

DOCKET NUMBER: 95-11452

ADV. NUMBER:

JUDGE: M. A. Mahoney

PARTIES: Bessie Mae Conner, Bobby Conner

CHAPTER: 13

ATTORNEYS: G. Alexander, J. Green

DATE: 9/18/96

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

BESSIE MAE CONNER  
BOBBY CONNER

Case No. 95-11452

Debtors.

ORDER

Geoffrey Alexander, Mobile, AL, for debtors.  
Jon Green, Mobile, AL, for Carmel Investments, Inc.

This matter is before the Court on the debtors' motion to compel Carmel Investments to release an automobile title. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). For the reasons indicated below, the debtors' motion is denied.

FACTS

Bessie Mae Conner and Bobby Conner filed a Chapter 13 petition on June 16, 1995. The debtors scheduled Carmel Investments (Carmel) as a secured creditor. Carmel filed a proof of claim in the amount of \$1,134.96 based upon its lien on the debtors' 1986 Chevrolet Celebrity. The Court confirmed the debtors' Chapter 13 plan on January 11, 1996. The plan provided that \$450 of Carmel's claim was secured. The plan also proposed to pay unsecured creditors a 100% dividend.

The plan stated in relevant part:

- d. Holders of secured claims shall retain the lien securing such claim.
- e. OTHER PROVISIONS: The secured portion of the debt owed to Carmel Investments on the 1986 Chevrolet Celebrity in the amount of \$450 shall be paid on the first distribution. The balance of the debt shall be paid pro rata (100%) as an unsecured claim.

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4. Title to the debtor's property shall revert in the debtor upon confirmation of the plan, or upon dismissal of the case after confirmation or upon closing of the case.

On June 26, 1996, the debtors filed a motion to compel Carmel Investments to release the lien on the Chevrolet Celebrity and turn over the certificate of title to the debtors. The debtors contend that the allowed secured claim has been paid in full under their confirmed chapter 13 plan, and therefore, Carmel no longer has lien rights in the automobile. Carmel objects to the release of its lien. It does not dispute that the allowed secured claim has been paid in full. However, Carmel contends that it should not be required to release its lien until the allowed unsecured claim has also been paid in full. The trustee reports that the unsecured claim has been credited \$109.27, leaving an unpaid balance of \$575.69.

#### LAW

In a Chapter 13 case, the scope of a creditor's lien is determined by §§ 506(a), 1322(b)(2), 1325(a)(5)(B), and arguably §506(d). *In re Scheierl*, 176 B.R. 498, 502-503 (Bankr. D. Minn. 1995). An allowed claim which exceeds the value of the creditor's collateral may be bifurcated into components. Section 506(a) allows a debtor to bifurcate an allowed claim into a secured claim to the extent of the value of the creditor's collateral and into an unsecured claim for the remaining balance of the allowed claim. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 239. The effect of bifurcation is that each component, the secured claim and the unsecured claim, will usually receive different treatment under the debtor's Chapter 13 plan.

Section 1322(b)(2) allows a debtor to modify the rights of a secured creditor, with the exception of a creditor whose claim is secured only by the debtor's residence. Furthermore, §1325(a)(5)(B) allows the confirmation of a Chapter 13 plan over a secured creditor's objection

where the creditor retains its lien on the collateral to the extent of the allowed secured claim, and the debtor distributes property under the plan of a value, as of the effective date of the plan, not less than the amount of the allowed secured claim. The undersecured creditor retains only the part of the lien measurable by the value of the collateral.

Carmel is the holder of an allowed secured claim in the amount of \$450.00 and an allowed unsecured claim in the amount of \$684.96. Carmel's allowed secured claim has been paid in full. Based on the Code provisions, Carmel's lien, to the extent that it secures the payment of the allowed secured claim, is satisfied. The issue in this case is whether an unsecured creditor is required to release its lien once its allowed secured claim has been paid, but prior to discharge or full payment of its allowed unsecured claim.

The debtors confirmed Chapter 13 plan did not specifically address at what time the holder of a secured claim is required to release its lien. The plan contains the following language:

d. Holders of secured claims shall retain the lien securing such claim.

In the few cases that have dealt with the present issue, the debtors' Chapter 13 plans clearly delineated what actions were expected of the creditor. *In re Nicewonger*, 192 B.R. 886 (Bankr. N.D. Ohio 1996) (proposed plan provided that "upon receipt of full payment of its allowed, secured claim [creditor] shall release its lien on the travel trailer and shall return all title documents to the Debtors with cancellation of its lien noted thereon."); *In re Scheierl*, 176 B.R. 498 (Bankr. D. Minn. 1995) (proposed plan stated, "Upon completion of payment of the secured portion of any claim, the property securing said claim shall vest in the debtor free and clear of any lien, claim or interest of the secured creditor."); *In re Lee*, 156 B.R. 628 (Bankr. D. Minn. 1993) *aff'd*, 162 B.R. 217 (D. Minn. 1993) (proposed plan stated, "Upon completion of payment of the secured portion of any claim, the property securing said claim shall vest in the debtor free and clear of any lien, claim or

interest of the secured creditor.”); *In re Holiday*, 1993 WL 733165 (Bankr. S.D. Ga. 1993) (proposed plan stated, “Once the allowed secured claim has been paid in full, either during or after the pendency of this case, the creditor holding such claim shall promptly mark any lien securing such claim as satisfied in the appropriate public records and shall surrender to the debtor(s) all necessary lien cancellations, including certificates of title to motor vehicles with the lien released, if appropriate.”); *In re Murry-Hudson*, 147 B.R. 960 (Bankr. N.D. Cal. 1992) (confirmed plan stated, “Secured creditors shall retain their liens *until* their allowed secured claims have been paid.”). Carmel did not have the opportunity to object to the plan in light of the meaning that debtors now attempt to give it. The debtors failure to include lien release language in their plan precludes them from arguing release is appropriate now. 11 U.S.C. §1327(a). The Court finds that the confirmed Chapter 13 plan cannot be read to require that an undersecured creditor release its lien once the creditor’s allowed secured claim is paid but prior to the completion of all payments on the creditor’s allowed unsecured claim. A creditor has not been given proper notice and an opportunity to object.

In *In re Scheierl*, 176 B.R. 498, 503-508 (Bankr. D. Minn. 1995), the court determined that the language and intent of the Bankruptcy Code prohibit a Chapter 13 debtor from obtaining the release of a creditor’s lien before the debtor completes all plan payments. The court offered two premises to support its position: (1) “No permanent reordering of property or contract rights” can take place prior to a Chapter 13 debtor’s complete performance. *See also In re Jones*, 152 B.R. 155, 181 (Bankr. E.D. Mich. 1993); and (2) The right of a Chapter 13 debtor to modify the rights of a secured creditor ends where the secured creditor’s right to adequate protection begins. These issues, at least, and possibly others must be given the opportunity to be aired.

Neither the Conner’s plan nor the Bankruptcy Code provides that the debtors are entitled to receive title to the automobile after paying only Carmel’s allowed secured claim. Carmel may

maintain possession of its lien until either the successful completion of the debtors' Chapter 13 plan or full payment of both its secured and unsecured claims. Accordingly, it is ORDERED that the debtors' "Motion to Release Title to Automobile held by Carmel Investments, Inc." is denied.

Dated: September 18, 1996

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MARGARET A. MAHONEY  
U.S. BANKRUPTCY JUDGE