

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED

FEB 17 2000
U.S. Bankruptcy Court
Greensboro, NC
AMH

IN RE:)
)
Robin Pegues,) Case No. 99-10967C-13G
)
Debtor.)
)

ORDER

This case came before the court on February 8, 2000, for hearing upon a motion by the Chapter 13 Trustee to allow the claim of Cox Furniture & Appliance Co., Inc. as secured in the amount of \$2,000.00 and unsecured in the amount of \$10,096.12. Appearing at the hearing were Phillip E. Bolton, attorney for the Debtor, Everett B. Saslow, Jr., attorney for Cox Furniture & Appliance Co., Inc. and the Chapter 13 Trustee, Anita Jo Kinlaw Troxler. Having considered the evidence offered by the parties and the arguments of counsel, the court finds and concludes as follows:

1. On June 23, 1999, Cox Furniture & Appliance Co., Inc. ("Cox") filed a timely proof of claim in the amount of \$12,096.12. The claim was filed as being secured by collateral consisting of certain furniture which Cox valued at \$9,000.00.

2. The Trustee asserts in the motion now before the court that the collateral which secures the Cox claim has a value of \$2,000.00 and that the secured claim of Cox, therefore, should be

limited to \$2,000.00, with the balance of the claim to be treated as unsecured.

3. The items of furniture which are subject to the purchase money security interest of Cox and which secure the claim of Cox in this case were described by each of the witnesses who testified at the hearing. These items consist of solid cherry and solid mahogany living room and dining room furniture, an oak bedroom suite and a sectional living room suite consisting of three upholstered items. It was undisputed that all of the solid wood furniture was of a good quality and in excellent condition.

4. Although the matter now before the court is in the form of a motion for reduced valuation, the situation actually presented is that the Debtor wishes to retain the collateral and to force Cox to accept plan payments based upon a reduced valuation of its collateral pursuant to § 1325(a)(5)(B).

5. Under the cram down option afforded by § 1325(a)(5)(B), the Debtor is permitted to keep the collateral over the objection of the secured creditor, the creditor retains the lien securing the claim and the Debtor must provide the creditor with payments, over the life of the plan, which have a present value equal to the value of the collateral. The precise matter for determination is the valuation of Cox's claim under § 506(a) for purposes of cram down,

which involves determining the value of the collateral which secures Cox's claim.

6. The applicable standard for determining the value of collateral under § 506(a) for purposes of cram down in a Chapter 13 case is the replacement-value standard. Pursuant to the replacement-value standard, the value of retained property in a Chapter 13 case where the Debtor has exercised the § 1325(a)(5)(B) cram down option is the cost that the Debtor would incur in order to obtain a like asset for the same proposed use. Stated another way, the value of the property is the price a willing buyer in the debtor's situation would pay to obtain like property from a willing seller, i.e., market value. See Associates Commercial Corp. v. Rash, ___ U.S. ___, 117 S.Ct. 1879, 138 L.Ed.2d 148 (1997).

7. In the present case, both sides called an appraiser as a witness. There was some discrepancy between the list of items appraised by the two appraisers. The appraiser called as a witness for Cox placed the market value of the furniture on his list at \$7,680.00, while the Debtor's appraiser placed the market value of the furniture on his list at \$6,000.00. Both witnesses also gave a liquidation or forced sale value which was significantly below the market value. The valuation which should be utilized in the present case is what it would cost in the market place to replace

the furniture which is subject to the security interest of Cox with like furniture. This involves utilizing the testimony regarding the market value of the furniture. Having considered the evidence regarding that value, the court finds and concludes that the replacement cost for the furniture that secures the Cox claim is \$6,420.00, that being the court's finding of what the Debtor would have to pay in order to replace the furniture which secures the claim with like furniture, i.e., used furniture of a similar type and condition as the furniture being retained by the Debtor. It follows that if the Debtor wishes to retain the furniture, her plan will have to provide for payments to Cox on its secured claim which have a value, as of the effective date of the plan, of not less than \$6,420.00.

8. Since the motion now before the court seeks to establish a valuation of \$2,000.00 for the collateral which secures Cox's claim, the motion will be denied.

IT IS SO ORDERED.

This 17th day of February, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge