

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

ENTERED

MAY 01 2000

U.S. Bankruptcy Court
Greensboro, NC

ME

IN RE:)
)
Bobby G. Castevens and) Case No. 99-51008C-13W
Lillie M. Castevens,)
)
Debtors.)
)

ORDER

This case came before the court on April 27, 2000, for hearing upon a motion by Foothill Credit Corporation for relief from stay to repossess a 1993 Plymouth Grand Voyager and upon a motion by Trustee to avoid lien on a 1993 Plymouth Grand Voyager. Appearing for the hearing were Daniel C. Bruton, attorney for Foothill Credit Corporation ("Foothill"), and Kathryn L. Bringle, the Chapter 13 Standing Trustee. Having considered the motions before the court and the matters of record in this case, the court finds and concludes as follows:

1. This Chapter 13 case was filed by the Debtors on June 8, 1999.

2. In their Schedule B, the Debtors list a 1993 Plymouth Grand Voyager and, in their Schedule D, list Foothill as a secured creditor with a lien on the 1993 Plymouth Grand Voyager.

3. On June 16, 1999, Foothill filed a proof of claim in this case in the amount of \$3,702.28. The claim was filed as being

secured by the Debtors' 1993 Plymouth Grand Voyager and has attached to it a copy of the certificate of title showing Foothill as first lienholder.

4. In their proposed plan, the Debtors identified Foothill as being a secured creditor with a lien on the 1993 Plymouth Grand Voyager, valued the vehicle at \$3,702.28 and proposed monthly payments beginning at \$50.00 per month and increasing to \$150.00 per month.

5. On September 8, 1999, an order was entered in this case confirming Debtors' plan. The confirmation order states that Foothill has a first lien on the 1993 Plymouth Grand Voyager and provides that "[t]he claim will be allowed as fully secured." The order further provides that "[t]he Trustee will disburse payments to the creditor at the rate of \$50.00 per month until June 2000, at which time payments will increase to \$150.00 per month."

6. Notwithstanding the foregoing provisions of the confirmation order, the Trustee has made no payments to Foothill. The reason that no payments have been made to Foothill is that the Trustee now contends that Foothill should be treated as an unsecured creditor because Foothill's lien is preferential and avoidable because perfected more than twenty days after the Debtors took possession of the 1993 Plymouth Grand Voyager and within

90 days of the filing of this case. On this basis, the Trustee prays in her motion that the Foothill lien be avoided as a preferential transfer. As correctly pointed out by Foothill, such relief is barred by the preclusive effect of the confirmation order which has been entered in this case.

7. Under § 1327(a) of the Bankruptcy Code "[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." The binding effect of confirmation "commits the Chapter 13 Trustee as well." In re Lee, 189 B.R. 692, 694 (Bankr. M.D. Tenn. 1995). The confirmation of a plan thus fixes the rights of all parties and binds them to the terms of the plan. This means in the present case that the Trustee, as well as the Debtors and Foothill, are bound by the provisions of the confirmation order.

8. Upon confirmation of a plan, "res judicata bars the assertion of any cause of action or objection which was raised, or could have been raised, prior to confirmation." In re Clark, 172 B.R. 701, 703 (Bankr. S.D. Ga. 1994); see also In re Tipping, 221 B.R. 11, 19-20 (Bankr. N.D. Ala. 1998) (a confirmation order "is given the same [res judicata] effect as any district court's final

judgment on the merits"); In re Algee, 142 B.R. 576, 579 (Bankr. D.C. 1992) (res judicata effect of confirmation order "has been applied been against creditors . . . [and] has been applied equally strictly against debtors").

9. In the present case, the confirmation order deals very specifically and clearly with the Foothill claim. In unambiguous language, the confirmation order provides that the Foothill claim will be allowed as a secured claim, states the amount of the secured claim and describes the manner in which the secured claim is to be paid. There was no appeal of the confirmation order by the Debtors or the Trustee, which is not surprising since it confirmed the very plan which was proposed by the Debtors with the approval of the Trustee. Nor has the confirmation order been altered¹ or modified² in any manner, and hence remains in full force and effect. The result is that the Debtors and the Trustee remain bound by the plan and confirmation order, including the provisions which allowed the Foothill claim as a secured claim and specified

¹See In re Tipping, 221 B.R. at p. 22 n.9, In re Lee, 189 B.R. at p. 694, and In re Clark, 172 B.R. at p. 703, for a discussion of the procedures by which a confirmation order may be altered, amended or nullified.

²Modification of a plan after confirmation is dealt with under § 1329 of the Bankruptcy Code.

the payments to be paid to Foothill. The net effect of these provisions of the confirmation order is to allow the Foothill claim as a secured claim. A confirmation order in a Chapter 13 case which allows a claim bars relitigation of that claim. See In re Duke, 153 B.R. 913, 918 (Bankr. N.D. Ala. 1996). The assertion that the lien is preferential is a matter which could have been raised prior to the confirmation hearing, and the Trustee's effort to now raise the issue involves an effort to relitigate the claim and treat it differently than it is treated under the confirmation order. As such, the motion must be denied.

10. As to Foothill's motion for relief from the automatic stay, it is clear that the Debtors may not retain and use the 1993 Plymouth Grand Voyager without making any payments to Foothill. It follows that Foothill will be entitled to relief from the stay unless payments are made to Foothill in accordance with the plan.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED as follows:

(1) The Trustee's motion to avoid the lien of Foothill Credit Corporation is denied; and

(2) The motion for relief from the automatic stay filed on behalf of Foothill Credit Corporation is granted to the extent that, unless the Trustee has paid Foothill the amount due under the

plan through the month of April within twenty days from the date of this order, the automatic stay shall lift without further order of this court.

This 1st day of May, 2000.

WILLIAM L. STOCKS

WILLIAM L. STOCKS
United States Bankruptcy Judge