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JUDGE: M. A. Mahoney

PARTIES: Richard Legear, Beverly Legear, Regions Bank

CHAPTER: 13

ATTORNEYS: R. S. Terry, T. R. Armer

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KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re

RICHARD LEGEAR and
BEVERLY LEGEAR,

Case No. 00-13145-MAM-13

Debtors.

**ORDER DENYING THE OBJECTION OF REGIONS BANK TO CONFIRMATION
AND CONFIRMING DEBTORS' PLAN**

Russell S. Terry, Mobile, Alabama, Attorney for Regions Bank
Tristan Russell Armer, Grand Bay, Alabama, Attorney for Debtor

This matter is before the Court on the objection of Regions Bank (Regions) to the confirmation of Debtors' plan. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the objection to confirmation is denied and the plan is confirmed.

FACTS

Debtors filed bankruptcy August 10, 2000. At the time of filing, Debtors had a loan with Regions, secured by a 1994 Nissan Pathfinder. The principal balance of the loan is \$11,647.00 and the stipulated value of the vehicle is \$9,550.00. Debtors have offered a preference payment in the amount of \$208.00 per month and have assessed an interest rate of 11% which is 2% above the contract rate. Regions is satisfied with these terms of the plan but is not satisfied with the insurance Debtors have on the vehicle. Debtors have insured the vehicle with a policy that has a \$500.00 deductible. Regions contends that since Debtors have no equity in the property, Regions would be inadequately protected unless Debtors obtained insurance with a lower

deductible. Regions states that they would not be satisfied unless the deductible was lowered to \$250.00.

LAW

The issue before the Court at confirmation is what amount of deductible is required for insurance on secured property where the debtor has no equity in the property and the creditor is undersecured. Regions argues that if the vehicle was damaged Regions would sustain a loss in the amount of the deductible and, therefore, Regions is inadequately protected. The use of the term “adequate protection” in relation to plan confirmation is incorrect. For a plan to be confirmed the requirements of 11 U.S.C. § 1325 must be met. Those conditions do not speak in terms of “adequate protection.” “Adequate protection,” defined at 11 U.S.C. § 361, is a term used for temporary protection measures a debtor may be required to offer a creditor preconfirmation. In fact, “adequate protection” only protects against a postpetition decrease in property value until confirmation. *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.* 484 U.S. 365, 382 (1988). Section 1325 requires payments which pay the full value of a creditor’s secured claim (valued at the time of confirmation)¹ over the life of the plan.

If the Court were in a preconfirmation hearing in this case, the Court would need to determine whether the Debtors’ insurance policy adequately protected Regions. Regions could not unilaterally make that decision. *In re Jackson*, 251 B.R. 597 (Bankr. D. Utah. 2000)(creditor refused to turnover vehicle until debtor obtained insurance with a lower deductible). “It is the duty of the court, not the privilege of the creditor, to determine what adequate protection is

¹ The value of property is determined as of confirmation because adequate protection payments should cover any decrease in value up to confirmation.

appropriate.” *Id.* If adequate protection were the issue, this Court would find that Regions is adequately protected by the package of the preference payment, the increase in interest rate and the insurance policy proposed by Debtors. The payments and insurance would cover any decreases in value during the case particularly due to the increased interest rate.

At confirmation, a court looks at whether Regions is receiving, as to its secured claim, “value . . . [that] is not less than the allowed amount of the claim.” 11 U.S.C. § 1325(5). The Debtors’ payment of \$208.00 per month until \$9,550.00 is paid coupled with interest at two percentage points above the contract rate meets this standard.

After confirmation, unless a plan clearly states that the contract between the Debtors and Regions is modified, the contract remains the same as it was before bankruptcy. 11 U.S.C. §1322(b)(2). The debtors clearly modified the debt amount, interest rate and term of payment. The insurance provision was not changed.

The loan contract states: “The insurance will be on terms, including deductible provisions and endorsements, that are satisfactory to Lender” Regions has a contract right to require that the deductible amount be satisfactory to them. This right existed prior to debtors filing bankruptcy and was unchanged by the filing. Debtors were required to maintain insurance to the satisfaction of Regions when they purchased the car and should be required to maintain comparable insurance now. The Debtors had an insurance policy with a \$500.00 deductible for almost two years before filing their case. There was no evidence offered to show that the risk factors had changed. If the change is simply that Debtors filed bankruptcy, that is unacceptable as a ground for a lower deductible. Regions cannot require Debtors to obtain better insurance

than it required before Debtors filed bankruptcy. Any changed requirement must be caused by changed circumstances.

THEREFORE IT IS ORDERED AND ADJUDGED:

1. The objection of Regions Bank to confirmation of Debtors' plan is DENIED.
2. Debtors' plan is CONFIRMED.

Dated: September 28, 2000

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE