

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

IN RE:) **Case No.: 99-50364 C 13**
Frank Copley)
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**ORDER DENYING THIRD MOTION TO
EXTEND TIME TO FILE DEFICIENCY CLAIM**

This matter came on for hearing before the undersigned Bankruptcy Judge on February 7, 2001, in Winston-Salem, North Carolina, after due and proper notice, upon the third Motion to Extend Time to File Deficiency Claim filed by Conseco Finance Servicing Corp., f/k/a Green Tree Financial Servicing Corporation, (“Creditor”). Appearing before the court were John Meadows, on behalf of the Creditor, A. Carl Penney on behalf of the Debtors, and Vernon Cahoon on behalf of the Chapter 13 Trustee.

This court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (B) which this court may hear and determine.

After reviewing the file and considering the arguments of counsel and the testimony of Bart McKnight, the Inventory Control Manager for the Creditor, this court makes the following:

FINDINGS OF FACT

1. On or about March 1, 1999, Frank Copley (“Debtor”) filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code.
2. On June 23, 1999, the Creditor filed a proof of claim in the amount of \$26,472.76, secured by a 1996 Fleetwood Mobile Home (the “Collateral”).
3. On June 25, 1999, an Order Confirming Plan was entered which provided for the Trustee to disburse payments to the Creditor through the Plan.
4. On December 8, 1999, the Chapter 13 Trustee filed a motion requesting that the Debtor’s plan be amended to provide that the Collateral be released and that the Creditor have until April 6, 2000 to file an unsecured deficiency claim and that the release of the collateral be deemed in full satisfaction of the Creditor’s secured claim if the Creditor fails to file a deficiency claim by this deadline. Notice and an opportunity for hearing was given to all interested parties. No party objected to the Trustee’s motion and an Order granting the Trustee’s motion became effective on January 20, 1999. The Debtor vacated the mobile home and the Collateral was available for recovery on or about January 20, 1999.
5. On March 31, 1999, the Creditor, by and through counsel, filed its first Motion to Extend Time to File Deficiency Claim. The Creditor accurately reflected that April 6, 2000 was the last day to file an unsecured deficiency claim. The Creditor further stated that they had been unable to complete the repossession process and sell the Collateral and requested an extension of one hundred twenty (120) days or until August 5, 2000 to file a deficiency claim. The court for cause entered an Order granting the Creditor until August 5, 2000 to file a deficiency claim.
6. On July 27, 2000, the Creditor filed a second Motion to Extend Time to File Deficiency Claim. The Motion stated that the Creditor had been unable to complete the

repossession process and sell the collateral and the Creditor requested an additional one hundred twenty (120) days to file a deficiency claim. The court granted the motion by Order entered August 24, 2000.

7. On November 22, 2000, the creditor filed a third Motion to Extend Time to File Deficiency Claim. The motion stated that the Creditor had been unable to complete the repossession process and sell the Collateral within that period. The Creditor requested an additional one hundred twenty (120) days to and including April 2, 2001 to file a deficiency claim.

8. On December 6, 2000, the Chapter 13 Trustee filed an Objection to Request of Conseco Financing Servicing Corporation for Extension of Time to File a Deficiency Claim. The Trustee's objection stated that "[the collateral] was released in or about January 2000 and the Trustee is of the belief that Conseco should provide information about the condition and location of the collateral and about attempts which have been made to liquidate it."

9. The third motion for extension came on for hearing on December 20, 2000. At that time, counsel for the Creditor advised that the Collateral had been sold on or about November 27, 2000, and the Creditor sought to file an unsecured deficiency claim in the amount of \$11,118.00. The court continued the hearing until February 7, 2001, so that evidence as to cause for a further extension might be presented to the court.

10. The evidence presented at the hearing on February 7, 2001 reflected the following:

(a) The mobile home was vacated by the Debtors and available to the Creditor on or about January 20, 2000.

(b) On May 23, 2000, the Creditor assigned the repossession file to Mr.

McKnight, the Inventory Control Manager. Mr. McKnight inspected the property to determine the best way to liquidate the collateral and had the locks changed. No prior efforts had been made by the Creditor to inspect or preserve the collateral.

(c) During May 2000, the Creditor attempted to transfer the equity with a new purchaser but this attempt failed. The Creditor began to market the mobile home in “as is” condition where it was located.¹

(d) The Creditor’s attempt to sell the property “as is” in place was not successful and in July 2000, the Creditor cleaned the carpet and had the plumbing winterized.

