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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

GARY A. & SANDRA LICHT

BK 89-13083 K

Debtor

MARINE MIDLAND BANK, N.A.

Plaintiff

-vs-

GARY A. and SANDRA LICHT
Albert J. Mogavero, Trustee

Defendant

MEMORANDUM OF DECISION
AND
ORDER

In this Chapter 13 case, Marine Midland Bank, N.A., the creditor holding a security interest in the debtors' automobile, has sought relief from the automatic stay under 11 U.S.C. § 362(d) in order to proceed with enforcement of its lien.

In an earlier decision I had determined that relief from the stay is available to a secured creditor in a Chapter 13 case in which a Plan has been confirmed and in which payment of the secured claim is provided for under the Plan, but where the debtor has fallen into arrears in payments to the Chapter 13 Trustee. *In re Petro*, BK 90-13864 (W.D.N.Y. Dec. 16, 1991). The same situation exists in this Chapter 13 case.

In that same decision, I stated that the "cause" which warrants lift of stay in such cases is the failure to make the

payments provided for by the Plan. Lack of "adequate protection" is not an appropriate basis since the provisions of a confirmed plan bind all creditors provided for by that plan (11 U.S.C. § 1327(a)), and any insufficiency of plan payments in compensating for depreciation, etc. of collateral, may not be complained of other than by motion to compel a modification of the plan or a motion to convert or dismiss.

In a later decision in that same case, I stated that a motion to lift stay in a situation like this properly raises the question of the effect of Plan arrearages upon a secured creditor's rights. I went on to state that so long as regular Plan payments either have resumed or will resume, a secured creditor is not harmed by a temporary lapse or an ongoing "shortage." This is true because in this District the unpaid balance of the secured portion of an undersecured claim continually accrues 9% to reflect the "present value" required by 11 U.S.C. § 1325(a)(5)(B)(ii). A delay in completing a Plan then, does not adversely affect a secured claim (so long as the Plan is eventually completed): the total amount ultimately paid will rise in accordance with the delay. *In re Petro*, BK 90-13864 (W.D.N.Y. Feb. 11, 1992). According to the payment record supplied to the Court, the Lichts (debtors) are \$2279 "short" in scheduled payments under their Plan, but are making appropriate regular payments at this time.

If Plan payments are being regularly made, a past lapse does not require that a section 362(d) motion be sustained. As I

stated earlier in this decision, a motion to convert or dismiss may lie where cause exists under § 1307(c) (such as where "shortages" render completion of the Plan within five years impossible). The creditor also has the option to bring a Motion to compel a modification of the Plan.

The current motion to lift stay is denied at this time and set for an adjourned date of July 22, 1992, at 11:00 a.m. in order to monitor whether the Plan payments continue to be regularly made.

SO ORDERED.

Dated: Buffalo, New York
May 19, 1992



U.S.B.J.