

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

IN RE: BOBBY BRADLEY, Debtor

**No. 4:15-bk-13978
Ch. 13**

ORDER DENYING MOTION FOR RELIEF FROM STAY

Before the Court is creditor John Gibson Auto Sales, Inc.'s [Gibson Auto] Motion for Relief From Stay and Abandonment of Collateral filed on February 28, 2016, and the debtor's response filed on March 3, 2016. The collateral at issue is a 2008 Can Am Spyder motorcycle. The Court set the motion and response for hearing on April 5, 2016. At the hearing, the parties requested a continuance to the Court's next division day, May 10, 2016, which the Court granted. On May 9, 2016, Gibson Auto filed a motion to continue the hearing once more because counsel had a conflict with matters set in criminal court in Pennsylvania on the following day. The Court granted Gibson Auto's motion and reset the hearing for July 12, 2016. On July 11, 2016, Gibson Auto filed another motion to continue because counsel had another conflict with matters that were set in criminal court in Pennsylvania on the following day and Gibson Auto's local counsel was on vacation. In its motion, Gibson Auto stated that the debtor's counsel was in agreement with the continuance. The Court again continued the motion for hearing on August 8, 2016. When the Court called the matter on August 8, the debtor's counsel requested another continuance because his client was not present and he was not prepared for trial. The debtor's counsel stated that because the plan had been confirmed prior to the hearing, he believed the motion for relief from stay was moot, although he had not discussed the matter with Gibson Auto's counsel prior to the hearing. Gibson Auto's local counsel was present and objected to the continuance. The Court granted the continuance over Gibson Auto's objection and set the motion for hearing on September 8, 2016, at which time both parties were ready to proceed.

While the motion for relief was being continued each month, the debtor was taking the steps necessary to confirm his proposed plan of reorganization. The debtor filed his first plan of reorganization with his petition on August 13, 2015. He subsequently filed three

amended plans after the chapter 13 trustee objected to each of his proposed modified plans after they were filed. No other party, including Gibson Auto, objected to any of the debtor's proposed plans. In his initial plan, the debtor proposed to pay Gibson Auto \$13,633.20 at 5% over the life of the plan for the motorcycle. On November 11, 2015, Gibson Auto filed its proof of claim in the amount of \$15,261.05 at 12.9% interest. In the debtor's second amended plan, the debtor proposed to pay Gibson Auto the payoff amount of its debt in accordance with Gibson Auto's proof of claim, at 5% interest until the claim was paid in full. Gibson Auto did not object to the debtor's proposal. On June 8, 2016, the debtor's third proposed plan of reorganization was confirmed by the Court. According to the testimony at the September 8 hearing, the debtor is making his payments under payroll deduction and is current on his plan payments with the exception of approximately \$280.00, and, according to the trustee, Gibson Auto is being paid monthly.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(G). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

In support of its motion for relief from stay, Gibson Auto argues that it is entitled to relief under both § 362(d)(1), for cause, and (d)(2), for lack of equity and because the property is not necessary to an effective reorganization. The Court finds that both arguments lack merit. Gibson Auto did not object to the confirmation of the debtor's proposed plan and the Court confirmed the plan on June 8, 2016. At that time, the plan bound Gibson Auto to the provisions of the confirmed plan, that it would be paid \$15,261.05 accruing at 5% interest with a monthly payment of \$290.00 until Gibson Auto is paid in full. According to the chapter 13 trustee, that is what is happening. Relief from the automatic stay under § 362(d)(1) post-confirmation would only be appropriate if Gibson Auto's collateral is not being adequately protected or some other post-confirmation default has occurred. *In*

re Clark, 2002 WL 32114480 *3, No. 4:02-bk-10963, Sept. 3, 2002. Gibson Auto's witness testified that the motorcycle is fully insured to the satisfaction of Gibson Auto and Gibson Auto did not identify any other post-confirmation default that has occurred. In fact, according to the trustee, Gibson Auto has been paid more than is required at this time under the confirmed plan and, although not required, the debtor has agreed to treat Gibson Auto as a code-21 creditor, which would allow Gibson Auto to receive more than the required payments under the plan. Counsel for Gibson Auto also argued that cause under § 362(d)(1) could be found because the debtor had not registered the motorcycle with the state. While the Court agrees the motorcycle should be registered to comply with Arkansas law, Gibson Auto has failed to demonstrate or prove to the Court any adverse result based on the non-registration that is sufficient to establish cause for purposes of § 362(d)(1). For these reasons, the Court denies Gibson Auto's motion for relief from stay under § 362(d)(1).

Likewise, the Court denies Gibson Auto's motion for relief from stay under § 362(d)(2). The Court agrees with the only cases the Court could find that address the appropriateness of relief from stay under subsection (d)(2) in a chapter 13 case when the plan has been confirmed: "the order confirming plan would be res judicata with respect to the issues of adequate protection, lack of equity, and whether the property in question is necessary to the successful rehabilitation of this Chapter 13 debtor." *In re Wiley*, 24 B.R. 369, 375 (Bankr. E.D. Mich. 1982). Further, section 1327 provides that "[t]he provisions of a confirmed plan bind the debtor and each creditor" 11 U.S.C. § 1327(a).

Counsel for Gibson Auto argued that there is no time limit specified within § 362(d)(2) that would preclude a chapter 13 creditor from filing a motion for relief from stay under § 362(d)(2) at any time, pre- or post-confirmation. However, the issues surrounding lack of equity and the necessity of the collateral for the debtor's reorganization are justiciable issues that *could* have been decided at the confirmation hearing. Confirmation of a plan denotes compliance with the provisions of § 1325. If a secured creditor believed that the debtor was filing a plan not in good faith, based on the lack of necessity of the collateral,

it could object under § 1325(a)(3) for lack of good faith or, if applicable, under § 1325(a)(4), for failure to pay unsecured creditors at least as much as they would have received in a liquidation case: the best interest of creditors test. Gibson Auto did not object to any of the debtor's proposed plans and, by not objecting, Gibson Auto represented to the Court that it either accepted the plan or, at a minimum, understood that it was to retain its lien and would be paid the value of its collateral as determined by its allowed claim. *See* 11 U.S.C. § 1325(a)(5). The order confirming a chapter 13 plan ends any further discussion concerning relief from stay under § 362(d)(2). *Anaheim Sav. and Loan, Assoc. v. Evans (In re Evans)*, 30 B.R. 530, 531 (B.A.P. 9th Cir. 1983) (“Because of our view that § 1327 controls in this case, a decision as to the applicability of § 362(d)(2) to a Chapter 13 need not be made.”); *see also In re Clark*, 2002 WL 32114480 at *2 (because issue of equity and necessity to reorganization was not raised during confirmation process, barred under § 1327(a) and principals of res judicata).

The Court appreciates counsel for Gibson Auto being candid with the Court when he stated he could not find any cases that allowed a motion for relief under § 362(d)(2) to proceed against a confirmed chapter 13 plan. For the reasons stated above, the Court denies Gibson Auto's motion for relief from stay under § 362(d)(2) also and dismisses Gibson Auto's Motion for Relief From Stay and Abandonment of Collateral.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 09/13/2016

cc: Brian C. Wilson
Joseph F. Kolb
Stephen Wade Parker
Jack W. Gooding