

Not intended for publication



Dated: August 16, 2004
The following is SO ORDERED.

G. Harvey Boswell
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE:

TERRY AZEVEDO AND ADRIENNE AZEVEDO,

Case No. 04-10113

Debtors.

Chapter 13

MEMORANDUM OPINION AND ORDER
CONDITIONALLY GRANTING CHESTER COUNTY BANK'S
OBJECTION TO CONFIRMATION

The Court conducted a hearing pursuant to FED. R. BANKR. P. 9014 on Chester County Bank's Objection to Confirmation on July 22, 2004. Resolution of this matter is a core proceeding. 28 U.S.C. § 157(b)(2). The Court has reviewed the testimony from the hearing and the record as a whole. This Memorandum Opinion and Order shall serve as the Court's findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

Terry and Adrienne Azevedo, ("Azevedos"), filed the instant case on January 12, 2004. The debtors listed Chester County Bank on Schedule F with a claim of \$8,000.00 and the notation "protect co-signer." Prior to filing for bankruptcy relief, the Azevedos had executed a promissory note in favor of Chester County Bank, ("Bank"), in the amount of \$12,000.00 with an

interest rate of 12.703%. Pursuant to the terms of the note, the debtors were to make forty-eight monthly installments of \$225.00 and a final balloon payment of \$5,975.60 on July 30, 2004. Terry Azevedo's father, Manuel Azevedo, co-signed the note with the debtors.

The Azevedos filed their proposed chapter 13 plan on January 12, 2004. The debtors listed the Bank as a special class unsecured creditor in the amount of \$8,000.00. The debtors did not list an interest rate for the debt, but they did propose a \$155.00 monthly payment. The Azevedos' plan also included a "not discharge" notation next to the Bank's name as well as a "protect co-signer" notation. The debtors proposed a sixty month plan.

The Bank filed an objection to confirmation of the debtor's plan on May 5, 2005. In its objection, the Bank alleged that the interest rate proposed by the debtors was insufficient. The Bank also alleged that it would be "adversely affected" if it did not receive the \$5,975.60 balloon payment which was due on July 30, 2004, from the co-signer.

The debtors' plan was confirmed on June 24, 2004. According to the plan which was attached to the confirmation order, the Bank has a special class unsecured claim in the amount of \$8,391.73. The claim will be paid 100% through the debtors' plan at the rate of \$155.00 per month. The debtors' plan lists the interest rate on this claim as ".00%."

II. CONCLUSIONS OF LAW

The Bank has alleged two grounds for its objection to confirmation. First, the Bank has asserted that the co-signer on the \$8,000.00 debt is obligated to make the \$5,975.60 balloon payment immediately. The Court finds that §§ 1301 and 1322(b)(2) defeat this allegation. Section 1301 of the Bankruptcy Code provides for a stay of actions against co-debtors. This stay may only be lifted if:

- (1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;
- (2) the plan filed by the debtor proposes not to pay such claim; or
- (3) such creditor's interest would be irreparably harmed by continuation of such stay.

11 U.S.C. § 1301(c)(2). Additionally, § 1322(b)(2) allows a debtor to modify the rights of unsecured creditors.

In the case at bar, the debtors are fully within their rights to propose paying the Bank's

entire claim over the life of the plan. Also, because of the co-debtor stay, the Bank cannot proceed against Manuel Azevedo to collect the \$5,975.60 balloon payment. In order to do that, the Bank would have to file a motion to lift the stay and then demonstrate to the Court that it is entitled to that relief; however, given the fact that the debtors in this case propose to pay the Bank the entire amount of their claim, any such motion by the Bank would be a difficult one to prove.

As a second basis for its objection to confirmation, the Bank has alleged that the debtors' plan is insufficient because it fails to provide for the contract interest rate. The Court agrees with the Bank. As it currently stands, the Azevedos' plan calls for 0% interest to be paid on the Bank's claim. In order to fully protect their co-signer, the Azevedos must pay the contractual interest rate. The Bank's objection will be conditionally granted. The debtors shall amend their plan to reflect the appropriate interest rate.

III. ORDER

It is therefore **ORDERED** that Chester County Bank's Objection to Confirmation is **CONDITIONALLY GRANTED**. The debtors shall amend their plan to provide that Chester County Bank's claim will be paid at the contract interest rate of 12.703%.

Mailing information:

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