

In the United States Bankruptcy Court
for the

Southern District of Georgia

Savannah Division

FILED

at 1 O'clock & 25 min P.M
Date May 17, 2002 CK

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia

In the matter of:)

ALFRED G. WILLIAMS)

Debtor)

J. C. LEWIS MOTOR COMPANY, INC.)

Movant)

v.)

ALFRED G. WILLIAMS)

Respondent)

Chapter 13 Case

Number 01-43463

ORDER ON MOTION FOR RELIEF FROM STAY

Debtor Alfred G. Williams ("Debtor") filed for Chapter 13 protection on November 14, 2001. Among the assets which Debtor listed was a 1998 Plymouth Grand Voyager ("the vehicle") valued at approximately \$13,500.00. Debtor's plan proposes to pay the sum of \$525.00 per month for 36 months and to pay the debt on the vehicle to J. C. Lewis Motor Company, Inc. ("the dealership"). The dealership filed a Motion for Relief from Stay on January 22, 2002, seeking to recover the vehicle. Pursuant to the Court's jurisdiction over this matter, which is a core proceeding under 28 U.S.C. § 157(b), I make the following Findings of Fact and Conclusions of Law.

cc: Debtor
Debtor's Atty. Dustin
Creditor
Creditor's Atty. Curtis Lewis
Trustee
M. G. Trustee May 17, 2002 CK

Findings of Fact

The evidence reveals that Debtor's ownership of the vehicle is derived from a retail installment contract dated August 23, 2001, showing the dealership as the seller, naming Debtor as the purchaser, and identifying the Voyager as the subject vehicle. At the time the contract was executed, Debtor traded in a 1987 Ford truck for which he was given a trade in allowance of \$1,558.18. Movant's Ex. 1.

The dealership contends that Debtor's ownership of the vehicle was contingent upon his being approved for credit by an outside creditor inasmuch as the dealership does not provide in-house financing for vehicles which it sells. In support of its contention, the dealership offers the delivery receipt which provides:

If a retail installment contract is executed as part of this sales transaction, then buyer and seller intend that this contract will be assigned by seller. In the event seller is unable to assign this contract within _____ days of the date hereof, this contract shall be null and void and buyer, immediately upon notice by seller, shall do one of the following:

1. Purchase the vehicle from seller for the cash price
... or
2. Return the vehicle described herein to seller

Ex. B. Debtor executed this delivery receipt. It was not executed, however, by anyone on behalf of the dealership; nor was the time limitation within which the contract had to be assigned filled in. The dealership took Debtor's trade-in and placed it on its used car lot or

otherwise sold it prior to the time the dealership learned that Debtor's credit had been declined by the finance company to which assignment was attempted.

After the first finance company declined to extend credit, the dealership's finance director attempted to assign the contract to a series of lenders, all of whom declined to make the loan. The finance director, Mr. Jackson, testified that notwithstanding the "blank" on the delivery receipt, Debtor was told that there was a thirty-day limitation on obtaining financing and, if financing could not be obtained within that time, then Debtor would be obligated to purchase the vehicle outright or return it. Notwithstanding the thirty-day deadline ordinarily applied to transactions such as this, the dealership unsuccessfully attempted for an extended period of time to obtain financing. Finally, near the end of October, or approximately two months after the contract was signed, the dealership made demand for return of the vehicle. The dealership contends that, given the terms of the contract and the collapse of any ability to finance it, Debtor is obligated to return the vehicle. The dealership also asserts that it has suffered approximately \$3,500.00 in depreciation from the time the vehicle was sold until now.

Despite the fact that no time limit is placed on the financing contingency, the dealership contends that the Court should construe the deadline as expiring within a reasonable time after the contract was executed. Debtor's position is that because the delivery receipt was not executed and was not fully filled in, the receipt creates no financing contingency on the contract and the Debtor is entitled to retain the vehicle and make

payments through his Chapter 13 plan.

Conclusions of Law

“The construction of a contract is a question of law for the court.”

O.C.G.A. § 13-2-1. Here, the parties have been unable to cite any binding precedent dealing with a similar factual situation; therefore, I construe the terms of the documents under general contract principles.

The first principle is that contract documents should be construed in a manner consistent with one another according to their terms if those terms are clear and unambiguous. *See id.* § 13-2-2(4) (“The construction which will uphold a contract in whole and in every part is to be preferred, and the whole contract should be looked to in arriving at the construction of any part.”). The second is that the terms of the contract which contain any ambiguity are to be construed against the parties who drafted them. *Id.* § 13-2-2(5) (“If the construction is doubtful, that which goes most strongly against the party executing the instrument or undertaking the obligation is generally to be preferred.”). In this case, the dealership drafted the contract, and the relevant documents are the retail installment contract, the Used Vehicle Buyer’s Purchase Order (“the purchase order”), and the delivery receipt, *see Ex. B.*, quoted *supra* at p.2, para.2.

The retail installment contract contains an agreement whereby Debtor agreed to “purchase from (the dealership), on a time basis, subject to the terms and

conditions of this contract and security agreement, the Motor Vehicle and services described below.” Movant’s Ex. 1. The contract provides for the delivery of a 1998 Plymouth Grand Voyager, requires payments in principal of \$13,481.99 with interest at a rate of 28% per year, and provides for 54 payments of \$441.69 beginning September 22, 2001. Id. There is a pre-printed assignment of the contract which was executed by the dealership, but the name of the assignee is not filled in because the dealership never succeeded in finding a lender willing to accept the credit. The purchase order provides:

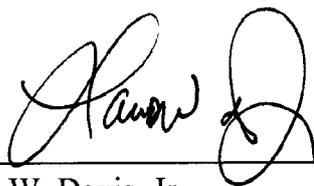
The Used Vehicle Buyers Order is an OFFER BY ME to purchase the vehicle described herein on the terms and conditions specified. There are no representatives (sic) or verbal agreements except those which appear on the face and back of this Buyer’s Order. UPON ACCEPTANCE OF MY OFFER by the Sales Manager or other authorized representatives of J. C. LEWIS MOTOR CO., INC., including all the terms and conditions on both the face and reverse side hereof, this document shall become BINDING AND ENFORCEABLE CONTRACT.

Ex. A. The purchase order was signed by Debtor and accepted by the dealership as evidenced by initials of two of its authorized agents. The delivery receipt, which contained the agreement to either purchase the vehicle in cash or return it if it could not be financed, was a separate document not made a part of or found on the reverse of either the retail installment contract or the buyer’s purchase order.

Because both the purchase order and the retail installment contract are

unconditional and because the delivery receipt was not executed by anyone on behalf of the dealership, I conclude that the delivery receipt does not constitute an enforceable modification of the other clear and unambiguous contracts. I have no doubt, based on the evidence before me and the partially completed delivery receipt, that the dealership does not make it a business practice to finance vehicles it sells to its customers; nor do I doubt that it was the dealership's intention to retain the right to recover the vehicle if it could not obtain financing. However, the delivery receipt - the document placing that obligation on the debtor - was not fully filled in and was never executed by a representative of J. C. Lewis. As a result, the financing contingency was never reduced to writing so as to be legally enforceable against Debtor. The dealership's motion must be denied.

Accordingly, Debtor's plan, which provides for payment in full of J. C. Lewis Motor Company's balance on this vehicle, is confirmed. Debtor is entitled to retain possession of the vehicle subject to his obligations to maintain full coverage insurance.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 15th day of May, 2002.