



SO ORDERED,

Judge Jason D. Woodard

United States Bankruptcy Judge

The Order of the Court is set forth below. The case docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

In re:

L.C. Carver,

Case No. 16-10274-JDW

Debtor.

Chapter 13

**ORDER OVERRULING DEBTOR'S OBJECTION
TO SECURED CLAIM OF ALLY FINANCIAL (DKT. # 12)**

This matter came before the Court on the *Objection to the Secured Claim of Ally Financial* (the "Objection")(Dkt. # 12), filed by L.C. Carver (the "Debtor"). Ally Financial (the "Creditor") filed a *Response* (Dkt. # 17) in opposition. Subsequently, the parties submitted, and the Court entered, an *Agreed Order* (Dkt. # 32), which resolved all factual issues and preserved one legal issue, with a deadline to submit briefs on the legal issue.

The Creditor holds a lien on a 2011 Chevrolet Silverado (the "Vehicle"). The Debtor proposed to retain the Vehicle and to pay its value through his chapter 13 plan (the "Plan"). The Debtor is a co-owner of the Vehicle with Essie Carver (the "Codebtor") and both are obligated to repay the loan from the Creditor. The

Codebtor is not in bankruptcy. The issue is whether the Creditor must release the title to the Vehicle if the Debtor successfully completes his Plan and receives a discharge, even though the Plan does not propose to pay the debt in full. The parties timely submitted briefs on the issue (Dkt. # 36 & 37). The Court has reviewed the arguments, the stipulated facts and issues, and the applicable law. The Court finds and concludes that the Creditor may retain its lien on the Vehicle even if the Debtor successfully completes his Plan and receives a discharge.

I. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157(a) and 1334(b) and the United States District Court for the Northern District of Mississippi's Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc Dated August 6, 1984. This is a core proceeding arising under Title 11 of the United States Code as defined in 28 U.S.C. § 157(b)(2)(A), (K), and (O).

II. FACTS¹

The following numbered facts were stipulated and submitted to the Court by the parties (Dkt. # 32):

1. The debtor filed Chapter 13 Bankruptcy on 01/29/16 in the United States Bankruptcy Court for the Northern District of Mississippi.
2. The debtor filed his Chapter 13 plan (Docket No. 7) on 02/15/16.
3. The Chapter 13 plan proposes to retain a 2011 Chevrolet Silverado and pay value to the lienholder Ally Financial, Inc. plus interest over the life of the Chapter 13 plan.
4. The debtor filed an Objection to Secured Claim of Ally Financial, Inc. (Docket No. 12) on 02/16/16.

¹ To the extent any findings of fact are conclusions of law, they are adopted as such, and vice versa.

5. Ally Financial, Inc. filed a Response to Objection to Secured Claim (Docket No. 17) on 03/14/16.

6. The parties herein are in agreement that the Chapter 13 plan shall be amended prior to confirmation to pay Ally a set value of \$16,402.50, plus 5% interest over the life of the Chapter 13 plan.

7. Ally filed a proof of claim in the amount of \$24,099.61 for the 2011 Chevrolet Silverado with VIN# 3GCPCREA1BG321409. The indebtedness owed to Ally was not incurred within 910 days from the date of filing.

8. The debt to Ally is a cosigned debt with Essie Carver. The title is in the name of "L.C. Carver or Essie Carver."

9. The Chapter 13 plan does not propose to protect the cosigner Essie Carver.

After the parties submitted their stipulated facts, the Debtor's Plan was confirmed on July 22, 2016 (Dkt. # 33). The Plan provides that the Creditor is to be paid \$16,402.50 plus 5% interest over the life of the Plan, as agreed to by the parties, and also that the Codebtor will pay the difference outside of the Plan (Dkt. # 33).²

III. CONCLUSIONS OF LAW

In addition to the stipulated facts, further clarification and extrapolation is necessary to resolve the issue. Through proper use of the bankruptcy laws, the Debtor is allowed to pay the Creditor the value of the Vehicle, rather than the full

² Given that the Plan payments have not all been made at this point, this Order could be construed as somewhat advisory. However, resolution of this issue is necessary as part of the plan confirmation process. 11 U.S.C. § 1325(a)(1). While the parties agreed to allow the confirmation order to be entered so that distributions could begin, the dispute over the lien release provision was preserved. This Order effectively strikes the lien release provision of the confirmed Plan.

balance owing. 11 U.S.C. §§ 506(a), 1325(a)(5)(B)(ii).³ In addition, the Debtor is allowed to pay an interest rate of 5% on the debt, rather than the contract rate of 14.6%. *See Till v. SCS Credit Corp.*, 541 U.S. 465, 474 (2004). This results in the Debtor paying the Creditor much less than the amount that would be due outside of bankruptcy. If the Debtor makes all payments according to his confirmed Plan and receives his discharge, he will have no further personal liability to the Creditor for this debt. 11 U.S.C. § 524(a).

