UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA

IN THE MATTER OF:	)	
	)	
RAFAEL ANTONIO RAMIREZ FLORES	)	CASE NO. 22-10010
	)	
	)	
Debtor	)	

DECISION

On March 08, 2023

This case is a reprise of the scenario addressed in Matter of Jones, 555 B.R. 869 (Bankr. N.D. Ind. 2016). As such, it presents the question of whether § 1327(a) means what it says: "The provisions of a confirmed plan bind the debtor and each creditor . . .." 11 U.S.C. § 1327(a).

As in Jones, the debtors filed a petition for relief under chapter 13. Their proposed plan contemplated paying Gaeta Auto Sales, which holds a lien upon their motor vehicle, in full, with interest.[1] Despite having received appropriate notice of the bankruptcy and the various deadlines associated with it, Gaeta did not file a proof of claim; neither did it object to the proposed plan. That plan, with a slight modification agreed to by the debtor and the trustee, was confirmed on March 21, 2022. Not only did Gaeta fail to file a proof of claim, the debtors also failed to file one on Gaeta's behalf during the time they had the opportunity to do so. See, Fed. R. Bankr. P. Rule 3004. Roughly seven months after both of those claims' deadlines passed, because there was no claim supporting a distribution to Gaeta, the trustee filed a motion to modify the plan to pay Gaeta nothing; effectively redirecting the monthly payments it was to receive to other creditors. Although all creditors and parties in interest were given notice of the trustee's motion and the opportunity to object to it, see, N.D. Ind. L.B.R. B-2002-2(a)(12), there were no objections within

[1] Unsecured creditors were to be paid in full, without interest.

the time required and it was granted by the court's order of January 6, 2023.[2] Instead of objecting to the proposed modification, Gaeta filed a motion for relief from the automatic stay.[3] The trustee has objected to the motion relying upon this court's decision in Matter of Jones, 555 B.R. 869 (Bankr. N.D. Ind. 2016). The matter is before the court following a hearing and the arguments advanced there.

In Jones, this court held that there was "no cause to relieve [a creditor] of the automatic stay" when its failure to file a claim prevented it from receiving a distribution under a confirmed plan. We characterized such a situation as "complaining about a self-inflicted wound." Jones, 555 B.R. at 870, citing In re Humphrey, 309 B.R. 777, 781 (Bankr. W.D. Mo. 2004) ("The reason Movant is not adequately protected is that it is not receiving payments. The reason Movant is not receiving payments is that it failed to file a timely claim."). Gaeta acknowledges Jones but notes that, since it was decided, the bankruptcy court in In re Weyer, 192 B.R. 612 (Bankr. W.D. Wisc. 2020) reached a contrary conclusion, which was affirmed by the district court, see, Weyer v. Valley Communities Credit Union, 2022 WL 1597293 (D. W.D. Wisc. 2022), after having considered and rejected this court's reasoning in Jones.[4] Gaeta argues this court should rethink its earlier

[2] Since there was no claim supporting Gaeta's contemplated distribution, the modification paying it nothing did not really change the plan, see, In re Pajian, 785 F.3d 1161, 1163 (7th Cir. 2015 ("a creditor must file a proof of claim in order to participate in Chapter 13 plan distributions"), so much as clarify it, by eliminating inconsistencies between the language of the plan and claims as actually filed. See, In re Macias, 195 B.R. 659, 662 n. 2 (Bankr. W.D. Tex. 1996) (trustee might request modification to avoid inconsistencies between the plan and allowed filed claims). See also, Matter of Witkowski, 16 F.3d 739, 740-41 (7th Cir. 1994) (payments contemplated by a confirmed plan may need to be adjusted once allowed claims are established).

[3] As originally filed, the motion sought relief under § 362(d)(2) – no equity in property that is not necessary to an effective reorganization – but all concerned acknowledge the vehicle securing Gaeta's claim is necessary to the debtor's successful completion of the confirmed plan. With the everyone's consent, Gaeta amended its motion to include the claim that it is not adequately protected because it will not receive payments under the confirmed plan.

[4] To the extent Gaeta is relying on the District Court's affirmance in Weyer, the court would note that while the decisions of a district court may be persuasive, they are not binding.

position and follow Weyer.[5]

Both the bankruptcy court and the district court in Weyer declined to follow this court's decision in Jones because it did not "explain how the creditor's failure to file a proof of claim overrides the express language in section 362(d) requiring the court to grant relief from stay 'for cause,' which specifically includes the lack of 'adequate protection,'" and that, by denying the requested relief, Jones "created equitable remedies in contravention of the code, something the Supreme Court barred in Law v. Siegel." Weyer, 2022 WL 1597293 *4. With all due respect to the Weyer courts' analysis, Jones did no such thing. Rather, it gave force to the provisions of the code and rules concerning the need to files claims and the effect of confirming a plan. The disagreement between Jones and Weyer really distills itself into a competition between confirmation of a plan and the impact of that event upon other provisions of the Bankruptcy Code, such as § 362(d).

See, 520 Mich. Ave. Assocs., Ltd. v. Devine, 433 F.3d 961, 964 (7th Cir. 2006) ("Decisions of district courts bind the litigants but have no authoritative effect elsewhere in the circuit (or even in the same district)."); Midlock v. Apple Vacations West, Inc., 406 F.3d 453, 457-58 (7th Cir. 2005) (collecting cases).

[5] At the hearing Gaeta informed the court that, after the motion was filed, it reached some sort of understanding with the debtors: if the motion is granted, they will make additional payments to Gaeta "outside the plan" and Gaeta will refrain from proceeding against their vehicle. The court has not formally been presented with or asked to approve such an arrangement and so does not consider it. It would note, however, that "side deals" which allow some creditors to avoid rules others are expected to follow are, at the very least, questionable and create the risk that creditors will lose confidence in the bankruptcy process. See, Matter of Barnes, 969 F.2d 526, 529-30 (7th Cir. 1992). See also, Matter of Vaughn, 110 B.R. 94 (Bankr. M.D. Ga. 1990 (trustee allowed to recover "side payments" debtor made directly to creditor.); Burns, 566 B.R. 918, 921 (Bankr. N.D. Ind. 2017); In re Brooks, 370 B.R. 194, 203 (Bankr. C.D. Ill. 2007) ("any erosion of the strict enforcement of the claim bar date would be unfair to those creditors who follow the rules…."); Keith M. Lundin, Lundin on Chapter 13 § 120.2, at ¶4 ("terms of a confirmed Chapter 13 plan cannot be altered by private agreements"). Furthermore, when the debtor is devoting all of its disposable income to the plan's payments to unsecured creditors, see, 11 U.S.C. § 1325(b)(2)(1)(B), there probably is no money to fund such regular additional payments, threatening the success of the entire plan.

Confirmation is a significant event in the life of a Chapter 13 case. This is made explicit by § 1327:

> The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, accepted, or has rejected the plan. 11 U.S.C. § 1327(a).

It is often said that confirmation is res judicata. See e.g., In re Russell, 386 B.R. 229, 231 (8th Cir. BAP 2008) ("the binding effect of a confirmed Chapter 13 plan is a basic tenet of bankruptcy law"); In re Chestnut, 356 Fed. Appx. 732, 2009 WL 4885018 *4 (5th Cir. 2009) (unreported); In re Wellman, 322 B.R. 298, 301 (6th Cir. BAP 2004); In re Guilbeau, 74 B.R. 13, 14 (Bankr. W.D. La. 1987). It has a "preclusive effect [that] forecloses litigation of any issue that was actually litigated or necessarily determined by the confirmation order." Bullard v. Blue Hills Bank, 575 U.S. 496, 135 S.Ct. 1686, 1692 (2015). After confirmation, the plan defines the rights of creditors and the responsibilities of the debtor and "all rights and remedies must be determined with reference to the plan." In re Van, 612 B.R. 893, 901 (Bankr. N.D. Ill. 2020). This remains true, even if the plan is contrary to the provisions of the Bankruptcy Code and Rules of Procedure. See, United States Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 130 S.Ct. 1367 (2010). The res judicata effect of confirmation includes "issues of adequate protection, and whether the property in question is necessary to the successful rehabilitation of the Chapter 13 debtor." Matter of Willey, 24 B.R. 369 (Bankr. E.D. Mich. 1982); In re Patterson, 107 B.R. 576, 578 (Bankr. S.D. Ohio 1989). See also, 8 Collier on Bankruptcy ¶ 1327.02[1][c] (16th ed. 2022); Keith M. Lundin, Lundin on Chapter 13, § 47, at ¶31, LundinOnChapter13.com (last visiting Mar. 6, 2023) ("debtor's best defense to an adequate protection request is a confirmed plan"). Those issues become irrelevant once the plan has been confirmed and, after confirmation, grounds for relief from stay are "generally limited to post confirmation defaults on the debtor's plan." In re Morrow, 495 B.R.

378, 387 (Bankr. N.D. Ill. 2013). See also, 8 Collier on Bankruptcy ¶ 1327.02[1][b] (16th ed. 2022).

Once one remembers the purpose of adequate protection, it becomes easier to understand why an issue such as adequate protection becomes irrelevant after a plan has been confirmed. Adequate protection is only a temporary measure. It is designed to protect the creditor's interest between the filing of the petition and confirmation of a proposed plan. See e.g., In re Walters, 203 B.R. 122, 123 (Bankr. S.D. Ill. 1996); In re Ragan, 140 B.R. 283, 285 (Bankr. D. Kansas 1992); In re Kessler, 86 B.R. 134, 136 (Bankr. C.D. Ill. 1988); Matter of Brock, 6 B.R. 105, 107 (Bankr. N.D. Ill. 1980). In connection with confirmation the court evaluates the plan's treatment of creditors against the standards set out in the Code – including whether the plan's provisions adequately protect secured creditors, 11 U.S.C. § 1325(a)(5)(B)(iii)(II) – and, if it meets those standards, confirms the plan. See, 11 U.S.C. § 1325(a). The sufficiency of the plan to safeguard a creditor's interest is an issue "necessarily determined by . . . confirmation." Bullard, 135 U.S. at 1692. Once confirmed, the plan's provisions for the treatment of creditors replace preconfirmation arrangements, Walters, 203 B.R. at 123; Kessler, 86 B.R. at 136; see also, Keith M. Lundin, Lundin on Chapter 13, § 120.2, at ¶ 2, LundinOnChapter13.com (last visited Mar. 6, 2023) and the confirmed plan becomes "the exclusive and transcendent relationship between the debtor and the creditor." In re Wellman, 322 B.R. 298, 301 (6th Cir. BAP 2004). Issues such as adequate protection, equity and necessity are res judicata and a creditor "[may not] assert any other interest than that provided for [it] in the confirmed plan." Id. See also, In re Evans, 30 B.R. 530, 531 (9th Cir. BAP 1983).

