

**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**IN RE:       RONALD SMITH and  
              SONYA SMITH**

**5:02-bk-18647 E  
CHAPTER 13**

**ORDER SUSTAINING OBJECTION TO CONFIRMATION**

On September 22, 2002, the Court heard an Objection to Confirmation of Plan filed by MHC Financial Services, Inc. f/k/a/ Ozark Financial Services, Inc. (“MHC”). Jeremy Bueker, Esq., appeared on behalf of the Debtors, and separate debtor Ronald Smith was also present. Martha Jett McAllister, Esq., appeared on behalf of MHC. The standing Chapter 13 Trustee, Jo-Ann Goldman, was also present.

Although MHC’s Objection to Confirmation of Plan raises several objections, MHC withdrew all but one objection at the hearing on this matter. MHC’s remaining objection concerns three 2000 Kenworth W900 Tractors, which MHC contends are not property of the Debtors’ bankruptcy estate. MHC argues that because the tractors are not property of the Debtors’ estate, the Debtors cannot propose to pay a cramdown value on the tractors. The facts of this case are undisputed; rather, the parties dispute the two legal issues raised by MHC. Following oral argument and brief testimony by separate debtor Ronald Smith, the parties rested, and the Court took the matter under advisement.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(L), and the Court has jurisdiction to enter a final judgment in this case.

## FACTS

Smith Team, Inc., an Arkansas corporation in good standing, purchased three 2000 Kenworth W900 Tractors on September 18, 2001. Arkansas Kenworth, Inc. (“**Kenworth**”) financed the purchase of these tractors, and Smith Team, Inc. granted Kenworth a security interest in the tractors. Kenworth then assigned its security interest in the tractors to MHC (formerly Ozark Financial Services, Inc.). The Debtors own 100% of the stock of Smith Team, Inc., and separate debtor Ronald Smith personally guaranteed the loan. Mr. Smith testified that when Smith Team, Inc. did not have enough money to make payments on the truck, he made the payments himself.

The Debtors filed their Chapter 13 bankruptcy petition and Chapter 13 plan (the “**Plan**”) on August 5, 2002. The Plan listed the debt owed to MHC on the three Kenworth tractors as a secured debt not to extend beyond the length of the plan. The Plan listed the value of the tractors as \$162,000.00, the payoff as \$223,345.60, and the unsecured portion as \$61,345.60. Schedule B to Debtors’ bankruptcy petition listed the three Kenworth tractors as personal property belonging to the Debtor. Schedule B did not list the Debtors’ interest in Smith Team, Inc.

## DISCUSSION

The issues presented as stated by the parties are: (1) whether the three Kenworth tractors are property of the Debtors’ bankruptcy estate, and (2) whether the Debtors can propose to pay less than the full value of the trucks. As explained below, the Court need not reach the second issue presented because MHC is an unsecured creditor in this bankruptcy.

The Debtors argue they have both contingent and equitable interests in the tractors. Debtors assert that their interest in the tractors is contingent because they have the power to dissolve Smith Team, Inc. and vest title to the tractors in themselves. Debtors cite *In re Pennino*, 211 B.R. 659

(Bankr. W.D. Ark. 1997), in support of this proposition. There, the Court held that the transfer of corporate assets to the debtor shareholders following the corporation's dissolution was not void, and that the transferred property became property of the estate. *In re Pennino* has no application to this case because the Debtors have not dissolved Smith Team, Inc. and transferred the assets to themselves.

Debtors also argue that they have an equitable interest in the tractors because they are the sole shareholders in Smith Team, Inc., a corporation created solely for their benefit, and they personally made payments on the tractors when Smith Team, Inc. could not. These facts are not sufficient to find that the Debtors have an equitable interest in the tractors. The Debtors cannot enjoy the limited liability a corporation affords, and then ignore the corporate form when it suits them.

The three Kenworth tractors are not property of the Debtors' bankruptcy estate. Legal title to the tractors is held by Smith Team, Inc. Corporate assets are not property of an individual debtor's bankruptcy estate. "A corporation has a separate legal existence from its shareholders, and the corporation, not its shareholders, owns the corporate assets and owes the corporate debts." *See In re Russell*, 121 B. R. 16, 17 (Bankr. W.D. Ark. 1990). *See also In re Hoffman*, 70 B.R. 155, 160 (Bankr. W.D. Ark. 1986) (stating property of corporation is not property of the estate of the debtor). Only individuals may file for bankruptcy protection under Chapter 13. 11 U.S.C. § 109(e). An individual debtor may not discharge another entity's debts in his or her bankruptcy case, although the debtor may discharge his personal liability for a corporate debt where he has guaranteed such debt. *See* 11 U.S.C. § 524(a) (a discharge voids personal liability of debtor). In sum, individuals may not protect corporate assets in a Chapter 13 bankruptcy case; a corporation is a separate entity, and if its debts are to be discharged, they must be discharged in a separate bankruptcy case filed by

the corporation.

Because MHC has a security interest in the three tractors belonging to Smith Team, Inc., and these tractors are not property of the estate, MHC is not a secured creditor in the Debtors' bankruptcy case. Rather, the Debtors' Plan should be modified to reflect MHC as an unsecured creditor of separate debtor Mr. Smith due to Mr. Smith's personal guarantee of Smith Team, Inc.'s debt to MHC. *See In Re Hemsing*, 75 B.R. 689, 691 (Bankr. D. Mont. 1987) ("the guaranty of payment is a promise to pay money, and is not a 'security' within the definition of the Bankruptcy Code since no property, real or personal, is pledged to secure repayment."). Accordingly, MHC will be entitled to a pro rata distribution under the Plan as an unsecured creditor.

#### **CONCLUSION**

The Court finds that the tractors are not property of the Debtor's estate. It follows that because the tractors are not estate property, the "cramdown" provision of 11 U.S.C. § 506(a) which refers to "property in which the estate has an interest" does not apply. MHC's claim is unsecured and will be paid on a pro rata basis with other unsecured creditors. Accordingly,

MHC's Objection to Confirmation is **SUSTAINED**, and the Debtors have thirty (30) days in which to modify their plan to reflect that MHC is an unsecured creditor. The Debtors shall also amend Schedule B, Personal Property to their bankruptcy petition to reflect their ownership interest in Smith Team, Inc. and to delete property owned by Smith Team, Inc. from their bankruptcy petition.

**IT IS SO ORDERED.**

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HONORABLE AUDREY R. EVANS  
UNITED STATES BANKRUPTCY JUDGE

DATED: \_\_\_\_\_

cc: Mr. Jeremy Bueker, attorney for Debtors  
Ms. Martha Jett McAllister, attorney for MHC  
Ms. Jo-Ann Goldman, Chapter 13 Trustee  
U.S. Trustee