

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

IN RE:) Chapter 13 Case
) Number 91-10155
JUNE MERIDITH HOFFMEYER)
)
Debtor)
_____)
BLAZER FINANCIAL SERVICES, INC.) FILED
) at 5 O'clock & 13 min. P.M.
Movant) Date: 10-23-91
)
vs.)
)
JUNE MERIDITH HOFFMEYER)
)
Respondent)

ORDER

Blazer Financial Services, Inc. ("Blazer") objects to confirmation of this Chapter 13 case. Based on the evidence presented at hearing and relevant legal authorities, I make the following findings.

FINDINGS OF FACT

On November 5, 1990 debtor, June Meridith Hoffmeyer, entered into a loan transaction with Blazer. The parties executed a loan agreement which reflects an amount financed of One Thousand

Three Hundred Fourteen and 60/100 (\$1,314.60) Dollars. The loan agreement granted Blazer a non-purchase money non-possessory security interest in "[a]ll consumer goods owned by [debtor]." There is no evidence in the record that Blazer perfected its security interest. In connection with the loan transaction, debtor completed and signed a "Schedule A/Security Listing" ("security listing") delineating specific household items pledged as security for Blazer's loan and debtor's estimated value for each: 2 television sets, \$700.00 (total); an AM/FM clock radio, \$70i.00; a video recorder, \$170.00; an AM/FM stereo with cassette player, \$350.00; and a 35mm camera, \$200.00.

Debtor filed her Chapter 13 petition January 28, 1991. Blazer timely filed a proof of claim showing a secured claim of One Thousand Two Hundred Sixty-Two and 25/100 (\$1,262.25) Dollars. Debtor's initial proposed three-year plan provides that holders of secured claims shall retain liens securing their claims and be paid the lesser of the amount of their claim or the value of their collateral. The plan classified Blazer as a secured creditor and valued Blazer's collateral at Five and No/100 (\$5.00) Dollars.¹ The plan further provides:

Pursuant to 11 U.S.C. §522(f), the liens . . .
of the following creditors on the property of

¹By plan modification filed March 4, 1991 the debtor removed the collateral valuation provision from the plan.

the debtor(s) are voided upon confirmation of the plan to the extent that such liens impair

an exemption claimed by the debtor(s) or to which the debtor(s) would have been entitled under 11 U.S.C. §522(b): . . . Blazer Finance.

The budget contained in debtor's Chapter 13 schedules is as follows:

(a) Estimated average future monthly income			
(1) Debtor's monthly take-home pay:		\$ 381.64	
(2) Spouse's monthly take-home pay:			
(3) Other monthly income . . .			
Second job at Villa Europa		<u>433.00</u>	
Total Estimated Monthly Income:			\$ 814.64
(b) Estimated average future monthly expenses of family, consisting of:			
1. Rent or home mortgage payment (include lot rental for trailer)		250.00	
2. Utilities	Electricity	85.00	
	Heat	0.00	
	Water	0.00	
	Telephone	35.00	120.00
3. Food		175.00	
4. Clothing		50.00	
5. Laundry and cleaning		12.99	
6. Newspapers, periodicals, and books (including school books)		5.00	
7. Medical and drug expenses		25.00	
8. Insurance (not deducted from wages)			
	Auto	0.00	
	Other	0.00	0.00
9. Transportation (not including payments to be paid under plan)		100.00	
10. Recreation		15.00	
11. Dues, union, professional, or social (not deducted from wages)		0.00	
12. Taxes (not deducted from wages)			0.00
13. Alimony, maintenance, or support payments			
14. Other payments for support of dependents not living at home		0.00	

15. Religious and charitable contributions	0.00	
16. Other monthly expenses . . .		
Haircuts & grooming	<u>10.00</u>	
	Total Estimated Monthly Expenses:	\$762.99
(c) Excess of estimated future monthly income over expenses		\$ 51.65

The debtor proposes a plan payment of Sixty and No/100 (\$60.00) Dollars per month for a period of 36 months to pay a pro rata dividend to holders of allowed unsecured claims estimated by the Chapter 13 trustee to be 18.13%. Prior to filing her bankruptcy petition, debtor sold one of the television sets and the video recorder included on the security listing without first obtaining a release from Blazer or paying off the debt. Debtor testified that she had to sell those items in order to pay rent and utilities. She further testified that she threw away the clock radio included on the security listing because it did not work.

