BANKRUPTCY: ENFORCING A CHAPTER XIII WAGE EARNER'S PLAN OVER THE OBJECTION OF A SECURED CREDITOR.

As part of a petition under Chapter XIII of the Bankruptcy Act, Edward Cheetham submitted a wage earner's plan[1] to a referee in bankruptcy. Although Universal C.I.T. Credit Corp. [hereinafter referred to as C.I.T.] was listed as a secured creditor in Cheetham's plan, no further mention was made of the corporation. C.I.T. rejected the plan and proposed to take back its security, an automobile in Cheetham's possession. The referee confirmed the plan over C.I.T.'s objection and denied C.I.T.'s petition for reclamation. Upon appeal, the district court reversed on the grounds that C.I.T.'s acceptance was a condition precedent to proper confirmation of the plan. In its opinion, the court focused on the following provision of Chapter XIII:

> [A wage earner's plan may not be confirmed until] it has been accepted in writing . . . by the secured creditors whose claims are *dealt with by the plan.*[2]

The lower court interpreted the statutory words broadly, holding, in effect, that *all* secured creditors were "dealt with" unless the plan expressly provided for payment to the rejecting secured creditor in strict accordance with the terms of his contract. The court reasoned that once a plan was confirmed, there were numerous ways in which a Chapter XIII proceeding might permit a

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1. A Chapter XIII Wage Earner's Plan is a federal statutory alternative to ordinary bankruptcy. Bankruptcy Act, 11 U.S.C. §§ 1001-86 (1964). Its remedy is limited to the working man, (i.e. one who earns his livelihood by wages, salary or commissions). Two major features of the remedy are that (1) it is voluntary for the debtor, and (2) debts are paid out of future wages. By contrast, "straight" bankruptcy involves a liquidation of the bankrupt's assets, distributing the proceeds to his creditors. Under Chapter XIII, the debtor usually keeps all of his property, but, with the assistance of an attorney, formulates a plan whereby his creditors are repaid out of expected earnings. Payments are distributed through a court-appointed trustee over a period, generally, not to exceed three years. The usual case involves an extension-in-time of his debts, although there are provisions for a composition. Hence the statutory remedy is an attempt to rehabilitate a working man who has hopelessly over-extended his credit, yet honestly desires to repay his debts, rather than avoid them. For a concise review see Benson, *Wage Earner Plans in Bankruptcy Court,* 41 MICH. STATE B.J. 10 (1962). For a more thorough treatment see C. NADLER, THE LAW OF DEBTOR RELIEF, §§ 404-598 (1954) (Supp. 1966). An excellent student comment appears in Note, *Chapter XIII of the Bankruptcy Act: As Maine Goes, So Should the Nation,* 5 SAN DIEGO L. REV. 329 (1968).

2. Bankruptcy Act, 11 U.S.C. § 1052(1) (1964) (emphasis added).

secured creditor's interest to be "affected";[3] hence it was unrealistic to claim that he was not being "dealt with." For example, the bankruptcy court acquires exclusive jurisdiction over the debtor's[4] property. Any action a secured creditor might take to reclaim his security must be approved by that court. Cheetham's plan contained no provision protecting C.I.T.'s contract rights, and therefore it was improper to confirm the plan without C.I.T.'s written acceptance.

Cheetham appealed to the First Circuit Court of Appeals, *held*, reversed. The lower court erroneously looked outside of the plan to find ways in which C.I.T. had been "realistically" dealt with.[5] The First Circuit court adopted the narrow interpretation of "dealt with" to limit its meaning to a situation in which the adverse effect upon a secured creditor appeared on the face of the plan. Cheetham did not "deal with" C.I.T. because he elected not to do so in his plan. Accordingly, written acceptance by a secured creditor was not a prerequisite to confirmation unless the plan *expressly limited the amount recoverable on the secured claim or restricted the security interest.*

The adverse effects considered by the district court arose from operation of the Bankruptcy Law, not from the plan as such. Adequate protection of the interests of non-assenting secured

3. The lower court in *Cheetham* used the word "affected" synonymously with "dealt with." *In re* Cheetham, 272 F. Supp. 501, 505 N.7 (D. Me. 1967).

4. One who files a petition under Chapter XIII is, in accordance with the objectives of the statute, designated "debtor" rather than a "bankrupt" to avoid the stigma attached to that term. Bankruptcy Act, 11 U.S.C. § 1002 (1964).

5. The district court enumerated several ways in which C.I.T. was "affected" and therefore "dealt with":

> [C]osts of administration, and claims of assenting secured creditors had priority over claims of nonassenting secured creditors; nonassenting secured creditors would receive payment only after their claims were "perfected and established," and then only "in such a manner as may be proved or allowed" by the court; and payments could be temporarily reduced or suspended by the court without notice to the creditors.

Cheetham v. Universal C.I.T. Credit Corp., 390 F.2d 234, 236 (1st Cir. 1968).

What this amounted to was an enumeration of statutory provisions which authorized a secured creditor's interest to be affected. Cheetham attempted to avoid the result reached by the lower court by inserting the following provision in his plan:

> Secured claims; Nothing is proposed by this plan which may materially and adversely affect the interest of any creditor having a valid security interest in any of the debtor's property. Any secured claim, as proved and allowed which may be materially and adversely affected, shall not be dealt with by this plan until such time as a written acceptance from such creditor is filed with the court.

Id. at 235.

creditors could be furnished by proceedings subsequent to confirmation. The mere inconvenience of having to resort to such proceedings should not be sufficient grounds to preclude confirmation. *Cheetham v. Universal C.I.T. Credit Corp.*, 390 F.2d 234 (1st Cir. 1968).

I. Purpose of the Wage Earner's Plan

In the Bankruptcy Act of 1898, there was no effective provision for the wage earner who desired to pay his debts through composition or extension.[6] Chapter XIII of the Bankruptcy Act, popularly known as the Wage Earner's Plan, filled this gap by providing the working man with a statutory remedy whereby he could repay his debts through an amortization program.[7] By means

6. Jan. 11, 1933 President Hoover noted the fundamental weakness of the Act.

> Under existing law, even where majorities of the creditors desire to arrange fair and equitable readjustments with their debtors, their plans may not be consummated without prohibitive delay and expense, usually attended by the obstruction of minority creditors who oppose such settlements in hope that the fear of ruinous liquidation will induce the immediate settlement of their claims. H.R. Doc. No. 522, 72d Cong., 2d Sess. 2 (1933).

The Supreme Court also noted this weakness.

> Although statutory relief for the financially distressed wage earner had been available to some extent as early as the Bankruptcy Act of 1867, 14 Stat. 517, Congress found in its study prior to the 1938 revision of the bankruptcy laws that there were no effective provisions for the complete repayment of the wage earner's debts suited to his problems. . . . For example, compositions under § 12 of the 1898 Act, 30 Stat. 549, were available to the wage earner, but the relief afforded was unsatisfactory. Section 12 proceedings, which were primarily adaptable for use by business entities, were disproportionately expensive in view of the small sums ordinarily involved in wage-earner cases; they lacked flexibility; and they did not provide for jurisdiction of the court subsequent to confirmation.

Perry v. Commerce Loan Co., 383 U.S. 392, 394 (1966).

See also, In re Perry, 272 F. Supp. 73, 77-83 (D Me. 1967).

7. Chapter XIII was enacted as part of President Franklin Roosevelt's "forgotten man" program which he promised the country in his campaign for president in 1932. *See* Haden, *Chapter XIII Wage Earner Plans—Forgotten Man Bankruptcy*, 55 KY. L.J. 564 (1967). Generally the Wage Earner's Plan has been advocated by writers as more advantageous to both creditor and debtor than straight bankruptcy. Its existence is based on the presumption that some if not most wage earners want to pay their debts, thereby maintaining an honorable credit standing. Creditors benefit by full or near full payments as opposed to virtually no realization of their claims under a normal bankruptcy proceeding in which the debtor has no assets. *See* note 10 *infra*. *See generally* Hilliard & Hurt, *Wage Earner Plans Under Chapter XIII of the Bankruptcy Act*, 19 BUS. LAW. 271 (1963); Nadler, *Rehabilitation of the Insolvent Wage Earner Under the Bankruptcy Act: A Challenge to Minnesota*, 42 MINN. L. REV. 377 (1958); 5 SAN DIEGO L. REV. 329 (1968), *supra* note 1. Because of these apparent advantages it has been the hope of many writers that, for wage earners, Chapter XIII would become the rule and bankruptcy the exception. *E.g.*,

of the Act, Congress clearly intended to rehabilitate the insolvent wage earner by encouraging him to pay his debts in full rather than avoid them by seeking a discharge in straight bankruptcy.[8] To accomplish this goal, the statute provided a framework within which the bankruptcy court could regulate the rights of secured creditors.[9] Otherwise, a secured creditor would be free to upset a plan for extension by foreclosing or repossessing his security (even when the secured property might be essential to the operation of the plan) and thus probably force the debtor into straight bankruptcy, to the detriment of other creditors, as well as the debtor.[10] Nevertheless, as one writer maintained, "[t]he trouble courts have had with the Act makes it evident that the specific intent of Congress as to secured creditors has not been made clear."[11] The divergent views expressed by the lower and circuit courts in the instant case exemplify this confusion.

Hilliard & Hurt, *supra*, at 275.

Today, consumer bankruptcy has reached a critical stage; well over 90% of all the bankrupticies filed are a result of personal insolvencies rather than business failures. O'Neill, *Wage Earner's Plan, Chapter XIII*, 27 FED. BAR J. 157 (1967); 5 SAN DIEGO L. REV. 329, 332 nn.34, 35 (1968) *supra* note 1. Proponents of Chapter XIII advocate a wider use to reverse the trend before the economy of the country is devastated. *See generally* Bobier, *Chapter XIII—Mecca or Mirage*, 32 THE DETROIT LAWYER 25 (1964); 18 PERSONAL FINANCE L.Q. REP. 41 (1964); 5 SAN DIEGO L. REV. 329 (1968) *supra* note 1. *Contra, see* Walker, *Is Chapter XIII a Milestone on the Path to the Welfare State?*, 33 REF. J. 7, 9 (1959). The article academically dissents from the majority of writers to emphasize the fact that Chapter XIII is not a panacea for all the problems of personal insolvencies. *See also* 34 FORDHAM L. REV. 528 (1966), for a student comment concluding that Chapter XIII is too loosely written and needs revision. The major problem is that the secured creditor's status is not clearly defined.

Despite its wide advocacy, use of the Wage Earner's Plan has been minimal. Less than 17% of the bankruptcy filings in 1967 were Chapter XIII filings. 5 SAN DIEGO L. REV. 329, 344 & n.89 (1968), *supra* note 1. Ignorance of the existence of this remedy has been advanced as the primary reason for its disuse. C. NADLER, THE LAW OF DEBTOR RELIEF § 381 (1954). As suggested in 34 FORDHAM L. REV. 528 (1966) *supra*, the uncertain status of the secured creditor may be an additional reason for its disuse by those attorneys who are familiar with the statute. After working diligently on a Chapter XIII petition, if a secured creditor is allowed to reclaim an essential item of the wage earner's property, forcing him into bankruptcy, an attorney may hesitate before taking the Chapter XIII route.

8. Perry v. Commerce Loan Co., 383 U.S. 392, 395 (1966).

9. *See generally* Bankruptcy Act, 11 U.S.C. §§ 1011, 1014, 1057 (1964). One of the principal reasons section 12 of the Bankruptcy Act of 1898 was infrequently employed was because no attempt had been made to regulate the rights of secured creditors. *See* 6 COLLIER ON BANKRUPTCY § 0.03 (14th ed. 1965).

10. Perry v. Commerce Loan Co., 383 U.S. 392, 395 (1966). In a majority of cases the wage earner has no assets and hence there is little distribution in a straight bankruptcy proceeding. 5 SAN DIEGO L. REV. 329, 339 & n.63 (1968), *supra* note 1.

II. Confirmation of the Plan

Courts often face a dilemma when secured creditors reject a wage earner's plan. As will be seen, the total impact of the statutory scheme is that all secured creditors are bound by such plans. Nevertheless, the statute also requires that any secured creditor "dealt with" by the plan must give written assent before it may be confirmed by the court.[12]

Essential to an adequate appreciation of the problem is an understanding of how the rejecting secured creditor is affected or bound by the wage earner's plan. If a secured creditor is omitted from a plan, either because he rejects it (desiring to reclaim his security) or because the wage earner elects to deal with him outside of the plan, he no longer enjoys unlimited freedom to pursue his rights in an action to foreclose or repossess his security;[13] the rejecting creditor is constrained to seek approval from the bankruptcy court. This is true for two reasons: (1) All of the debtor's property comes under the exclusive jurisdiction of the court in which a Chapter XIII petition is filed;[14] and (2) that court has been granted the power to enjoin or stay any act or proceeding to enforce any lien upon the property of a debtor.[15] When a protesting secured creditor's petition to reclaim his security is denied, the reason generally advanced by a court is that retention of the property by the debtor is necessary to the success of the plan.[16] If the trustee or debtor thereafter elects not to pay the creditor in accordance with the original agreement, the creditor's only remedy

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11. D. COWANS, BANKRUPTCY LAW AND PRACTICE, § 99 (Supp. 1968).

12. Bankruptcy Act, 11 U.S.C. § 1052(1) (1964).

13. Two provisions of Chapter XIII which limit this freedom are Section 611:

> Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located, and of his earnings and wages during the period of consummation of the plan.

and Section 614:

> The court may, in addition to the relief provided by section 29 of the Act and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits other than suits to enforce liens upon the property of a debtor, and may, upon notice and for cause shown, enjoin or stay until final decree any act or commencement or continuation of any proceeding to enforce any lien upon the property of a debtor.

Bankruptcy Act, 11 U.S.C. §§ 1011, 1014 (1964).

14. *Id.*

15. *Id.*

16. *See, e.g.*, Hallenbeck v. Penn Mutual Life Ins. Co., 323 F.2d 566, 572 (4th Cir. 1963); *In re* Garrett, 203 F. Supp. 459, 461 (N.D. Ala. 1962).

is to renew his petition to foreclose or repossess the secured property.[17] The lower court in *Cheetham* reasoned that through the *provisions of the statute*, the *court* can adversely affect the rejecting secured creditor by its exclusive jurisdiction and injunctive powers. Therefore, it was unrealistic to say that *any* of the secured creditors were not being "dealt with."[18] The court was persuaded by the following rule established in *In re O'Dell*.[19]

> [A] plan proposed Chapter XIII which does not provide for assumption of executory contracts by the trustee or otherwise make provision for the payment of the claims of secured creditors according to the terms of the instrument creating the debt, does deal with such claims. A plan without such provision should not be confirmed unless accepted by the secured creditors.[20]

This view makes a secured creditor's contract rights inviolable in a Chapter XIII proceeding. The legal effect is to grant every secured creditor a veto power over confirmation of a wage earner plan, unless the debtor agrees to make full payments according to his contract.[21] If the security was vital to the debtor, one which he could not reasonably sacrifice and still continue his plan, he would be forced into straight bankruptcy because he could not meet the demands of the rejecting secured creditor.[22]

The Wage Earner's Plan was enacted to fulfill the need for a workable remedy for the rehabilitation of wage-earner debtors. It would seem inconsistent with this objective to give one secured creditor the power to upset confirmation of a plan, forcing the debtor into bankruptcy to the substantial detriment of other creditors. Further, such a veto power would violate the rule of construction set forth in *Perry v. Commerce Loan Co.*;[23] when the meaning of words in Chapter XIII lead to absurd or futile results, the court will look beyond such words to the purpose of the Act.[24] To adopt the lower court's interpretation would seem to lead to an

17. *See In re* Duncan, 33 F. Supp. 997, 998 (E.D. Va. 1940).

18. *Compare In re* Cheetham, 272 F. Supp. at 507 *with* Cheetham v. Universal C.I.T. Credit Corp., 390 F.2d at 237.

19. 198 F. Supp. 389 (D. Kan. 1961).

20. *Id.* at 391.

21. Cheetham v. Universal C.I.T. Credit Corp., 390 F.2d at 237.

22. *See* Brown, *A Primer on Wage-Earner Plans Under Chapter XIII of the Bankruptcy Act*, 17 BUS. LAW. 682, 690-91 (1962).

23. 383 U.S. 392 (1966).

24. *Id.* at 400.

incongruous result—an historical retrogression to a period when no effective remedies had been devised to rehabilitate the wage earner. Under *Cheetham*, a rejecting secured creditor may block confirmation *only* if the plan expressly limits his claim or decreases the value of his security. Conversely, if a majority of unsecured creditors accept it, a debtor may obtain confirmation over the objection of a secured creditor by simply omitting any provisions which adversely affect that secured creditor's interest.

In *In re Rutledge*,[25] for example, the district court found that the proposed plan would make a rejecting secured creditor, Worthen Bank & Trust Co., an involuntary participant in the plan. Although full current payments were to be paid as they fell due, the referee's order allowed delinquent payments to be made within a "reasonable length of time." The court avoided giving Worthen a veto power against confirmation by remanding the case "so that the plan may be amended so as not to include Worthen in its provisions . . . ."[26]

Because several prior cases had avoided the problem posed by *O'Dell*, the holding in the *Cheetham* case is not revolutionary. *In re Rutledge* permitted a debtor to side-step the otherwise harsh result of allowing a creditor to defeat the plan. However, this method of amendment is limited to cases which come to the court on review *prior* to confirmation. *In re Wilder*[27] affirmed confirmation of a plan which included a protesting secured creditor, Sterchi Brothers Stores, Inc., but did not provide for two delinquent payments of $36.75. The court deemed such an alteration of the creditor's contract merely nominal and applied the principle of *de minimis non curat lex*. Still, *Cheetham* is the first instance in which a court squarely faced the fact that *O'Dell* created an unnecessary problem as to confirmation, and therefore rejected it.[28] However, as will be seen, *Cheetham* merely postponed C.I.T.'s power to destroy the plan. The real problem was left unresolved: In order to effectuate

25. 277 F. Supp. 933 (E.D. Ark. 1967).

26. *Id.* at 936.

27. 225 F. Supp. 67 (M.D. Ga. 1963).

28. Cheetham v. Universal C.I.T. Credit Corp., 390 F.2d at 237. A bill which in fact rejected the *O'Dell* interpretation was introduced in the House of Representatives on January 17, 1967. However, it died in the House Judiciary Committee. The proposed amendment to Section 646(2) read as follows:

> [I]f any secured creditor does not accept, the provisions of the plan dealing with his rights shall be excluded from the plan and he shall not be affected thereby.

H.R. 2520, 90th Cong., 1st Sess. 7 (1967).

the purpose of the Act, how far may a secured creditor be kept at bay? When equitable considerations indicate the decision is reasonable, may a bankruptcy court enjoin a creditor from foreclosing or repossessing his secured property although the debtor has not strictly complied with the security agreement?

III. The Injunctive Power

In its dictum, *Cheetham* affirmed a portion of *Hallenbeck v. Penn Mutual Life Ins. Co.*,[29] which formulated three prerequisites for the exercise of the court's power to enjoin a creditor from foreclosing or repossessing his security. The third precondition, quoted in *Cheetham*, is that:

> [T]he owner of the secured indebtedness must not be required to accept less than the *full periodic payments specified in his contract*.[30]

By affirming this requirement, *Cheetham* is impliedly guaranteeing that C.I.T. will receive "full periodic payments" outside of the confirmed plan, or be allowed to reclaim the automobile (in which case Cheetham may be forced into bankruptcy). If Mr. Cheetham makes full payments, however, the court will probably enjoin C.I.T. from repossessing its security.

(A) Precondition of "full periodic payments."

Hallenbeck articulated a rule of law which the majority of prior Chapter XIII cases had adhered to in principle.[31] In *In re Copes*,[32] the same court which decided *O'Dell*, held that a rejecting secured creditor was entitled either to the benefits of his contract or the return of his security.[33] Two other cases were in substantial agreement on this point.[34]

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29. 323 F.2d 566 (4th Cir. 1963).

30. *Id.* at 572 (emphasis added).

> [I]n addition to usual equitable considerations, including the debtor's good faith in submitting a plan and ability to perform it, at least three conditions should be met before this injunctive power may be exercised: (1) The injunction or stay must be necessary to preserve the debtor's estate or to carry out the Chapter XIII plan; (2) the granting of the injunction must not directly or indirectly impair the security of the lien; and (3) the owner of the secured indebtedness must not be required to accept less than full periodic payments specified in his contract. *Id.*

31. *Id.*

32. 206 F. Supp. 329 (D. Kan. 1962).

33. *Id.* at 330.

34. *In re* Papas, 216 F. Supp. 819, 823 (S.D. Ohio 1962); Interstate Finance Corp. v. Scrogham, 265 F.2d 889, 891 (6th Cir. 1959).

Nevertheless, one prior case allowed an injunction to issue without requiring that all the terms of the secured creditor's contract be strictly met. The court in *In re Duncan*[35] upheld an injunction of the referee restraining the seller of a frigidaire from reclaiming it. The debtor proposed to continue payments of $6.90 a month, but the seven or eight payments in arrears were not required to be paid immediately. In effect, the court created an extension-in-time for the defaulted payments. In meeting the contention that there was an unconstitutional taking of property in violation of the fifth amendment, the court cited a Supreme Court case[36] which authorized even greater property rights to be restricted by restraining a mortgage creditor from foreclosing.

If the *Hallenbeck* "full periodic payments" requirement permits an extension of defaulted payments as in *Duncan*, it admits that the court has authority to order a reasonable curtailment of the secured creditor's contract rights in order to prevent a wage earner plan from failing. On the other hand, if *Hallenbeck's* precondition means that *all defaulted payments* must be paid before a court will restrain a secured creditor from taking back his security, it adheres to the *O'Dell* rationale that the secured creditor's contract rights are unassailable.

(B) The partially secured creditor.

One argument against the *Hallenbeck* prerequisite of "full periodic payments" is that it does not distinguish between a

35. 33 F. Supp. 997, 998-99 (E.D. Va. 1940).

36. Wright v. Union Central Life Ins. Co., 304 U.S. 502 (1938). The case involved the constitutionality of Section 75(s) of the Bankruptcy Act, which sought to rehabilitate the farmer-mortgagor. The Supreme Court declared:

> Bankruptcy proceedings constantly modify and affect the property rights established by state law.
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> . . . .
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> Property rights do not gain any absolute inviolability in the bankruptcy court because created and protected by state law. Most property rights are so created and protected. But if Congress is acting within its bankruptcy power, it may authorize the bankruptcy court to affect these property rights, provided the limitations of the due process clause are observed.

Id. at 517, 518.

It is suggested that by "due process" the Court means that the creditor must be given notice and an opportunity to be heard throughout the bankruptcy proceeding, and that adequate safeguards are provided in order to protect the value of the security.

Certainly the constitutional grant of authority over the subject of bankruptcy permits Congress to impair contractual obligations in order that the objectives of law may be achieved. Hanover National Bank v. Moyses, 186 U.S. 181, 188 (1902).

partially and a fully secured creditor. For example, D owes C $1,000 which is secured by a reasonably necessary household item, a refrigerator, valued at $500. The debt is to be paid in monthly installments of $100 each. Practically speaking, C has a secured claim of only $500 and an unsecured claim of $500. It would be unfair to other unsecured creditors for C to be guaranteed $100 a month when only one-half of the debt is secured.[37] Section 646(1) of the Bankruptcy Act[38] plainly requires that all unsecured debts be treated alike.[39]

(C) An injunction may issue when necessary to meet the ends of equity and justice.

