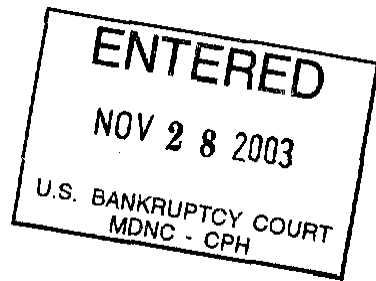


UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION



IN RE: )  
)  
James Lee Allred and ) Case No. 03-11641C-13G  
Shelia Reaves Allred, )  
)  
Debtors. )

ORDER

This case came before the court on November 25, 2003, for hearing upon Debtors' Motion for Surrender of Property and Modification of Plan. Stan H. Dick appeared on behalf of the Debtors and Anita Jo Kinlaw Troxler appeared as Chapter 13 Trustee.

According to the motion, Debtors' 1992 Honda was wrecked and extensively damaged in October of 2003. The Honda is subject to a lien securing indebtedness owed to Citifinancial. The plan that was confirmed in this case on September 2, 2003, values the Honda at \$2,750.00 and provides that any timely filed claim by Citifinancial documenting evidence of a non-preferential perfected lien shall be paid as secured up to the value of the Honda with any balance being treated as an unsecured claim. The plan further provides that payments on any secured **claim** shall be at the rate of \$125.00 per month, increasing to \$150.00 per month in July of 2004. A timely **claim** was filed by Citifinancial in the amount of \$2,643.11 reflecting a non-preferential perfected lien on the Honda, which resulted in Citifinancial having an allowed secured claim in the amount of \$2,643.11. In the motion, the Debtors seek to modify their plan to surrender the wrecked vehicle to

Citifinancial for liquidation and to have any portion of the Citifinancial indebtedness that is not satisfied from the liquidation treated as being unsecured. Thus, the Debtors seek to modify their plan in order to reduce the amount to be paid under the plan on Citifinancial's secured claim.

Section 1329(a) (1) of the Bankruptcy Code permits the type of modification sought by the Debtors in this case. However, in order to obtain such a modification, the Debtors must satisfy the requirements of §§ 1322(a), 1322(b), 1323(c) and the good faith requirement of 1325(a), all of which are made applicable to motions to modify by § 1329(b). A debtor who proposes a modification which is necessitated by his or her own post-confirmation misconduct, neglect or unjustified failure to comply with the confirmed plan or confirmation order does not meet the good faith requirement of § 1325(a). See In re McNulty, 142 B.R. 106, 110 (Bankr. D.N.J. 1992) (debtor's breach of the original plan required the conclusion that the modified plan was not proposed in good faith). Likewise, a debtor who has abused or neglected the collateral of a secured creditor following the confirmation of a plan may not be permitted to modify the plan in order to shift the resulting loss to the secured creditor. See In re Butler, 174 B.R. 44 (Bankr. M.D.N.C. 1994).

Although the Debtors in the present apparently were not at fault with respect to the accident in which their vehicle was

damaged, the fact remains that the Debtors failed to maintain insurance on their vehicle. In the motion, Debtors assert that Citifinancial 'did not require the debtors to maintain comprehensive insurance coverage . . . ." No evidence was offered to support this assertion and it is inconsistent with the provisions of the security agreement which is attached to Citifinancial's proof of claim which provides that "fire, extended coverage, collision and/or comprehensive casualty insurance is required, naming lender as loss payee, until the loan is fully paid." Moreover, the confirmation order in this case specifically provides that "Debtors shall maintain collision insurance on any vehicle on which there is a lien." Thus, it appears that the Debtors, at the very least, violated the confirmation order by continuing to operate their vehicle without having insurance on it. The unfortunate predicament which prompted the requested modification therefore is the result of the failure of the Debtors to provide collision insurance as required under the confirmation order. Under these circumstances, the court concludes that the Debtors do not meet the good faith requirement of § 1325(a) to the extent that they seek to reduce the payment on the secured claim of Citifinancial. See In re Butler, 174 B.R. 44 (Bankr. M.D.N.C. 1994).

To the extent that the motion seeks to modify the plan and the automatic stay to permit Citifinancial to take possession of the

1992 Honda in order to liquidate the vehicle and apply the resulting proceeds to the secured claim, the motion will be allowed. To the extent that the motion seeks to have any unpaid balance of the secured claim of Citifinancial treated as an unsecured claim, the motion will be denied.

IT IS SO ORDERED.

This 28th day of November, 2003.

**William E. Stocks**

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WILLIAM L. STOCKS  
United States Bankruptcy Judge