Not intended for publication

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE

David Johnson, Jr. , and
Loretta Johnson **Case No. 00-12959**

Debtors. **Chapter 11**

MEMORANDUM OPINION AND ORDER RE
OBJECTION TO CONFIRMATION BY GMAC

The Court conducted a hearing on GMAC's Objection to Confirmation on August 29, 2001. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

GMAC has objected to confirmation of the debtors' Chapter 11 plan for two reasons: (1) GMAC alleges that Loretta Johnson is not entitled to join in her husband's Chapter 11 case; and (2) GMAC alleges that Loretta Johnson should be obligated to pay GMAC the entire amount of their debt. David Johnson filed this Chapter 11 case after his farming operation and dozier service partnership began experiencing financial difficulties. As David's wife, Loretta Johnson joined in this case as a codebtor.

On September 6, 1999, Loretta Johnson purchased a 1999 GMC "Jimmy" in her own name. Loretta Johnson made ten payments before the instant bankruptcy case was filed. The

Johnsons have been making monthly adequate protection payments to GMAC in the amount of $500.00. GMAC has been included in the Johnson's plan with a claim of $18,950 which represents the NADA value of the vehicle. The plan calls for a monthly payment to GMAC in the amount of $500.00. Loretta Johnson previously testified in this case that although she does not work fulltime for her husband's dozier service, she would occasionally use her GMC Jimmy to run errands for the business. At the hearing on their objection to confirmt

II. CONCLUSIONS OF LAW

A. 11 U.S.C. §§ 109 and 302

Section 109(d) of the Bankruptcy Code provides that any person who may be a debtor under Chapter 7 may be a debtor under Chapter 11. A person may be a debtor under Chapter 7

> only if such person is not –
> (1) a railroad;
> (2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company . . . , credit union, or industrial bank or similar institution . . .
> (3) a foreign insurance company, bank, savings bank, cooperative bank, etc.

11 U.S.C. § 109(b)(1)-(3). Pursuant to § 302(a) of the Code,

> A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter *and such individual's spouse.*

11 U.S.C. § 302(a) (emphasis added). There is no prohibition, either in the Code or caselaw, against a spouse being a joint debtor in a Chapter 11 case. As a result, GMAC's Objection to Confirmation based on Loretta Johnson's status as David Johnson's spouse is unfounded.

B. 11 U.S.C. § 506

Section 506(a) of the Bankruptcy Code states that:

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest, . . .is a secured claim to the extent of the value of such creditors' interest in the estate's interest in such property, . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim.

11 U.S.C. § 506(a). In the case of *In re Lyles*, 226 B.R. 854 (Bankr. W.D.Tenn. 1998), this Court adopted the Supreme Court's decision in *Associates Commercial Corporation v. Rash*, 117 S.Ct. 1879 (1997). In that case, the United States Supreme Court held that when a debtor invokes the "cram down" provision of 11 U.S.C. § 1325(a)(5) and elects to retain and use collateral over a creditor's objection, the proper method of determining the value of such collateral is the so-called "replacement-value" standard. *Id.* at 1882. This standard requires a bankruptcy court to assess, on a case-by-case basis, the value of collateral "in light of the purpose of the valuation and of the proposed disposition or use of such property." *Id.* at 1884 (citing 11 U.S.C. § 506(a)). The Supreme Court further mandated that "the value of property retained because the debtor has exercised the § 1325(a)(5)(B) 'cram down' option is the cost the debtor would incur to obtain a like asset for the same 'proposed . . .use'." *Id.* at 1886. In a famous footnote to the *Rash* case, the Supreme Court declined to define "replacement value" and instead stated that "whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the value of the property." *Id.* at 1886 (n. 6). The Supreme Court's decision in *Rash* applies in Chapter 11 proceedings as well. *See, In re Ohio Transportation Co.*, 247 B.R. 715 (Bankr. S.D. Ohio 2000).

In the case at bar, GMAC is not entitled to receive the entire amount they are owed.

They are entitled to the replacement value of the vehicle which Loretta Johnson is proposing to pay them. She made ten payments prior to filing for bankruptcy relief and she has been making $500 monthly adequate protection payments. GMAC is receiving everything they are entitled to under the Code.

C. 11 U.S.C. § 1129

A court "shall confirm" a Chapter 11 plan if it complies with § 1129 of the Bankruptcy Code. Said section requires that a plan be proposed in good faith, be fair and equitable to all creditors within a class, and will likely not be followed by liquidation or further need for reorganization. 11 U.S.C. § 1129(a), (b). In the case at bar, GMAC has not alleged that the Johnson's plan lacks good faith, is not fair and equitable or that it does not qualify for confirmation under any of § 1129's other subsections. There simply has been no proof that the Johnson's plan does not qualify for confirmation under § 1129.

ORDER

It is therefore **ORDERED** that GMAC's Objection to Confirmation is **OVERRULED.** It is **FURTHER ORDERED** that the Johnson's Chapter 11 plan is **HEREBY CONFIRMED**. **It is so ordered.**

By the Court,

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G. Harvey Boswell
United States Bankruptcy Judge

Date: September 26, 2001

cc:

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