DOCKET NUMBER: 99-12325
ADV. NUMBER: None
JUDGE: M. A. Mahoney
PARTIES: Jeremiah Lawson Helton
CHAPTER: 13
ATTORNEYS: L. C. Williams, V. G. Memory
DATE: 4/10/00
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

JEREMIAH LAWSON HELTON Case No. 99-12325-MAM-13

Debtor.

ORDER AND JUDGMENT DENYING MOTION FOR RELIEF FROM STAY

Lionel C. Williams, Mobile, Alabama, Attorney for Jeremiah Lawson Helton
Von G. Memory, Montgomery, Alabama, Attorney for Orix Credit Alliance, Inc.

This matter is before the Court on the motion of Orix Credit Alliance, Inc. (Orix) for relief from the automatic stay. 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 motion of Orix for relief from stay is denied.

FACTS

Jeremiah Lawson Helton filed for relief pursuant to chapter 13 of the Bankruptcy Code on July 6, 1999. Mr. Helton scheduled Orix as a creditor with three separate undersecured claims. He valued the first claim at $55,000, secured by a John Deere Model 650-G Dozier valued at $45,000; the second claim at $68,000, secured by a Timberjack Model 450-C Skidder valued at $40,000; and the third claim at $90,000, secured by a Hydroax Model 611-E valued at $50,000.

The proposed plan filed by Mr. Helton along with his schedules provided that unsecured creditors were to receive pro rata distributions equal to 10% of their allowed claims. The plan valued the Dozier at $50,000, the Skidder at $45,000, and the Hydroax at $55,000. For each

respective item of collateral, the plan provided Orix with a monthly preference payment of $833, $750, and $917.

The deadline for objecting to the plan was August 11, 1999. Orix was put on notice of the deadline. Orix did not timely object to confirmation. A meeting of creditors was held August 12, 1999 and shortly after this, Mr. Helton's plan was confirmed with amendments not affecting the treatment of Orix's claims.

On February 3, 2000, Orix filed this motion for relief from stay. A hearing was held on April 5, 2000, after which the Court took the matter under advisement. The following day, counsel for Orix submitted a letter in which the gross value of each item of collateral was calculated. The calculations were based on the collateral value in the confirmed plan, plus interest over the life of the plan at a rate that the Court assumes to be the respective contract rate for each item of collateral. Orix stated in the letter that the gross value of the Dozier equals $63,741, the Skidder equals $57,367, and the Hydroax equals $70,115.[1]

Based on the assertions of Orix and Mr. Helton's schedules, there is no dispute that at the time he filed this case, Mr. Helton did not have equity in any of the items of collateral. Mr. Helton has remained current under the terms of his confirmed chapter 13 plan.

LAW

A.

The Court finds that the motion of Orix for relief from the automatic stay is due to be denied because of § 1327(a) of the Bankruptcy Code and the doctrine of *res judicata*. Plan

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[1]Mr. Helton objected to the admissibility of the letter. The letter does not affect the Court's decision and it therefore will be admitted as evidence.

confirmation orders bind debtors, creditors, trustees and other parties in interest. 11 U.S.C. § 1327(a). "An order confirming a chapter 13 plan is *res judicata* as to all justiciable issues which were or could have been decided at the confirmation hearing." *Anaheim Savings and Loan Assoc. v. Evans (In re Evans)*, 30 B.R. 530, 531 (9th Cir. BAP 1983) (cite omitted). The binding effect of a confirmation order precludes relief from the stay on grounds of lack of adequate protection absent a default in carrying out the plan. *Id.*; *Green Tree Financial Corp. v. Garrett (Matter of Garrett)*, 185 B.R. 620, 623 (Bankr. N.D. Ala. 1995) (confirmation order precludes relief from stay based upon facts occurring preconfirmation).

The primary basis for Orix's motion for lift of stay is Mr. Helton's preconfirmation default under the terms of the parties' contracts and security agreements. However, the parties' rights are dictated by the confirmed plan, not the agreements entered into preconfirmation, assuming Mr. Helton's case is not dismissed.[2] Orix had the opportunity to contest the terms of the plan and it failed to do so. Mr. Helton has not defaulted under the terms of his confirmed plan. In fact, he has prepaid 0.66 months. Therefore, the motion of Orix for relief from the automatic stay is denied.

B.

[2]Orix is correct that confirmation does not necessarily cancel its lien. If Mr. Helton's case is dismissed, then the parties are placed in the same position as they were prior to the filing of Mr. Helton's bankruptcy petition. 11 U.S.C. § 349; *In re Whitmore*, 154 B.R. 314, 315 (Bankr. D. Nev. 1993); *U.S. v. Mitchell (In re Mitchell)*, 93 B.R. 615 (Bankr. W.D. Tenn. 1988). The bankruptcy case is essentially undone. S. Rep. No. 989, 95th Cong., 2d Sess. 49 (1978). However, if Mr. Helton makes all of the plan payments and satisfies the conditions of the plan, then any lien on estate property of a creditor that is provided for by Mr. Helton's plan is cancelled. 11 U.S.C. § 1327(c).

The letter filed by Orix after the hearing on this matter is essentially a challenge to the interest rate (or lack thereof) used to provide Orix the present value of its secured claims pursuant to § 1325(a)(5)(B)(ii) of the Bankruptcy Code.[3] The binding effect of a chapter 13 plan includes whether the creditor should have been paid interest on its claim. COLLIER ON BANKRUPTCY ¶ 1327.02[1][c] (15th ed. 1999). Thus, the failure of Orix to object to confirmation not only precludes its motion for relief from stay, but also precludes it from challenging its treatment under the plan. *Id*.; *In re Szostek*, 886 F.2d 1405 (3rd Cir. 1989) (failure to apply present value provision of Code not grounds for vacating confirmed plan where creditor did not timely object); *In re Minzler*, 158 B.R. 720 (Bankr. S.D. Ohio 1993) (failure to timely object to confirmation precluded creditor from contesting treatment under plan as secured creditor rather than lessor).

Even assuming a chapter 13 plan must provide interest pursuant to the present value provision found in § 1325(a)(5)(B)(ii), the Court finds that this was provided for in Mr. Helton's plan. *See*, *Barnes v. Barnes (In re Barnes)*, 32 F.3d 405 (9th Cir. 1994) (§ 1325(a)(5)(B)(ii) is a

[3]A challenge to the terms of Mr. Helton's confirmed plan would more properly have been filed as a motion for reconsideration or to vacate the confirmation order pursuant to Fed. R. Civ. P. 60, as incorporated by Fed. R. Bankr. P. 9024. Nevertheless, the Court is deciding this issue since Mr. Helton is not prejudiced by the outcome.

mandatory requirement for confirmation of a chapter 13 plan).[4] To explain this finding, the Court must first provide some background on chapter 13 practice in this district.

In the past, the official chapter 13 plan in this district did not provide a space to note the applicable interest rate pursuant to § 1325(a)(5)(B)(ii). The routine practice was to provide a "grossed up" collateral value, i.e., the true value of the collateral plus an amount equal to the interest payments necessary to give the secured claimant the present value of its claim over the life of the plan. Currently, this district's official plan (the plan used by Mr. Helton) does provide a space to note the applicable interest rate. Thus, it is no longer necessary to "gross up" the value of the collateral to account for interest. However, old practices die hard. Debtors' attorneys still routinely "gross up" the value of collateral and leave the space for an interest rate blank. Mr. Helton's plan did this. It valued each piece of collateral at a value $5,000 greater than the value set forth in his schedules and did not set forth an interest rate. The extra $5,000 accounted for the interest necessary to give Orix the present value of the collateral over the life of the plan. Therefore, § 1325(a)(5)(B)(ii) was satisfied. The amount of interest included in the confirmed plan to arrive at the present value of Orix's claim cannot now be challenged because of § 1327(a) of the Code and the doctrine of *res judicata*.

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[4]Since this Court is finding that § 1325(a)(5)(B)(ii) was satisfied, it does not have to determine whether this provision is a mandatory requirement for confirmation or what such a mandatory requirement might require of judges, trustees, debtors or creditors. The Court notes that if such a rule required bankruptcy judges to actively examine debtors in every instance where plans did not clearly on their face provide interest, even if no creditor objected to the plans, then this may infringe upon judges' roles as impartial fact finders and it may create difficulties for debtors' and creditors' counsel. For example, counsel may be reluctant to object to a judicial interrogation out of deference to the court or out of a fear that it could impact the judge's objectivity. Additionally, plans without present value interest often are the result of negotiation and compromise. It would be intrusive and extremely inefficient to require bankruptcy judges to examine every deal made during the confirmation process.

THEREFORE, IT IS ORDERED AND ADJUDGED that the motion of Orix Credit Alliance, Inc. for relief from stay is DENIED.

Dated: April 10, 2000

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MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE