IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

IN RE: WAIN and MICHELLE RYEL, Debtors **No. 5:15-bk-70290**
Ch. 13

ORDER SUSTAINING OBJECTION TO CONFIRMATION OF AMENDED PLAN

Before the Court is Santander Consumer USA, Inc. d/b/a/ Chrysler Capital's [Santander] *Objection to Confirmation of Amended Chapter 13 Plan* filed on June 11, 2015. The reason for Santander's objection is the debtors' proposed treatment of a lien Santander has on a vehicle that is co-owned by the debtor, Wain Ryel [Ryel], and a non-debtor third party, Henry McGehee [McGehee]. According to the parties' stipulated facts, Ryel and McGehee both purchased a vehicle and agreed to be "jointly and individually liable to pay the debt created." They agreed to a contract rate of interest of 18% and gave Santander a security interest in the vehicle. Ryel and McGehee are jointly listed on the title as owners of the vehicle and Santander's security interest in the vehicle is entered on the title. The debtors filed their chapter 13 petition on February 4, 2015, and included the subject vehicle in their petition. To the Court's knowledge, McGehee is not a debtor in any bankruptcy case.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(L). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

The debtors' amended plan of reorganization, which was filed on June 9, 2015, includes two provisions that relate specifically to Santander:

6. With respect to Santander Consumer USA, Inc. secured debt paid hereunder, the co-debtor, Henry McGehee shall be entitled to the stay protections of 11 U.S.C.. Section 1301, which stay shall remain in place for the life of the plan.

7. With respect to [Santander's] secured claim set forth in 5(B)(i) above, Santander Consumer USA, Inc. shall retain the lien securing the claim in accord with 11 U.S.C. Section 1325(a)(5)(B)(i)(I), until the **earlier** of (aa) the payment of the underlying debt determined under non bankruptcy law; or (bb) discharge under 11 U.S.C. Section 1328. However, upon the occurrence of the earlier of either of those events, Santander Consumer USA, Inc. shall release the lien on Debtors' vehicle to Debtors.

Santander objects to the language in paragraph 7 that requires Santander to release its lien on the subject vehicle upon discharge of the debtors.[1] Santander argues that the debtors' bankruptcy filing can neither affect McGehee's liability on the underlying debt nor alter McGehee's pledge of and interest in the collateral. As such, Santander argues that it should not have to release its lien on the vehicle upon entry of the debtors' discharge if the underlying debt has not been paid in full.[2]

The debtors presented four arguments in response to Santander's objection. First, the

[1] Santander also objected to (1) the proposed rate of interest the debtors intended to pay during the pendency of the plan, and (2) the debtors proposed payments to Santander and its entitlement to equal monthly payments under the plan. Santander withdrew both objections prior to the hearing.

[2] The parties do not dispute that Santander's claim is a "910 car claim" and that § 506 valuation is not applicable. In other words, the debtors are required to pay not less than the allowed amount of Santander's claim under their plan. Santander filed a claim in the amount of $26,631.36, which is the same amount listed by the debtors as Santander's "Debt Amount to be Paid." Regardless, because the debtors are only proposing to pay an agreed upon *Till* rate of interest of 5.25%, the unpaid interest that accrues during the plan term–the difference between the contract rate of 18% and the *Till* rate of 5.25%–may still be due when the debtors receive their discharge. Although the debtors would not be personally liable for the unpaid interest because of the code's discharge injunction under § 524(a)(2), McGehee would still be obligated to pay the accrued interest under the parties' contract.

debtors argue that the amended plan, as proposed, complies with the appropriate provisions of the code. Specifically, § 1325 states that the court shall confirm a plan if, with respect to an allowed secured claim against collateral that the debtors intend to retain,

> the plan provides that—
> (I) the holder of such claim retain the lien securing such claim until the earlier of—
>> (aa) the payment of the underlying debt determined under nonbankruptcy law; or
>> (bb) discharge under section 1328.

11 U.S.C. § 1325(a)(5)(B)(i). In the debtors' amended plan, in paragraph 7, which is referenced above, the debtors have included this specific provision and stated that Santander will retain its lien until the earlier of those two events, at which time "Santander Consumer USA, Inc. shall release the lien on Debtors' vehicle to Debtors."

The debtors' second argument is that any unpaid interest that may be due when the debtors receive their discharge is not an obligation that was due at the time the debtors filed their petition. Based on the case cited by the debtors in support of this position, it appears to the Court that the debtors are arguing that Santander does not have a present interest in the unmatured interest. *See, e.g., In re Grant*, 242 B.R. 800 (Bankr. D.N.H. 1999). Without a present interest, Santander does not have a right to collect the interest that accrues while the debtors are performing in a pending case.

