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JUDGE: M. A. Mahoney, W. S. Shulman

PARTIES: John Edward Cobb, Virginia K. Cobb, Nissan Motor Acceptance Corporation

CHAPTER: 13

ATTORNEYS: J. Hartley, E. Breithaupt

DATE: 4/5/99

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

JOHN EDWARD COBB  
VIRGINIA K. COBB

Case No. 96-13357-WSS-13

Debtors

**EN BANC ORDER INSTRUCTING TRUSTEE RE HANDLING OF  
ALLEGEDLY DEFECTIVE CLAIMS AND GRANTING MOTION  
COMPELLING TRUSTEE'S COMPLIANCE WITH CONFIRMATION ORDER**

Jeffery Hartley, Attorney for the Chapter 13 Trustee  
Eric Breithaupt, Attorney for Nissan Motor Acceptance Corporation

This case is before the court on Nissan's Motion to Compel Trustee's Compliance with Confirmation Order. 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 matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the court has the authority to enter a final order. For the reasons indicated below, the court is granting the motion to compel the Chapter 13 Trustee's compliance with the confirmation order. The court is also instructing the trustee as to how to handle claims in chapter 13 cases until the court has entered an order on any allegedly defective claim.

FACTS

The parties agree that the facts stated in Nissan's motion are true. The debtors filed their chapter 13 case on September 16, 1996. Nissan was listed as a secured creditor in their schedules. Nissan filed a Proof of Claim which was not on the standard form. It consisted of a cover letter, a signed itemization of the claim against the debtors which included a collateral

description and value statement, and a copy of the installment contract. The claim is listed in the claims register as Claim No. 1.

The court confirmed the debtors plan on November 12, 1996 and signed an order valuing Nissan's collateral (and therefore its secured claim) at \$18,000. The confirmation order stated that Nissan was to be paid a preference payment of \$300 per month.

The Chapter 13 Trustee then mailed a "Notice of Defective Claim" to Nissan and, based upon that notice, did not pay Nissan's claim. The debtor never objected to the claim and the court never entered an order disallowing it.

The debtors have paid over \$10,000 into the case and, since Nissan was not receiving its preference payment, the unsecured creditors have now been paid the amount promised under the plan - 52.16% of their claims. Nissan asks to be paid the full amount of its claim through the plan during its remaining term, or, alternatively, that the unsecured creditors be required to disgorge the amounts paid to them which should have been paid to Nissan, or, alternatively, that the Chapter 13 Trustee be required to perform under his bond to make Nissan whole.

## LAW

Nissan Motor Acceptance Corporation seeks payment of its claim as provided in the plan and court order of November 16, 1996. The Chapter 13 Trustee did not pay the claim because, under the procedure the Trustee's office had followed for an unspecified number of years, claims were not paid once a "Notice of Defective Claim" was mailed to the debtor and creditor. Payment was made only after the alleged defect had been cured. Usually, upon receipt of the "Notice of Defective Claim," the debtor's counsel would file a claim objection. That did not happen in this case.

Pursuant to 11 U.S.C. § 502(a), a claim is deemed allowed unless an objection is filed. Therefore, Nissan's claim is allowed and should be paid unless an order disallowing or modifying the claim is entered by the court. The process of alerting the creditor and debtor to potentially defective claims is a good one and a real service to parties and the bar; however, the Chapter 13 Trustee is not a judge and his office's determination of claims' problems should not benefit or prejudice any party.

The court concludes that the best manner in which to handle this problem in this case is to instruct the Trustee to immediately commence payments to Nissan of all funds available each month after payment of administrative claims and fees and expenses. The amounts paid to Nissan should not be limited by the plan's statement that the preference payment is \$300 per month. At the conclusion of the plan, if Nissan remains unpaid in any amount on its original claim, Nissan can renew its motion for disgorgement of funds from unsecured creditors or for the Trustee's performance under his bond. It would be premature to institute either of these remedies now.

THEREFORE IT IS ORDERED that:

1. The motion of Nissan Acceptance Corporation to compel the Chapter 13 Trustee's compliance with the debtors' confirmation order is GRANTED;
2. Nissan Motor Acceptance Corporation shall be paid all money paid into the debtors' plan except what is necessary to pay administrative claims. The Trustee shall disregard the plan's and confirmation order's limitation on payments to Nissan Motor Acceptance Corporation of \$300 per month;

3. In this case and all other chapter 13 cases, the Chapter 13 Trustee is ordered to pay all claims as filed unless an objection to a claim is filed and an order disallowing the claim is entered and final;

4. In this case and all other chapter 13 cases, in the event a debtor, the Trustee, or any other interested party seeks to prevent payment to a creditor against whom a claim objection may be filed, that party may file a motion to hold payments in escrow or suspense until the claim dispute is finally resolved; and

5. Nissan Motor Acceptance Corporation shall have the right to renew this motion at any time in the future if it is not paid the full amount of its filed claim during the remaining term of the debtors' plan.

Dated: April 5, 1999

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MARGARET A. MAHONEY  
U.S. BANKRUPTCY JUDGE

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WILLIAM S. SHULMAN  
U.S. BANKRUPTCY JUDGE