As the more specific provision, § 1327(a), takes precedence over more general provisions of the Bankruptcy Code, such as § 362. Patterson, 107 B.R. at 578. See also, Keith M. Lundin, Lundin on Chapter 13 § 120.2, at ¶70, LundinOnChapter13.com (last visited Mar. 6, 2023)

("1327(a) trumps the rights of sleeping creditors"). "Section 1327 bars a secured creditor from seeking relief from the stay of § 362 absent a post confirmation default in carrying out the plan." Evans, 30 B.R. at 531. See also, In re Harvey, 213 F.3d 318, 321 (7th Cir. 2002) ("permitting one of the creditors to launch a later attack on a confirmed plan would destroy the balance of interests created in the initial proceeding."). After confirmation, creditors are limited to asserting the interests provided for in the plan, Matter of Lewis, 8 B.R. 132, 137 (Bankr. D. Idaho 1981), and "cause [for relief from stay] may only be predicated upon matters accruing after . . . confirmation," In re Clark, 38 B.R. 683, 684 (Bankr. E.D. Pa. 1984), such as a default under the plan, willful waste, the failure to insure collateral or some other significant post confirmation event. See, Id. at 685 n. 3; In re Wellman, 322 B.R. 298, 301 (6th BAP 2004); In re Morrow, 495 B.R. 378, 387 (Bankr. N.D. Ill. 2103); In re Minzler, 58 B.R. 720, 721 (Bankr. S.D. Ohio 1993); Wiley, 24 B.R. at 375.

This conclusion does not really give the debtors a windfall, as some have argued. Through their plan the debtor expected to fully pay all his creditors, including Gaeta, and emerge from bankruptcy owning his vehicle unencumbered by Gaeta's lien. Because Gaeta did not file a claim that will not happen. Debtor's other creditors benefit because they should be paid sooner than anticipated, but Gaeta's lien will survive the bankruptcy and after these proceedings have been concluded the debtor will have to deal that lien and Gaeta's right to enforce it at that time. Even if this would be considered a windfall to the debtor, the fact that a statute may produce a result viewed as more favorable to one party than another is not a reason to refuse enforce the statute.

"[C]reditors are obligated to take an active role in protecting their claims." In re Szostek, 886 F.2d 1405, 1414 (3rd Cir. 1989). "A secured creditor cannot simply absent itself from the bankruptcy process in chapter 13, then hope to obtain easy relief from the automatic stay after confirmation." Macias, 195 B.R. at 662 n.3. Neither should creditors expect debtors to do for

them that which they can do themselves, such as file a claim. In re Humphrey, 309 B.R. 777, 782 (Bankr. W.D. Mo. 2004). Gaeta "was not entitled to stick its head in the sand and pretend it would not lose any rights by not participating in the proceedings." Matter of Pence, 905 F.2d 1107, 1109 (7th Cir, 1990). Not filing a claim has consequences, see, Matter of Waldschmidt, 605 B.R. 860 (Bankr. N.D. Ind. 2019); Matter of Burns, 566 B.R. 918 (Bankr. N.D. Ind. 2017); In re Baldridge, 232 B.R. 394, 396 (Bankr. N.D. Ind. 1999), and "a creditor who elects not to file a claim also elects not to be paid under a plan." Macias, 195 B.R. at 662.

Whether cause exists to terminate the automatic stay is a matter committed to the court's discretion. Matter of Williams, 144 F.3d 544, 546 (7th Cir. 1998) ("although [§ 362(d)] is written in mandatory terms, the bankruptcy court has discretion whether and to what extent it will grant relief from the stay"); Matter of C&S Grain Co., Inc., 47 F.3d 233, 238 (7th Cir. 1995); Matter of Holtkamp, 669 F.2d 505, 507 (7th Cir. 1982). Granting "relief from the stay based on a creditor's choice to forgo distributions under the plan is a dangerous distortion of the Code," Keith M. Lundin, Lundin on Chapter 13, § 124.2, at ¶ 18, LundinOnChapter13.com (last visited Mar. 6, 2023), and not something the court is inclined to do. Accord, In re Humphrey, 309 B.R. 777 (Bankr. W.D. Mo. 2004); In re Macias, 195 B.R. 659 (Bankr. W.D. Tex. 1996).

Gaeta Auto Sales' motion for relief from stay will be denied. An order doing so will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court