(e) Between July 2000 and September 2000, the collateral was repaired and reconditioned for sale. The repair and reconditioning included the following: cleaned interior, steam-cleaned carpeting, replaced carpeting, repaired water leak behind washing machine, pumped down Freon, flushed pipes and winterized,² replaced skirting, patched nail holes in walls, painted living room, painted tongue black, replaced blinds, stove pans, door knobs, smoke detectors, and reconnected electricity and water.

(f) On September 13, 2000, the Collateral was pulled to the lot of a retail dealer, Southern Showcase, to complete the refurbishing and repairs.

(g) When the refurbishing and repairs were completed, the marketing of the collateral was taken over by Southern Showcase.

¹The Affidavit and testimony of Bart McKnight is that the Creditor was marketing the home in “as is” condition in May - June, 2000. No monies were spent on advertising, and the only “marketing” was a sign in the window.

²The court notes that the efforts to “winterize” the mobile home took place during the summer months. No efforts were made to “winterize” the collateral when the property was released in January, 2000.

(h) A purchaser for the mobile home was located and the sale of the collateral was completed on November 27, 2000, prior to the expiration of the last extension granted by the court.

(i) It is Mr. McKnight's responsibility to ensure timely liquidation of repossessed vehicles. However, the Creditor did not make Mr. McKnight aware of any of the deadlines imposed by the court for the filing of a deficiency claim.

11. The Creditor has never filed a deficiency claim in this case.

12. The Creditor's claim for a deficiency, if allowed, would require either (1) that the Debtor's plan payments be increased from approximately \$400.00 to approximately \$560.00 per month, or (2) that the dividend to unsecured creditors be reduced from approximately 53% to approximately 25%.

DISCUSSION

Granting an extension of time within which to file a deficiency claim is within the discretion of the court. Rule 9006 of the Federal Rules of Bankruptcy Procedures provides in part as follows:

(b) Enlargement

(1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision³, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order . . .

Rule 9006(b)(1) requires a party to show some cause for an order enlarging a time period.

³Subsections (2) and (3), not applicable here, set forth limited circumstances under which the court is prohibited or restricted from enlarging time for taking action.

Generally, courts should be liberal in granting extensions of time before the period to act has elapsed; however, they should be wary of granting motions for extension of time as a matter of course. See, 10 Collier on Bankruptcy ¶ 9006.06 [2] (15th ed. 2000). The requirement that a party show cause should be taken seriously so that proceedings are not delayed without reason. Id.

Two reasonable extensions, of one hundred twenty (120) days each, have already been granted to this Creditor. The burden is on the Creditor to show the court why a third extension should be granted in this case. The court finds that the Creditor has not met this burden. The Creditor has not presented any evidence indicating that the circumstances relating to the liquidation of the collateral in this case were at all unusual. There is no evidence that the 1996 mobile home was in unusually poor condition requiring extraordinary measures to prepare it for sale. Rather, it seems likely to the court that some of the reconditioning and repair to the mobile home was necessary because the Creditor effectively abandoned the collateral from January until May 23, 2000. In fact, other than performing an inspection and changing the locks, no real efforts were made to prepare the collateral for sale until July 2000. While the Creditor certainly has the right to service and repair the collateral in preparation for sale, such undertakings must be initiated with some cognizance of the time restraints imposed by orders of this court.

The court does not believe that reasonable efforts were made to repossess and liquidate the collateral in a timely fashion. It would have been impossible for the Creditor to have filed its deficiency claim within the original time period, up to and including April 5, 2000, because the Creditor had not even inspected the collateral. Likewise, the Creditor could not possibly have filed its claim within the next extended time period, through and including August 6, 2000, because the Creditor was in the midst of a number of repair and reconditioning projects that the

Creditor knew or should have known would extend well beyond the deadline. Finally, the Creditor did manage to sell the collateral on November 27, 2000, several days before the final extended deadline of December 3, 2000, but the Creditor did nothing to try to expedite its in-house procedures to ensure the timely filing of a rather substantial deficiency claim. The Creditor did not even make its Inventory Control Manger, Mr. McKnight, aware that the deadlines existed.

Based on the foregoing, the court concludes that the Creditor has not shown cause as to why the court should extend, for a third time, the period within which a deficiency claim in this case.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the Creditor's Motion to extend the time within which to file a deficiency claim is hereby denied.

This the 27 day of February, 2001.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge