

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re

JAMES V. GORCHECK and  
MAUREEN E. GORCHECK

Case No. 00-14500 K

Debtors

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In this Chapter 13 case the Debtors own one 1999 Sport Utility Vehicle and lease another Sport Utility Vehicle. (Indeed it seems that the sole purpose of this Plan is to save two luxury vehicles at the expense of other creditors.) The Debtors propose to assume the \$434/mo. lease with Ford Motor Credit Corporation. Ford Motor Credit Corporation opposes this assumption unless the Debtors cure approximately \$900 in lease arrears more promptly under their Plan than would normally be the case. Normally, the Chapter 13 Trustee would treat this unsecured claim<sup>1</sup> as if it were a typical car loan, rather than lease, except in one regard. He would treat it like a secured claim, payable (along with other secured claims) before any distribution begins upon priority or general unsecured claims, but without a 9% “present value adjustment.”

A strong case could be made for the allowance of a “present value adjustment” as a part of any “cure” whether such cure is “prompt” or not. Similarly, a strong case could be made for the proposition that a “cure” that extends beyond the original lease term is not “prompt.” (See *In re Progressive Systems, Inc.*, Case No. 95-14370 K (Bankr. W.D.N.Y. Aug. 7, 1996) unpublished). And certainly it could be argued that a \$434/mo. lease should not be

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<sup>1</sup>The car belongs to the lessor, and so the claim is not a claim “secured” by property of the Debtors.

approved under any circumstance, unless the vehicle is both unique and essential to the debtor's livelihood. But those remedies are not asked of the Court. What is asked is to prefer (in the generic, non-technical sense) this arrearage claim over all other claims -- to pay it off faster even than secured claims, thereby stretching-out both secured claims (which accrue 9% "present value adjustment" on the unpaid balance), and unsecured claims (which also accrue 9%, in certain cases). The Debtors acquiesce. But it is hollow for them to concede a position that delays their other creditors, and that costs them only whatever additional amounts accrue as "present value adjustment" on other debts that are entitled thereto (if there are any such debts).

The Trustee argues that the car lessor is well-protected by its rights as owner of the car and by payment of its claim ahead of other unsecured claims, and ought not to be entitled to more favorable treatment.

The "prompt cure" requirement of 11 U.S.C. § 365 and 11 U.S.C. § 1322(b)(7) is completely independent of the matter of allowance or priority of claims. Indeed, the matter of "cure" has nothing to do with "claims" at all.

Rather, what is truly before the Court is how the Debtors may balance the "prompt cure" requirement against fundamental fairness to those creditors (if any) who are not receiving a present value adjustment to offset such delay.

In a Chapter 11 case, such matters are often resolvable by simply extending the Plan and treating the "prompt cure" much as we would treat a "luxury item" in a Chapter 13 case here.

In a Chapter 13 case, "prompt cure" might deny any solution other than surrender

of the vehicle, such as where the Plan is already out to 5 years and the lease arrears are so high that “prompt cure” will threaten a fundamentally fair amortization of mortgage arrears or of a secured loan on another car, or the ability to satisfy a non-dischargeable tax debt.

Car loans, mortgage loans and other secured loans are governed by 11 U.S.C. § 1322(b)(2), which requires cure in a “reasonable” time. To assume a lease requires “prompt” cure, and it seems clear from the cases that “prompt” is prompter than “reasonable.”

The balance between “prompt cure” and fairness to others has not been reached in this case. The Court will not visit upon other creditors the Debtors’ decision to assume such an extravagant auto lease on the terms that the lessor demands.

Consequently, the Court is not inclined to confirm the Plan unless the car is surrendered or unless the cure and a major portion of the car lease is treated as a “luxury item.”

The confirmation hearing is restored to the calendar for **November 13, 2000 at 12:00 noon**, to entertain further argument in these regards.

SO ORDERED.

Dated: Buffalo, New York  
October 27, 2000

/s/ Michael J. Kaplan

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U.S.B.J.