These same reductions are not available to the Codebtor, who is not in bankruptcy. Section 524(e) of the Bankruptcy Code provides that the “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.” 11 U.S.C. § 524(e). As a consequence of § 524, “it has been repeatedly held that the discharge has no effect on the liability of a nondebtor codebtor or guarantor of the discharged debt.” 4 COLLIER ON BANKRUPTCY ¶ 524.05 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). This view has been repeatedly affirmed by the U.S. Court of Appeals for the Fifth Circuit. *See, e.g., Sandy Ridge Dev. Corp. v. La. Nat’l Bank (In re Sandy Ridge Dev. Corp.)*, 881 F.2d 1346 (5th Cir. 1989); *see also United States v. Stribling Flying Serv., Inc.*, 734 F.2d 221 (5th Cir. 1984). As a result, the Codebtor remains liable for the full unpaid principal balance of the debt, plus accrued interest at the higher contract rate. Once the Debtor’s bankruptcy case is over, the codebtor stay of §

³ Unless otherwise indicated, all chapter, section and rule references are to the “Bankruptcy Code,” 11 U.S.C. § 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1301 will no longer protect the Codebtor and the Creditor may pursue her for the unpaid balance and/or repossess the Vehicle if she defaults.

With this in mind, the Court turns to the question at hand: “[w]hether or not [the Creditor] would be required to release the title to the 2011 Chevrolet Silverado upon successful completion of the Chapter 13 plan payments and entry of discharge due to the fact the title is in the name of ‘L.C. Carver or Essie Carver.’” (Dkt. # 32). Courts that have addressed this issue have all held that the creditor has a right to pursue its claims against a non-filing codebtor because the discharge is effective only for the debtor and does not alter the rights and obligations of the non-filing codebtor. *See Faulkner v. CEFUCU (In re Faulkner)*, 2013 WL 2154790 (Bankr. C.D. Ill. May 17, 2013); *In re Jackson*, 2012 WL 6623497 (Bankr. M.D. Ga. Dec. 18, 2012); *Brooks v. Gen. Motors Acceptance Corp. (In re Brooks)*, 340 B.R. 648 (Bankr. D. Me. 2006); *In re Leonard*, 307 B.R. 611 (Bankr. E.D. Tenn. 2004); *Southeastern Bank v. Brown*, 266 B.R. 900 (S.D. Ga. 2001). The Debtor has not been able to cite a case that has held otherwise, and the Court has not found one in its own research.

These courts have all addressed similar situations, where a debtor proposed to pay a crammed down value for a vehicle through his or her chapter 13 plan, and where a non-filing codebtor is also liable on the car loan. In each of these cases, the courts have concluded that “the lien will remain in place and can be enforced against [the codebtor]’s interest in the [vehicle] until such time as [the creditor] receives full payment of its claim at the contract rate.” *Jackson*, 2012 WL 6623497 at *3; *see also Faulkner*, 2013 WL 2154790 at *5 (“[the creditor]’s lien remains in

place and can be enforced against the non-filing codebtor's interest in the vehicle until such time as [the creditor] receives full payment of its claim at the contract rate"); *Brooks*, 340 B.R. at 654 ("until [the creditor] is paid in full it has no obligation to release its lien"); *Leonard* 307 B.R. at 614 ("because the [vehicle] is co-owned and secured by a co-signed debt, until and unless [the creditor] receives the deficiency balance owed . . . it is not required to release its lien and surrender the title to the [vehicle] to any party"); *Brown*, 266 B.R. at 910 ("[i]f the structure of the plan does not provide for the full amount that the creditor would have received absent bankruptcy, the creditor may recover the additional amount from the cosigner"). This Court agrees with the holdings of these courts.

The Creditor here is not required to release its lien on the Vehicle until it is paid in full. If the Debtor completes his Plan payments and receives a discharge, the Creditor may not proceed against the Debtor for any deficiency. 11 U.S.C. § 524(a)(2). However, the Creditor is not required to release its lien on the Vehicle because it may still pursue the Codebtor for the remaining funds that are owed under the contract. 11 U.S.C. § 524(e).

IV. CONCLUSION

The Creditor will not be required to release its lien on the Vehicle. Its lien is still valid and effective against the Codebtor, who is not a joint debtor in the Debtor's bankruptcy case. The Creditor's claim is not being paid in full through the Plan so the Creditor retains the right to collect the deficiency from the Codebtor, and to exercise its rights in the collateral if necessary. Accordingly, it is hereby

ORDERED, ADJUDGED and DECREED that the Debtor's Objection (Dkt. # 12) is **OVERRULED** with regard to the lien release provision.

##END OF ORDER##