

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

**Theresa Ann Byrd,

Debtor.**

**Case No. 99-11289

Chapter 13**

**Theresa Ann Byrd,

Plaintiff,**

v.

Adv. Pro. No. 99-5177

**NEI Pawn Shop,

Defendant.**

**MEMORANDUM OPINION AND ORDER RE
COMPLAINT TO COMPEL TURNOVER OF CERTAIN PROPERTY FROM
DEFENDANT**

The Court conducted a trial in this matter on August 5 and August 12, 1999. FED. R. BANKR. P. 7001. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the trial and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

On February 17, 1999, the debtor, Theresa Byrd, (“Byrd”), pawned a ladies wedding band at NEI Pawn Shop, (“NEI”). On February 23, 1999, Byrd pawned a ladies ring and a Mickey Mouse Watch at NEI. According to the debtor’s testimony, the approximate total of these two loans was \$100.00.

Byrd testified at the trial that it was her understanding that she had thirty days from the date of the loan to redeem the collateral. If Byrd did not redeem the collateral within this time period, she understood that the collateral would become property of the pawn shop. Byrd further testified that she understood that if she paid the interest on her loans within the thirty-day redemption period, the pawn shop would hold the collateral for another thirty days. Byrd testified that she neither made a payment on the loan within the original thirty-day period, nor did she pay the loan's interest within that same time.

On April 26, 1999, Byrd filed for chapter 13 bankruptcy relief. Byrd listed NEI Pawn on her Schedule D as a secured creditor with a claim for \$120.00. Byrd included NEI in her chapter 13 plan as a secured creditor with a \$10 monthly payment.

Although Byrd had not made a payment on the NEI loans or the interest at the time of filing her chapter 13, NEI sent Byrd a postcard on May 18, 1999, which read as follows:

You are hereby notified to redeem your pledged property on or before 5-27-99 or the same will be forfeited to the pawnbroker under your agreement; and your right to redeem your pledged property will thereafter be divested.

Trial Exhibit 1.

After considering the evidence from the trial, the Court finds that the debtor should be allowed to redeem her property within a reasonable period of time. Despite receiving no payment from the debtor on her two loans, NEI was willing to give Byrd until May 27th to redeem her property. There was no evidence introduced at the trial that this extension of the redemption period by NEI did not exist at the time of the case filing. The Court therefore

concludes that Byrd’s right to redeem her collateral existed at the time of her chapter 13 filing and was, under the Bankruptcy Code, property of the estate. In light of this, the Court finds that the debtor shall have an additional 120 days to redeem her collateral. Should the debtor pay her debt to NEI in full by the end of the 120 day period, NEI shall turn over the collateral to her. The debtor’s plan, as amended by this opinion, shall be confirmed.

ORDER

It is therefore **ORDERED** that:

1. The debtor has until November 23, 1999, to pay her debt to NEI Pawn Shop in full
2. NEI Pawn Shop shall retain the debtor’s collateral until the debt is paid in full.
3. NEI Pawn Shop is to file a proof of claim to which the debtor may object as provided in F.R.B.P. 3007.
4. The debtor’s chapter 13 plan, as amended by this Order, is hereby confirmed.

IT IS SO ORDERED.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: August 23, 1999