

FILED

In the United States Bankruptcy Court
JAN 31 4 43 PM '97
for the

Southern District of Georgia U.S. BANKRUPTCY COURT
SAVANNAH, GA.
Brunswick Division

In the matter of:

BOB L. JOHNSON, JR.

Debtor

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Chapter 13 Case

Number 96-41735

ORDER ON OBJECTION TO CONFIRMATION

This matter comes before the Court on First Citizens Bank of Glennville's objection to the confirmation of Debtor's Chapter 13 plan. Based upon the record in the file and the applicable authorities, I make the following findings of fact and conclusions of law.

Debtor, Bob L. Johnson, Jr., filed a petition for relief under Chapter 13 of the Bankruptcy Code on July 16, 1996. In his plan, Debtor valued the collateral of First Citizens as secured in the amount of \$2,800.00 with the remainder of the debt being unsecured. On August 15, 1995, First Citizens filed an objection to the confirmation of Debtor's plan, and filed a fully secured claim in the amount of \$3,898.77. This dispute concerns the value of the collateral securing the debt and not the amount of the debt. On

December 11, 1996, this Court held a hearing to consider Debtor's plan confirmation and the objection of First Citizens.

First Citizens initially contended that its debt was secured by an interest in a 1990 Chevrolet C1500 Pickup Truck and Hotsy Pressure Washer.¹ Although First Citizens reasonably believed at the time it filed its objection that it held a perfected security interest in the Chevrolet truck, by letter to the Court dated December 19, 1996, First Citizens has acknowledged that its interest in the truck was not in fact perfected. Thus, the only issue for this Court to determine is the value of the pressure washer and the extent that First Citizens possesses a secured claim.

During the hearing, Debtor testified that he purchased the pressure washer in July 1992. At that time the pressure washer listed for \$6900.00 and Debtor financed it for \$7200.00. Debtor still owns the engine and all components which were purchased as a unit. Debtor's testimony revealed that he believes the unit to be worth approximately \$2500-\$2800. He based his testimony on his knowledge of the equipment and his

¹First Citizens' secured interest in the Hotsy Pressure Washer collectively includes an interest in a dual axle trailer, 550 gallon water tank, hose reel with fifty feet of hose, 12.5 Briggs and Stratum gasoline engine, and a 4.5 GPM at 2500 PSI pressure washer.

experience cleaning buildings on a part-time basis. Debtor also testified that the unit needed some repairs and that approximately \$500.00 would be required to fix the equipment properly. Debtor further testified that the unit was in good shape and that he had taken "pretty good" care of it.

When asked if he would surrender the equipment in full satisfaction of the debt, Debtor declined, stating that he wished to retain the pressure washer because it helped him maintain his Chapter 13 plan. Debtor testified that the pressure washer brought in an additional \$2500.00 of income annually.

Terry Barnard, assistant vice-president of First Citizens Bank, also testified about the value of the pressure washer. He based his testimony on his knowledge of the type of equipment used by the Debtor and his experience as a bank officer. In Mr. Barnard's estimation, the value of the unit at least was equal to the amount of the loan. His valuation, however, was based on the price of similar equipment held by a retailer, and he admitted that he had never seen the equipment in question. He did state that the bank would accept the equipment in full satisfaction of its claim against Debtor.

After considering the evidence, I hold the value of the collateral to be \$2,800.00. Debtor's evidence was persuasive, and he has the best perspective from which to assess the value of the collateral. He is the owner, he knows its condition, and he is familiar with the market for used equipment. The bank officer had never inspected this equipment and as a result, his estimate is not supported by adequate foundation. Nor is the bank's offer to accept the collateral in full satisfaction of the debt controlling. While this evidence suggests the value may in fact be higher, the motivations of the bank in extending such a offer, and the Debtor in refusing it are not those of the typical buyer/seller, and in the absence of corroborating evidence is not controlling. See Black's Law Dictionary 537 (5th ed. 1979) (fair market value is "[t]he amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts"); see also In re Johnson, 165 B.R. 524, 530 (S.D.Ga. 1994) (holding that the for the purposes of Chapter 13 "cram-down," a bankruptcy court must reach a fair market determination based on the totality of the relevant evidence tendered applying common sense and personal experience.

IT IS THEREFORE THE ORDER OF THIS COURT that First Citizens Bank of Glennville's objection to confirmation is overruled, Debtor's valuation of \$2,800.00

is approved, and the plan is confirmed at \$319.00 per month.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 31st day of January, 1997.