

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JOHN A. BAKER) CASE NO. 05-10688
LINDA K. BAKER)
)
Debtor)

DECISION AND ORDER DENYING CONFIRMATION

At Fort Wayne, Indiana, on May 18, 2005

This matter is before the court with regard to confirmation of the debtors' proposed Chapter 13 plan, filed on March 16, 2005. Notice of the proceedings concerning confirmation and the opportunity to object to the plan has been given to all creditors. The trustee has filed an objection contending, inter alia, that the plan's provision requiring creditors to release their liens before the debtors receive a discharge is improper.

The court's order concerning confirmation scheduled a hearing and set a deadline by which objections to the plan were to have been filed. The notice indicated that, if timely objections were filed, the scheduled confirmation hearing would automatically be removed from the court's calendar and such further proceedings as might be necessary to consider confirmation and any objections would be re-set by separate order. The notice also stated that, if it was apparent from the face of the plan that an objection was well taken, confirmation might be denied without further notice or hearing. In this instance, the trustee's objection is well taken. It is apparent from the face of the plan that it cannot be confirmed over that objection.

A chapter 13 debtor may bifurcate the claim of an undersecured creditor into its secured and unsecured components. The secured claim is determined by the value of the creditor's lien, which,

unless there are superior liens, is represented by the value of its collateral; any remaining amounts due are unsecured. See, 11 U.S.C. § 506(a). If the debtor wishes to retain the collateral, absent the creditor's consent, the plan must allow the creditor to retain the lien securing its claim. 11 U.S.C. § 1325(a)(5). The Bankruptcy Code does not, however, specifically state how long this lien retention should last and there is currently a debate over the issue. For example, should the creditor be required to release its lien early in the case, as soon as the secured portion of its claim has been paid, or, given the very real possibility that the case may fail and be dismissed, should the creditor be allowed to retain its lien until the end of the case, when the unsecured portion of its claim is also finally disposed of, and the debtor actually receives a discharge? The reported decisions addressing the issue are divided. Compare, In re Lee, 162 B.R. 217 (D. Minn. 1993); In re Johnson, 213 B.R. 552 (Bankr. N.D. Ill. 1997); In re Murry-Hudson, 147 B.R. 960 (Bankr. N.D. Cal. 1992); In re Shorter, 237 B.R. 443 (Bankr. N.D. Ill. 1999); In re Campbell, 160 B.R. 198 (Bankr. M.D. Fla. 1993); with In re Archie, 240 B.R. 425 (Bankr. S. D. Ala. 1999); In re Scheierl, 176 B.R. 498 (Bankr. D. Minn. 1995); In re Wilson, 174 B.R. 215 (Bankr. S.D. Miss. 1994); In re Zakowski, 213 B.R. 1003 (Bankr. E.D. Wis. 1997); In re Thompson, 224 B.R. 360 (Bankr. N.D. Tex. 1998). See also, In re McPherson, 230 B.R. 99 (Bankr. E.D. Ky. 1999)(lien properly released after successful completion of plan but before discharge).

Although it has never published a decision on the issue, in oral rulings from the bench and in unpublished decisions, this court has consistently held that an undersecured creditor should not be required to release its lien until the plan has been completed and the debtor receives a chapter 13 discharge. Although we recognize the existing division of authority, the court believes that the decisions which allow the undersecured creditor to retain its lien until discharge represent the most

appropriate reading of the statute and are supported by the better reasoned arguments. Consequently, a chapter 13 plan which provides for the cancellation or release of an undersecured creditor's lien before the debtor has completed all of its obligations under the plan should not be confirmed. Accord, In re Pruitt, 203 B.R. 134 (Bankr. N.D. Ind. 1996)(Judge Dees). Accordingly, to the extent it is based upon the timing of the release of liens, the trustee's objection to confirmation of the debtors' currently proposed chapter 13 plan is sustained and confirmation of that plan is DENIED. Any further plan shall be filed within fourteen (14) days of this date, for hearing and objection on notice to all creditors.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court