set of circumstances value to the creditor represents the wholesale value, that which it would have received in liquidating the collateral. See, In re Adams 2 B.R. 313 (Bankr. M.D. Fla., 1980).

By contrast First Federal asserts that the proper value is the retail value as determined in light of the purpose of the valuation and proposed disposition or use of the property. Under the proposed plan the debtor will retain the vehicle and continue to use it for personal use over the life of the plan as allowed under 11 U.S.C §1325(a)(5)(B) which requires a retail valuation. In re Reynolds, 17 B.R. 489 (Bankr. N.D.Ga., 1981). In Reynolds, the court found at

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<sup>1</sup>11 U.S.C. §1325(a)(5)(B) provides:

(a) except as provided in paragraph (b) the court shall confirm a plan if

(5) with respect to each allowed secured claim provided for by the 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,"

footnote 2

"Legislative history reflects an intention that the (valuation) determination be made on a case-by-case basis . . . . Value does not necessary contemplate a force sale or liquidation value of the collateral; nor does it always imply a going concern value." H.R. No. 95-595, 95th Cong., 1st Sess. 356 (1977), U.S. Code Cong. and Admin. News. 1978, pp. 5787,6312. While courts will have to determine value on a case-by-case basis, the subsection makes it clear that valuation is to be determined in light of the purpose of the valuation and proposed disposition or use of the subject property. This determination shall be made in conjunction with any hearing on such disposition or use of property or on a plan affecting the creditor's interest. S. Rep. No. 95-989, 95th Cong., 2nd Sess. 68 (1978), U.S. Code Cong. and Admin. News 1978, p. 5854

The facts of the Reynolds decision closely parallel the facts in this case. The debtor in the Reynolds case purchased a 1980 Oldsmobile Cutlass automobile which was financed by General Motors Acceptance Corporation (GMAC). The purchase price was Eight Thousand Six Hundred Thirty Four and No/100 (\$8,634.00) Dollars financed along with credit life insurance and extended warranty protection for a period of forty eight (48) months. The net outstanding balance due GMAC at the time of the debtor's filing was Eight Thousand Six Hundred Forty Three and 54/100 (\$8,643.54) Dollars. According to the NADA Guide Book the retail value of the vehicle including its optional equipment was Seven Thousand One Hundred Twenty Five and No/100 (\$7,125.00) Dollars and the wholesale value was Six Thousand One Hundred and No/100 (\$6,100 00) Dollars. At the 341 meeting of creditors the Trustee recommended a value of Six Thousand Eight Hundred and No/100 (\$6,800.00) Dollars for the vehicle. GMAC objected to this valuation and confirmation of the proposed chapter 13 plan insisting that in valuing its allowed secured claim the purchase price of Eight Thousand Six Hundred Eighty Four and No/100 (\$8,684.00) Dollars agreed to by the debtor at the time of the purchase just six months prior to the filing of the petition should control. The court in finding a value of Seven Thousand One Hundred Twenty Five and No/100 (\$7,125.00) Dollars, the

present retail value of the vehicle, found that the debtor's plan is to retain the vehicle and continue to use it to maintain debtor's employment status and for personal use over the life of the plan as allowed under 11 U.S.C. §1325(a)(5)(B). Applying a liquidation (wholesale) value standard on this vehicle would be inconsistent with a continued use of the vehicle and the rehabilitative purpose of this chapter 13 plan. The value of the creditor's claim under 11 U.S.C. §506(a) is enhanced by the proposed continued use of the property to help maintain employment and thereby effectuate the debtor's performance under the plan. The continued use of the vehicle by the debtor during the period of the proposed plan demands a rehabilitation value consistent with the "going concern" of the the chapter 13 debtor. The retention of the vehicle enables the debtors to avoid the necessity of replacement transportation. The debtors in Reynolds made a conscience decision to keep and pay for the vehicle rather than surrender it under Section 1325(a)(5)(C). The debtors in Reynolds proposed retention and use of the vehicle pursuant to a chapter 13 plan connotes a going concern value. Thus the retail, replacement cost standard is the appropriate measure of value under Section 506(a). In re Reynolds, supra at pp. 492-493. Under Section 1325(a)(5)(B)(ii) this creditor is entitled to a secured claim in the amount of the current value of the collateral as of the effective date of the plan.

The rationale of the Reynolds decision follows the congressional intent for the determination of value on a case-by-

case basis in light of the purpose of the valuation and proposed disposition or use of the subject property. In this case as in Reynolds, the debtor's plan to retain the vehicle and continue to use it for personal use over the life of the plan. Under the Reynolds analysis which is adopted by this court, the retail value Eight Thousand Nine Hundred Forty and No/100 (\$8,940.00) Dollars, is the value as of the effective date of the plan. The order of confirmation shall provide that

the plan shall pay to First Federal the sum of Eight Thousand Nine Hundred Forty and No/100 (\$8,940.00) Dollars as a secured claim and Two Hundred Thirteen and 85/100 (\$213.85) Dollars as an unsecured claim in satisfaction of the requirements of Section 506(a) and Section 1325(a)(5)(B)(ii).

ENTERED at Augusta, Georgia this 20th day of June, 1988.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE