

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED
APR 21 2000
U.S. Bankruptcy Court
Greensboro, NC
ME

IN RE:)
)
Suzanne L. Sergent,) Case No. 99-12084C-13G
)
Debtor.)
)

ORDER

This case came before the court on April 18, 2000, for hearing upon an objection by Heilig-Meyers Furniture to the valuation of certain furniture contained in Debtor's Chapter 13 plan. Appearing at the hearing were J. Gordon Boyett, attorney for the Debtor, Charles F. Carpenter, attorney for Heilig-Meyers Furniture, 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. In November of 1997, July of 1998, September of 1998, December of 1998 and May of 1999, Heilig-Meyers sold certain furniture and a lawnmower to the Debtor and has a perfected security interest in such furniture and lawnmower.

2. Under the Debtor's plan, the Debtor proposes, pursuant to § 1325(a)(5)(B), to retain the furniture and lawnmower and to require Heilig-Meyers to accept plan payments based upon a valuation of \$1,000.00 for the furniture and lawnmower.

3. Under the cram down option afforded by § 1325(a)(5)(B), the debtor is permitted to keep collateral over the objection of the secured party, the creditor retains the liens 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 in the matter now before the court is the valuation of Heilig-Meyers' claim under § 506(a) for purposes of cram down, which involves determining the value of the furniture and lawnmower which secure Heilig-Meyers' claim.

4. 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, 520 U.S. 953, 117 S. Ct. 1879, 138 L.Ed.2d 148 (1997).

5. In the present case, both sides offered evidence concerning the value of the furniture and lawnmower in question. Having considered the evidence regarding what it would cost the Debtor to replace the furniture and lawnmower in the market place, which includes yard sales, flea markets and used furniture stores, the court finds and concludes that the replacement cost for the furniture and lawnmower that secures the Heilig-Meyers' claim is \$1,371.00, that being the court's finding of what the Debtor would have to pay in order to replace the furniture and lawnmower with like furniture and lawnmower, i.e., used furniture and lawnmower of a similar type and condition as the furniture and lawnmower being retained by the Debtor.

6. Since the Debtor valued the furniture at only \$1,000.00, the objection by Heilig-Meyers Furniture will be sustained and the Debtor required to use a valuation of \$1,371.00 in order to retain the furniture and lawnmower as proposed in Debtor's plan.

IT IS SO ORDERED.

This 21st day of April, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge