

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

FILED
U.S. BANKRUPTCY COURT
WESTERN DISTRICT OF NC

IN RE:

James Burnett Cornett and
Barbara Ann Cornett,

Debtors.

Address: 119 Cotton Wood Road
Cleveland, NC 27913

Social Security No: [REDACTED]-6279

Chapter 13
Case No. 95-50756

MAR 27 1996
J. BARON GROSHON
BY: DL
Deputy Clerk

JUDGEMENT ENTERED ON MAR 27 1996

ORDER CONFIRMING PLAN AND RELEASING MOTOR VEHICLE

THIS CAUSE, coming on for hearing before the undersigned United States Bankruptcy Court Judge, on March 5, 1996, upon the Objection to Confirmation of Chapter 13 Plan, filed by Nissan Motor Acceptance Corporation ("NMAC") on December 1, 1995, and it appearing to the Court that counsel for NMAC and Debtors appeared in Court, the Court makes the following Findings of Fact and Conclusion of Law:

FINDINGS OF FACT

1. Debtors filed a Chapter 13 Bankruptcy petition in this case on October 23, 1995.
2. On July 27, 1995, Debtors purchased under the terms of a Simple Interest Retail Installment Contract ("Retail Contract") a 1995 Nissan Altima, Vehicle Identification Number 1N4BU31D9SC160854 ("Motor Vehicle"). Pursuant to the terms of the Retail Contract, NMAC is a secured creditor and first lienholder.
3. NMAC filed a Proof of Claim with the Trustee on December 4, 1995, for the payoff balance of TWENTY-THREE THOUSAND ONE HUNDRED SEVENTEEN AND 72/100 DOLLARS (\$23,117.72).

4. Under the Retail Contract, Debtors were to make seventy-two (72) consecutive payments of FOUR HUNDRED THIRTY-TWO AND 42/100 DOLLARS (\$432.42) per month, with the first payment beginning August 26, 1995.

5. Debtors made only one (1) of seventy-two (72) installment payments prior to the filing of the Chapter 13 petition.

6. Debtors filed the Chapter 13 petition only eighty-eight (88) days following the date of the Retail Contract and only fifty-eight (58) days following the date of the first payment due.

7. According to the Dealership Recap Sheet, the sell value of the Motor Vehicle was SEVENTEEN THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$17,200.00). Debtors were approximately FIVE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$5,200.00) "upside down" on the trade-in of the 1992 Ford Escort. This FIVE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$5,200.00) negative position was added to the sell value for a sale price of TWENTY-TWO THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$22,400.00) and an amount financed of TWENTY-TWO THOUSAND SEVEN HUNDRED SEVENTY-NINE AND 88/100 DOLLARS (\$22,779.88).

8. Given that Debtors made only one (1) of seventy-two (72) payments and that Debtors filed the Chapter 13 petition less than sixty (60) days following the date of the first payment due, Debtors should have known their financial situation was such that they should not have incurred the new debt in good faith.

9. Debtors proposed to cram down NMAC's secured claim to SEVENTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$17,500.00) with interest at the Trustee rate, not the Retail Contract rate of 10.90% per annum.

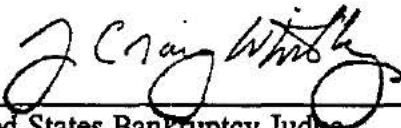
10. Debtors now desire and intend to release the Motor Vehicle to NMAC free of the automatic stay and reduce their plan payments to \$300.00 per month.

CONCLUSION OF LAW

Pursuant to 11 U.S.C. §1325(a), the Chapter 13 plan is confirmed, subject to Debtors stipulation and consent that the automatic stay is hereby lifted as to the Motor Vehicle.

NOW, THEREFORE, it is hereby **ORDERED** that the Chapter 13 plan is confirmed. Debtors stipulate that the automatic stay is hereby lifted as to the Motor Vehicle and that NMAC shall have ninety (90) days from the date of repossession to foreclose its interest and submit a deficiency proof of claim. Debtors' plan payments shall be reduced to \$300.00 per month beginning April 1, 1996, with an estimated return to unsecured creditors of 27%. Debtors' attorney shall be entitled to a non-base attorney fee of \$200.00 to be paid inside the plan.

Dated: 3-26-96



United States Bankruptcy Judge