

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division

In the matter of:

ROBERT KARL FULLER  
KAREN AILEEN FULLER

*Debtors*

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Chapter 13 Case  
Number 91-40721

MEMORANDUM AND ORDER

On May 19, 1993, the court held a hearing on Debtors' Objection to the claim of First Union National Bank ("First Union"), the Debtors' Motion to Avoid Lien of First Union, and First Union's Motion for Relief from Stay previously continued. Upon consideration of the evidence adduced at that hearing and applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtors filed their Chapter 13 petition on April 8, 1991. The Chapter 13 plan was confirmed on August 29, 1991. First Union's claim was bifurcated in the

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at 1 O'clock & 51 min. PM

Date 7/8/93

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United States Bankruptcy Court  
Savannah, Georgia 511

Chapter 13 case with a value of \$2,500.00 placed on the automobile in issue here and an unsecured claim of \$3,038.47 arising out of the same note. The plan which proposed a 100% dividend to unsecured creditors was confirmed without objection. First Union's allowed secured claim was paid by the Chapter 13 Trustee but the balance remains unpaid.

On January 28, 1993, Debtors filed a Motion to Convert the Chapter 13 case to a Chapter 7 case which was granted. Debtors stated in their Chapter 7 schedules filed February 12, 1993, that they owed no secured debt. On March 23, 1993, First Union filed a Motion for Relief from Stay alleging that it was secured and that Debtors were delinquent in payments on the automobile.

On April 27, 1993, Debtors objected to First Union's claim, asserting that First Union was properly listed as an unsecured creditor on the Chapter 7 petition and arguing that First Union should be ordered to provide Debtors with clear title to the vehicle. The same date, Debtors also filed a Motion to Avoid the Lien of First Union. First Union argues that under 11 U.S.C. Section 348(a) Debtors' Chapter 13 case was not completed and no discharge was granted, and therefore, the Bank's residual claim in the Chapter 7 case is a secured claim unaffected by the payment in

the Chapter 13 case.

### CONCLUSIONS OF LAW

Section 348 of Title 11 governs the effect of conversion and provides as follows:

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

11 U.S.C. §348(a). Under Section 348(a), Debtors' Chapter 7 case is deemed to have been filed at the time the Chapter 13 case was filed. Matter of Dennis, 31 B.R. 128 (Bankr. M.D.Ga. 1983). Therefore a purchase money security interest which was bifurcated in the Chapter 13, remains perfected upon conversion even if the entire secured portion of the claim was paid in the Chapter 13 case prior to conversion. Id. *Contra* In re Pickett, 151 B.R. 471 (Bankr. M.D.Tenn. 1992); In re Hargis, 103 B.R.

912 (Bankr. E.D.Tenn. 1989). Despite the rationale of Pickett and Hargis in applying a Section 506 analysis to this issue, I find that neither case has considered the conditional nature of a Chapter 13 confirmation. While Section 1327 provides that the terms of a confirmed plan bind all parties and that the debtor holds property free and clear of any interest other than those provided for in the plan, such provisions must be read in light of Section 1328.

A Chapter 13 proceeding provides debtors with additional benefits not available in Chapter 7 such as the co-debtor stay, retention of property during the plan, modification of a creditor's rights, and a broader discharge of debts. However, the discharge is granted only upon the completion of payments under the Chapter 13 plan. 11 U.S.C. §1328. See In re Wood, 23 B.R. 552, 558 (Bankr. E.D. Tenn. 1982). Debtors are not entitled to the benefits of Chapter 13 until they have completed their plan. In re Holiday, Chapter 13 Case No. 92-10426, slip op. at 9 (Bankr. S.D.Ga. March 30, 1993). As the debtors in the case at bar have decided to convert to a Chapter 7, they have lost the benefits which might have accrued from a discharge obtained on the bifurcated debt in the Chapter 13. I hold that property valuations in Chapter 13 plans are conditional upon completion of plan payments and entry of an order of discharge in the Chapter 13 case and are not binding upon conversion to a

Chapter 7 proceeding.

Debtors' Objection to the Claim of First Union National Bank and the Motion to Avoid the Lien of First Union are denied. First Union's Motion for Relief from Stay is granted, subject to the rights of the Chapter 7 Trustee.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY THE ORDER OF THIS COURT that Debtors' Objection to the Claim of First Union National Bank and the Motion to Avoid the Lien of First Union are denied. IT IS FURTHER ORDERED that First Union's Motion for Relief from Stay is granted.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 7<sup>th</sup> day of July, 1993.