

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHIRLEY L. FLOOD :
 :
 v. :
 :
 CHRYSLER FINANCIAL CORP. : CIVIL NO. 99-6309

OPINION

Giles, C.J.

April ___, 2000

This is an appeal of an Order from the United States Bankruptcy Court for the Eastern District of Pennsylvania granting summary judgment to the defendant-creditor, Chrysler Financial Corporation (“Chrysler”). The issue before the court is whether the grant of summary judgment was proper. The bankruptcy court’s judgment is affirmed.

I.

Appellant, Shirley L. Flood (“Flood”) filed a voluntary petition for bankruptcy and a “cramdown”¹ plan under Chapter 13 of the Bankruptcy Code, 11 U.S.C. § 1301, et seq., on October 15, 1998. Appellee, Chrysler, is a secured creditor of Flood because it possesses a perfected lien on her automobile, a 1998 Dodge Stratus. On December 8, 1998, Chrysler filed a Proof of Claim in Flood’s case in which it sought the value of its collateral, the car, plus its contract rate of interest, 16.95%. Attached thereto was the original sales agreement for Flood’s

¹ In a Chapter 13 “cramdown”, the debtor retains the property in which the secured creditor has a security interest, even if the secured creditor would prefer to repossess and liquidate the property as it would be entitled to do in the absence of a bankruptcy filing. In exchange for giving the debtor a right to continue possession of the property, section 1325(a)(5)(B) mandates two things: (i) the secured creditor shall retain a continuing lien on the property; and (ii) the secured creditor shall receive from the debtor “the value, as of the effective date of the plan, of such property to be distributed under the plan on account of such claim [which shall be] not less than the allowed amount of such claim.” 11 U.S.C. § 1325(a)(5)(B)(ii).

vehicle. On December 21, 1998, Flood filed an Adversary Complaint to determine the validity and extent of Chrysler's lien against her vehicle.² On January 20, 1999, Chrysler filed its Answer to Flood's Adversary Complaint.

Prior to the scheduled hearing on the Adversary Complaint, Chrysler filed a Motion for Summary Judgment. The motion asserted that were two issues yet to be resolved in the case as a matter of law: the value of the vehicle and the appropriate interest rate. On August 26, 1999, the bankruptcy court held a hearing on Chrysler's summary judgment motion. There, Flood stated that there was no dispute over the collateral's value. However, Flood disagreed as to the applicable rate of interest. On September 13, 1999, the bankruptcy court granted Chrysler's motion for summary judgment. Flood immediately filed a Motion for Reconsideration, which was denied. On November 15, 1999, Flood filed a Notice of Appeal asserting that the proper interest rate was a genuinely disputed material fact which should have precluded the award of summary judgment.

II.

This court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(a). The

² 11 U.S.C. § 506(a) of the bankruptcy code enables a debtor to bifurcate a creditor's claim, treating the claim, up to the value of the collateral, as a secured claim while treating as unsecured the amount of the claim that exceeds the value of the collateral. Section 506(a) states in relevant part that "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

issue presented is a question of law, over which this court has plenary review. In re Anes, 195 F.3d 177, 180 (3d Cir.1999).

III.

Summary judgment is appropriate when there are no genuine disputes as to any material facts. See Fed. R. Civ. P. 56(c). If such is the case, a trial is unnecessary because a reasonable fact finder could not enter a judgment for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In reviewing the bankruptcy court's grant of summary judgment, this court must "exercise plenary review, construing all evidence and resolving all doubts raised by affidavits, depositions, answers to interrogatories, and admissions on file in favor of the non-moving party." Ciarlante v. Brown & Williamson Tobacco Corp., 143 F.3d 139, 145 (3d Cir. 1998). Accordingly, this court must "lay out the substantive law governing the action, and then in light of that law determine whether there is a genuine dispute over dispositive facts." Id.

The proper interest rate to be charged in the Chapter 13 cramdown plan was a matter of law, and not a matter of factual dispute. Controlling law in this area was set out by the third circuit in GMAC v. Jones, 999 F.2d 63 (3d Cir. 1993). The court held that, in order to be consistent with the statutory objective of section 1325(a)(5)(B)(ii), the cramdown section of the Bankruptcy Code, the appropriate interest rate to be charged under a plan is the "contract rate of interest," as it is the "rate that the creditor voluntarily agreed to accept at an earlier date." Jones, 999 F.2d at 70. Further, in recognition of the fact that interest may fluctuate over time, the third circuit established as the rule of practice that:

[i]n the absence of a stipulation regarding the creditor's current rate

for a loan of similar character, amount and duration, we believe it would be appropriate for bankruptcy courts to accept a plan utilizing the contract rate if the creditor fails to come forward with persuasive evidence that its current rate is in excess of the contract rate. Conversely, utilizing the same rebuttable presumption approach, if a debtor proposes a plan with a rate less than the contract rate, it would be appropriate, in the absence of a stipulation, for a bankruptcy court to require the debtor to come forward with some evidence that the creditor's current rate is less than the contract rate.

Id. at 70-71 (footnotes omitted). Thus, the third circuit has held that a bankruptcy court should assume that the proper interest rate for a cramdown plan is the contract interest rate and that if the debtor believes that the creditor's rate is less than the contract rate, she bears the burden of proving that fact. As such, it would not suffice for a debtor to try to prove other lenders may have lower rates. She must indeed establish that her creditor's current lending rate is lower than her contract rate.

IV.

This court holds that the bankruptcy court properly granted summary judgment to Chrysler. The appropriate interest was not a disputed material fact as the third circuit has held that, as a "rule of practice³," the contract rate of interest is the proper interest rate in a cramdown. The contract rate of interest is what Chrysler requested and was a part of the record available to the bankruptcy court at the time it rendered its judgment, as it was attached to Chrysler's Proof of Claim. If Flood believed that a lesser interest rate was applicable, she had the affirmative duty "to come forward with some evidence that the creditor's current rate is less than the contract rate" for a loan of a similar character, amount, and duration in her response to Chrysler's

³ Jones, 999 F.2d at 70.

motion.⁴ Flood failed to do so. At the hearing on the summary judgment motion, she offered some newspaper articles which allegedly showed the “market rate for automobiles.” (Summ. J. Hr’g Tr. at 5.). That proffer did not create a possible genuine issue of fact as to the rate Chrysler was then charging for loans like Flood’s.

Flood’s “mere assertion that at a further hearing, or on the ultimate date of trial she will be successful in presenting competent evidence to demonstrate that Chrysler’s current rate is less than [her] contract rate⁵,” misconstrued her burden under Jones and was insufficient to withstand summary judgment at the time the motion was decided. The bankruptcy judge did not abuse his discretion by not putting off the resolution of the interest issue under these circumstances. The bankruptcy court appropriately concluded that the interest rate was the contract rate based on controlling law, and that Flood had proffered no evidence creating a genuine issue of fact.

Accordingly, the bankruptcy court’s Order granting summary judgment in favor of Chrysler is affirmed.

An appropriate Order follows.

⁴ Id. at 71.

⁵ In re Shirley L. Flood, No. Bankr. 98-33272 (Bankr. Order Sept. 1, 1999)

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JUDGMENT

AND NOW, this ___ day of April, 2000, the Order dated September 1, 1999 of the United States Bankruptcy Court for the Eastern District of Pennsylvania granting summary judgment in favor of Chrysler Financial Corporation is hereby AFFIRMED for the reasons stated in the attached Opinion.

BY THE COURT:

JAMES T. GILES C.J.

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