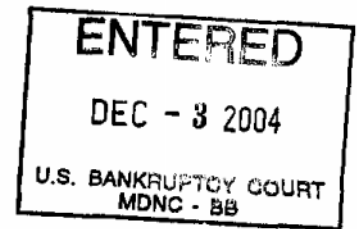


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION



IN RE:

Charlette B. Johnson,

Debtor.

Case No. 04-82907-C13

ORDER

This matter came on for hearing before the Court on November 18, 2004 in Durham, North Carolina upon Motion by Mitsubishi Motors Credit of America ("Creditor") for Relief from Stay and Relief from Co-Debtor's Stay. Cheryl Capron appeared along with the Debtor and Ben Lovell appeared for the Trustee. L. Clifford Brisson, Jr., represents the Creditor. For reasons stated below, Mr. Brisson did not appear at the hearing.

After considering the arguments of counsel and reviewing the file, the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Debtor filed her petition under Chapter 13 of the Bankruptcy Code on September 27, 2004. The Debtor estimates that the dividend to unsecured creditors upon the completion of her plan will be twenty-five percent.

On May 6, 2000, the Debtor and Moses N. Johnson("Co-Debtor") entered into a Vehicle Lease Agreement (the "Agreement") with the Creditor. The Agreement provided that the Debtor would lease a 2000 Mitsubishi Montero Sport for a period of four years and that payments would be \$625.35 per month. The title of the vehicle was issued to MMCA Lease Ltd. The lease matured May 6, 2004 and the Creditor repossessed the vehicle prior to the filing of the Debtor's petition.

In its Motion for Relief from Stay, the Creditor stated that Debtor has not made a payment since April 2004. The Creditor stated that it has possession of the vehicle and the Creditor sought to enforce its state law rights with regard to the vehicle. The Creditor stated that, as of October 18, 2004, the amount of its claim in the Debtor's case was \$20,562.43.

After the Creditor filed this Motion, but prior to the hearing, the parties negotiated a settlement by which the Debtor would pay the full amount of the Creditor's claim over the course of five years at five percent interest. The claim would be paid through the Trustee and would be paid during the life of the Debtor's plan. In exchange for this payment, the Creditor would return the vehicle to the Debtor and issue title to the Debtor.

The value of the vehicle is not in dispute. The Creditor, in its Motion, stated that the value of the vehicle is \$10,507.50.¹ Mr. Lovell confirmed this value at the hearing and the Debtor did not dispute such.

DISCUSSION

Upon its face, the Creditor's Motion presents only minor issues. The Creditor seeks to exercise its state law rights with regard to a vehicle in which the Debtor, due to the fact that the lease matured, has no interest. However, in an attempt to regain possession of the vehicle, the Debtor has agreed to extremely favorable treatment for the Creditor. The Debtor seeks to pay, albeit at a favorable interest rate, almost double the value of the vehicle to the Creditor. The Debtor's main argument to justify this overpayment is that the Debtor can not finance another vehicle upon reasonable terms. The Debtor repeatedly stated that another car would have to be purchased at a much higher interest rate. However, an analysis of the alternatives shows that the

¹As is custom in this District, this value represents ninety percent of the N.A.D.A. average retail value of the vehicle.

proposed settlement is not reasonable:

Vehicle Type	Vehicle Value	Loan Amount	Interest Rate	Payment Amount	Total of Payments
Mitsubishi	\$10,507.50	\$20,562.43	5.0%	\$388.04	\$23,282.40
Unidentified	\$10,507.50	\$10,507.50	18.0%	\$266.82	\$16,009.20

The Debtor also notes that the vehicle is approximately 32,000 miles over the allowed amount provided by the Agreement. According to the Agreement, a charge of \$0.15 per mile would be assessed for each mile in excess of the allowed amount. While not considering the validity of any claim the Creditor might bring, for the sake of this Motion the Court will assume the charge would be approximately \$4,800. This charge would be moot if the vehicle was purchased by the Debtor. If the vehicle is not purchased, the Creditor could possibly bring a claim for this amount. The debt would likely be treated as an unsecured claim and, therefore, would be paid at the twenty-five percent rate proposed by the Debtor. This reduces the amount that would be paid on this claim to \$1,200.

In essence, the Debtor seeks to finance the purchase of this vehicle in order to regain possession. The Court, when determining the propriety of allowing a debtor to borrow money, must consider the effects of the loan on a debtor's ability to complete his or her plan and the effects of the borrowing upon a debtor's unsecured creditors. In the instant matter, the Court will not approve this financing arrangement. The price is simply too high.² Even when considering the potential mileage charge arising from the Agreement, the Debtor proposes to pay \$6,000 more for the Mitsubishi than she would have to pay for another vehicle of equal value.

²Given the value of the car and the price being paid, the effective interest rate on the Mitsubishi is 36.89%.

As such, the Court finds that allowing the negotiated settlement of the parties would endanger the Debtor's ability to complete her plan while providing an equitable dividend to her creditors.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the automatic stay provided by 11 U.S.C. § 362 is lifted as to the 2000 Mitsubishi Montero previously leased by the Debtor.

This the 3rd day of Dec., 2004.

Catharine R. Carruthers
Catharine R. Carruthers
U.S. Bankruptcy Judge