The debtors' third and fourth arguments are based in the law and equity, respectively. Their third argument is that there is an apparent conflict in applicable law. Between Ryel and McGehee, there is only one lien. The debtors contend that because Ryel is now in bankruptcy, there is a conflict over what law controls Santander's rights in relation to its lien. Under the bankruptcy code, the debtors argue that Santander must release its lien when the debtors receive their discharge. The debtors' fourth argument is simply that it would be a cruel result if Santander is allowed to repossess the subject vehicle because of an interest deficiency when the debtors receive their discharge after having paid the

underlying claim in their bankruptcy case.

The Court finds that the debtors' most compelling argument relates to what at first blush seems to be a conflict in the applicable statutes and laws involved in this case. Clearly, under nonbankruptcy law, Santander is entitled to retain its lien on the vehicle until it is paid the full amount of its contract relating to the purchase of the vehicle. Also, again under nonbankruptcy law, both Ryel and McGehee are liable for that contract amount. However, now that Ryel has filed for bankruptcy protection under chapter 13, the bankruptcy code controls the rights and remedies of the parties. First, no one disputes that there is an automatic stay with regard to the co-debtor, McGehee. 11 U.S.C. § 1301. As long as the stay remains in place, Santander cannot take any action to collect any part of the debt from McGehee. *See Mid Maine Mut. Savs. Bank v. Johnson* (*In re Johnson*), 12 B.R. 894, 896 (Bankr. D. Maine 1981) ("The co-debtor stay is intended only to delay collection efforts against those individuals who have obligated themselves on debts incurred by Chapter 13 debtors and only to the extent which the plan proposes to pay those claims.") Second, in order for a plan to be confirmed, the plan must provide that Santander retain its lien on the vehicle until either the underlying debt determined under nonbankruptcy law has been paid or the debtors receive a discharge under § 1328. The debtors' proposed plan makes such a provision. However, the plan also includes language that requires Santander to release its lien "on Debtors' vehicle to Debtors" when one of those two events have occurred.

This language is challenging. First, the statement refers to the "debtors' vehicle." However, according to the parties' stipulation, only one of the debtors owns the vehicle; Michelle Ryel does not appear to have an ownership interest in the vehicle. Second, although the debtors were correct in arguing that the amended plan, as proposed, complies with the appropriate provisions of the code–specifically, § 1325–the addition of the release language goes beyond what the code permits. Section 524(e), which is applicable in a chapter 13 case, states that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such

debt." 11 U.S.C. § 524(e). To require Santander to release its lien on the vehicle that is jointly owned by Ryel and McGehee would directly affect the property of McGehee and the contractual relation that McGehee and Santander have entered into. Unless the debtors pay the underlying debt as determined under nonbankruptcy law in full, Santander is entitled to retain its lien on the subject vehicle to secure McGehee's obligations under the parties' contract. *In re Leonard*, 307 B.R. 611, 614 (Bankr. E.D. Tenn. 2004)

This does not leave the debtors without protection. Once the debtors receive their discharge, an injunction is in place that prevents "the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability *of the debtor* . . . ." 11 U.S.C. § 524(a)(2) (emphasis added). Section 524(a) is designed to "'ensure that once a debt is discharged, the debtor will not be pressured in any way to repay it.'" *In re Leonard*, 307 B.R. at 613 (citations omitted; quoting H.R. REP., No. 595, 95th Cong., 1st Sess. 364 (1997), U.S. Code Cong. & Admin. News 1978, 5963, 6320)). However, there is no commensurate injunction that prevents a creditor from proceeding with collection actions against a non-debtor co-owner once the chapter 13 case is over. *Id.* The Court is aware that "the day the debtors get their discharge is the day the tow truck could haul the car away" because of the interest deficiency; however, it was Ryel's and McGehee's decision to become co-owners of the subject vehicle and encumber the vehicle with a lien. Although the debtors claim this to be a "cruel result," the debtors will enjoy the use of the vehicle for five years, pay substantially less than the contract rate of interest during the plan period, and have no personal liability for the debt when they receive their discharge.

For these reasons, the Court sustains Santander's objection to confirmation of the debtors' amended plan. The debtors shall amend their plan to comply with the Court's findings.

IT IS SO ORDERED.

cc: Todd Hertzberg
Heather Buchberger
Joyce Babin, chapter 13 trustee