In its objection to confirmation, Blazer contends debtor's proposed Chapter 13 plan is not her best effort and that its collateral is undervalued.² At hearing, Blazer's counsel argued Blazer should be collateralized to the extent of the total value of the collateral debtor sold or thrown away, which Blazer contends is Five Hundred Seventy-Five and No/100 (\$575.00) Dollars.

CONCLUSIONS OF LAW

The first issue raised by objection to confirmation is

²The valuation objection was rendered moot by plan modification filed March 4, 1991 (see footnote 1).

whether debtor's proposed plan constitutes her "best effort" under

11 U.S.C. §1325(b) (1) (B).³ Section 1325(b) (1) provides
in pertinent

part:

(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan-

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended-

(A) for the maintenance or support of the debtor or a dependent of the debtor; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

11 U.S.C. §1325(b) (1) .

The "best effort" test of §1325(b) (1) (B) is satisfied if "all of

³Blazer did not object to or question the good faith of the debtor in seeking Chapter 13 relief. See 11 U.S.C. §1325(a) (3).

the debtor's 'projected disposable income' [is] applied to payments under the plan." In re: Warner, 115 B.R. 233, 236 (Bankr. C.D. Cal. 1989); In re: Warren, 89 B.R. 87, 88 n. 1 (9th Cir. BAP 1988); In re: Baker, 129 B.R. 127, 130 (Bankr. W.D. Tex. 1991). Debtor's total monthly income working two jobs is Eight Hundred Fourteen and 64/100 (\$814.64) Dollars. Her budgeted monthly expenses of Seven

Hundred Sixty-Two and 99/100 (\$762.99) Dollars are not unreasonable. Based on her budget, debtor's projected disposable income is Fifty-One and 65/100 (\$51.65) Dollars a month. Debtor proposes to make payments of Sixty and No/100 (\$60.00) Dollars per month for 36 months to the trustee to fund her plan. Debtor is proposing to pay all of her "disposable income," as defined under §1325(b) (2) toward completion of her Chapter 13 plan. Her proposed Chapter 13 plan satisfies the "best effort" requirement of §1325(b) (1) (B).

In her proposed plan, debtor moves the court to avoid Blazer's lien pursuant to §522(f).⁴ Section 522(f) (2) (A) allows

⁴11 U.S.C. §522(f) provides in pertinent part:

Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is-

the debtor to avoid any non-possessory, non-purchase money lien impairing an exemption to which debtor would be entitled under §522(b). Georgia has opted out of the federal scheme of exemptions pursuant to §522(b) and sets forth its own list of exemptions in

Official Code of Georgia Annotated (O.C.G.A.) §44-13-100.⁵ See Generally, In re: Plummer, Ch. 7 Case No. 387-00162 (Bankr. S.D. Ga. Dalis, J. July 1, 1988). Under O.C.G.A. §44-13-100(a)(4) debtor is entitled to an exemption as to her interest in "household goods" (see note 5). I define "household goods" as

. . . .
(2) a non-possessory,
non-purchase-money security interest in any-

(A) . . . household goods . . . that
are held primarily for the personal, family,
or household use of the debtor or a dependent
of the debtor;

⁵O.C.G.A. §44-13-100(a) provides in pertinent part:

In lieu of the exemption provided in
Code Section 44-13-1, any debtor who is a
natural person may exempt . . . the
following property:

. . . .

(4) The debtor's interest, not to
exceed \$200.00 in value in any particular
item, in . . . household goods . . .
that are held primarily for the personal,
family, or household use of the debtor or a
dependent of the debtor. The exemption of the
debtor's interest in the items contained in
this paragraph shall not exceed \$3,500.00 in
total value.

items of tangible personal property held primarily for personal or family use by the debtor or a dependent of the debtor in or about the household, excepting therefrom items held for investment purposes or items having a pecuniary value independent of its functional use.