A further argument against the *Hallenbeck* prerequisite is that it severely limits the broad injunctive power granted the court to ensure success of a wage earner's plan. The statute does not specify when the injunctive power may be utilized.[40] *In re Pizzolato*[41] provides a broad rule: An injunction may issue when, in the sound discretion of the court, it is necessary to meet the ends of equity and justice.[42] In that case, Mrs. Pizzolato filed a Chapter XIII petition in which a bank, as a secured creditor, was technically "dealt with"; only current full payments of $70 per month were provided for, but no provision was made for the "balloon payment" of $435.30 as a final payment. As her payments were in default, the bank rejected the plan and filed a petition for reclamation. The referee denied the petition. When the bank sought review on the order of the referee, the district court affirmed the referee's injunction but remanded the case for modification of the plan to require $70 monthly payments to be continued until the "balloon payment" of $435.30 was paid with interest. The equitable considerations were as follows:

(1) The security was a three year old Dodge automobile required by Mrs. Pizzolato to get to work. Her husband was an unemployed disabled veteran receiving some compensation from the Veterans Administration.

(2) She had a considerable equity in the automobile.

37. *See* Brown, *supra* note 22.

38. Bankruptcy Act, 11 U.S.C. § 1046(1) (1964).

39. *In re* Bailey, 188 F. Supp. 47, 49 (N.D. Ala. 1960).

40. *See* material cited note 13 *supra*.

41. 268 F. Supp. 353 (W.D. Ark. 1967).

42. *Id.* at 356.

(3) Payments to the bank would not be *seriously* delayed, hence the bank was not materially and adversely affected.

(4) Mrs. Pizzolato, who was honestly trying to retire her debts, would be forced into bankruptcy if the bank's petition were granted.

(5) If she were forced into bankruptcy, the other secured creditors would recover virtually nothing.

In balancing the interest of a social policy which favors Chapter XIII (as more beneficial to creditors generally) and the personal interests of the secured creditor, *Pizzolato* reasoned that it was *highly unlikely* that value of his security would be impaired. The market price of the automobile was more than double the amount of the debt. If the plan failed, and the debtor converted her wage earner plan into an ordinary bankruptcy proceeding, the bank would almost certainly realize the full amount of its debt.

Admittedly, when a creditor's rights under a security agreement are denied in order to ensure the success of a wage earner's plan, it is at the expense of the secured creditor.[43] For example, if Mrs. Pizzolato negligently permitted her automobile insurance to lapse, and the car was then destroyed, the court's ruling would reduce the bank to an unsecured status. But if the risk of loss is minimal, it appears reasonable to allocate this relatively small burden to the secured creditor rather than place an otherwise socially useful remedy at his mercy.

Pizzolato demonstrates that when equitable considerations demand it, the court may permit some delay in the exercise of a secured creditor's contract rights.[44] Further, the overriding policy of encouraging the debtor to pay his debts in full, to the general gain of creditors, may require that the principle, originated in

43. Several courts will not allow the contract rights of a secured creditor to be modified in a Chapter XIII proceeding, presumably because he has taken the precaution of obtaining security for his debt, and it must therefore be duly honored. See notes 31-34 *supra.*

The argument that a denial of rights under a security agreement is at the expense of the secured creditor would not be valid, however, if the debt was only partially secured. Realistically, it is to the partially secured creditor's benefit to enjoin him from foreclosing or repossessing his security. A wage earner's plan carried to a successful completion will give the partially secured creditor full satisfaction of his debt. Whereas, if he repossesses the secured property, he realizes only a portion of his debt, and the unpaid portion may never be satisfied if the debtor should be forced into straight bankruptcy.

44. It is suggested that future courts might find equitable considerations which would allow them to order partial current payments to a rejecting secured creditor, so long as his security is not substantially impaired.

ordinary bankruptcy that the security agreement of a creditor must be duly honored, be relaxed.

IV. Conclusion

Although the Wage Earner's Plan has been infrequently used, it offers at least a partial solution to the ever-increasing consumer bankruptcy problem. *Cheetham's* interpretation of the statutory words "dealt with" is one which contributes to a wider use of Chapter XIII without violating the intent of Congress. The *Cheetham* rule permits a debtor to avoid the veto power of a secured creditor against confirmation by omitting him from the plan.

Yet by adopting the uncertain *Hallenbeck* criterion as to when an injunction may properly issue, *Cheetham* appears conservative, tending to protect the strict contractual rights of the secured creditor. A more flexible rule as declared in *Pizzolato* seems fair to the secured creditor without handicapping the effectiveness of the remedy.

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