Plummer, supra, 16-17.

The television sets, clock radio, video recorder, stereo cassette player, and 35mm camera itemized as Blazer's security are tangible personal property held primarily for debtor's personal use, with no investment purpose and with no value independent of their functional uses. These items of collateral are properly categorized as

"household goods." Cf. Swainsboro Financial Services, Inc. v. Alexander (In re: Alexander), Ch. 13 Case No. 90-11861 (Bankr. S.D. Ga. Dalis, J. May 1, 1991); Phillips v. Blazer Financial Services (In re: Phillips), Ch. 7 Case No. 487-01169 (Bankr. S.D. Ga. Dalis, J. May 13, 1988). The household goods securing Blazer's loan are of nominal value and fully exemptible under O.C.G.A. §44-13-100(a)(4). Pursuant to 11 U.S.C. §522(f), debtor may avoid Blazer's lien.

Counsel for Blazer argued at hearing that its security interest in the items of collateral which debtor no longer has is not avoidable because those items are no longer property of the estate. Blazer requests that its claim be allowed as secured to the extent of the property sold. Blazer's position is

not sustainable. Bankruptcy Code §506(a) determines secured status of claims.

An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim.

11 U.S.C. §506(a).

The claim of Blazer is secured only to the extent of Blazer's interest in the bankruptcy estate's interest in the property which is subject to Blazer's lien. Bankruptcy Code §541 provides in

pertinent part: "(a) The commencement of a case under section 301 . . . of this title [11] creates an estate." 11 U.S.C. §541(a).

Section 541(a) further defines the property comprising the bankruptcy estate. See generally 11 U.S.C. §541(a)(1) - (7). As to the property sold or thrown away by the debtor prepetition, as of the commencement of the case, the bankruptcy estate held no interest in the property. The prepetition sale or disposal of the property upon which Blazer claimed a lien terminated the debtor's interest in the property and upon filing this case the bankruptcy estate acquired no interest. There is no estate interest upon

which Blazer may claim an interest in order to have a secured claim under §506(a). To the extent of the transferred property the claim is unsecured in this case. The balance of the property to which Blazer claims a lien and to which the estate claims an interest meet the definition of household goods which are exemptible under the applicable Georgia statute. The lien of Blazer is avoidable and the entire claim is unsecured.⁶

There being no other objection to confirmation and it appearing that debtor's proposed plan meets all other confirmation criteria of §1325 (see footnote 1), Blazer's objection to confirmation is ORDERED overruled; further ORDERED that Blazer's security interest is avoided pursuant to §522(f) as impairing exemptions to which debtor is entitled under state law; and

⁶I have previously maintained that the bankruptcy court has an obligation, independent of objections, to analyze the good faith of a debtor in bringing a Chapter 13 petition. See 11 U.S.C. §1325(a)(3); In re: Moraetes, Ch. 13 Case No. 88-11384 at p. 4 (Bankr. S.D. Ga. Augusta Division, Dalis, J. June 9, 1989). However, under circumstances where the good faith of the debtor could be questioned regarding her motivations and sincerity in seeking relief under the provisions of Chapter 13 based upon the circumstances under which the debtor contracted her debts and her demonstrated bona fides, or lack of same, in dealing with a single creditor, and the potential nondischargeability of debt due this creditor in a Chapter 7 proceeding, see Kitchens v. Georgia Railroad Bank & Trust Co., 702 F.2d 885, 888-889 (11th Cir. 1983), and where the creditor in question with every opportunity fails to raise a good faith objection, and independent of the debtor's dealings with this single creditor, the Chapter 13 proceeding appears to have been brought in good faith, I will not raise the good faith issue based upon this debtor's prepetition treatment of this creditor's interests.

further ORDERED that Blazer's claim is allowed as
unsecured.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 23rd day of October, 1991.