UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: GRANVILLE WAYNE RIDGE AND KAREN H. RIDGE, Debtors.	CASE NO. 05-75189-CRM CHAPTER 13 JUDGE MULLINS
GRANVILLE WAYNE RIDGE AND KAREN H. RIDGE, Movants, v. UNION ACCEPTANCE CORPORATION, Respondent.	CONTESTED MATTER

ORDER

THIS MATTER is before the Court on an Objection to Claim (the "Objection") (Doc. No. 19). Granville Wayne Ridge and Karen H. Ridge (the "Debtors") filed their Chapter 13 petition on August 22, 2005 (Doc. No. 1). Debtors' plan was confirmed on January 10, 2006 (Doc. No. 16). The plan provides that the claims of secured creditors, whose claims have been filed and allowed, shall be paid to the extent of the value of their security on a pro-rata basis, or in such monthly amounts that are approved or modified by the Court at the confirmation hearing. The plan further provides that unsecured creditors shall receive a 1% distribution.

Union Acceptance Corporation ("Union") has a title lien on Debtors' 1996 Chevy Impala. On September 12, 2005, Union filed a proof of claim for $15,972.78, listing a secured claim of $7,295.00 and an unsecured claim of $8,677.78. Debtors scheduled the Union obligation for

$19,034.28, of which $12,948.58 was secured. The vehicle was involved in an accident post-confirmation and deemed a total loss by Progressive Insurance. At the time of the accident, Debtors had full coverage automobile insurance with Union listed as the loss payee. At the time of the insurance settlement, the balance of the secured portion of the claim was $5,345.08 and the balance of the unsecured portion of the claim was $8,677.78. On March 5, 2007, Union transferred the claim to Roundup Funding LLC ("Roundup"). On March 13, 2007, Roundup filed an amended proof of claim to reflect an unsecured claim for $4,427.12 and a secured claim for $11,545.66, for a total of $15,972.78. It is undisputed that Progressive Insurance paid Roundup the amount of $11,545.66 through B-Line LLC, the assignee to whom Union transferred the claim.

Debtors filed their Objection to Union's proof of claim on February 12, 2007. In the Objection, the Debtors requested that the Chapter 13 trustee ("trustee") withhold disbursements to Union based on its proof of claim and sought an order requiring that the funds received be returned to the trustee for proper disbursement. Roundup responded to the Objection, (Doc. No. 21), contending that Union's proof of claim was an estimation, made without knowledge of the vehicle's actual mileage, condition or improvements. Further, Roundup argues that Union's security agreement with Debtors granted Union a security interest in all "proceeds of any insurance policies or service contracts on the [vehicle]." Roundup agreed to return $2,468.94 to the trustee as an overpayment of the secured portion of its claim.

The issue before this Court is whether the proceeds from the Debtors' insurance policy are property of the estate. Debtors argue that the proceeds are property of the estate and, therefore, Union and its assignee are entitled only to the balance of the allowed secured claim. On the contrary, Roundup argues it is entitled to the full amount of the insurance proceeds because its transferor was named as the loss payee.

Both parties rely heavily on In re Huff, 322 B.R. 661 (Bankr. M.D. Ga. 2005). In Huff, Americredit Financial ("Americredit") was owed a debt of $14,357.00 secured by a first priority security interest in the debtor's automobile. The plan was confirmed and the car was valued at $7,025.99 for purposes of repayment under the plan. Post-confirmation, debtor's vehicle was totally destroyed in an automobile accident. The insurance proceeds due and payable were $5,180.35. The debtor filed a motion seeking authority to use the insurance proceeds to purchase another vehicle. The bankruptcy court denied the debtor's motion and found that Americredit, as named loss payee, was entitled to all the insurance proceeds. The Huff court based its analysis on whether the debtor had an interest in the proceeds. Id. at 664. First, the court noted that under section 541(a)(6) of the Bankruptcy Code, interests include "proceeds, product, offspring, rents, or profits of or from property of the estate." Id. Further, the court stated that where insurance proceeds are determined to be property of the bankruptcy estate, "the confirmed Chapter 13 Plan will dictate how the proceeds are to be disbursed." Id. The court concluded that "where both the debtor (via the bankruptcy estate) and the secured creditor (via the insurance policy) have an interest in the insurance proceeds, the secured creditor shall be paid the value of its interest in accordance with the confirmed Chapter 13 Plan and any remainder shall be paid to the debtor as the party in whom the automobile revested when the Chapter 13 plan was confirmed." Id. at 665.

Thus, because Union was listed as loss payee in the insurance policy, Roundup, as the assignee, has an interest in the insurance proceeds. However, Roundup is only entitled to the insurance proceeds up to the value of its interest in the vehicle when the plan was confirmed. At the hearing, Debtors argued that confirmation of the plan was *res judicata* as to the value of the secured portion of the claim ($7,295.00), as established at the meeting of creditors. This amount was also the original amount of Union's secured claim set forth in its proof of claim. In response, Roundup argues that *res judicata* does not apply because the confirmed plan does not

list a value or any type of payment for the secured creditors except for a change in the interest rate to 7.5%. Moreover, the confirmed plan states that the claim shall be paid to the extent of the value of the security. Roundup further argues that the value of its interest in the vehicle is $11,545.66, the vehicle's value at the time of the accident and the value listed in the amended claim.

The Debtors' argument that a secured creditor's interest in insurance proceeds is defined at the time of confirmation of the chapter 13 plan comports with 11th Circuit authority. In a case where there was a post-confirmation destruction of a vehicle, the 11th Circuit has held that the loss payee's interest is defined at the time of confirmation of the chapter 13 plan. Ford Motor Credit Co. v. Stevens (In re Stevens), 130 F.3d 1027, 1030 (11th Cir. 1997). In Stevens, Ford Motor Credit ("Ford") held a properly perfected security interest for $18,586.72 and was also named as loss payee in the debtor's insurance policy. Id. at 1028. In the debtors' confirmed plan, the bankruptcy court allowed the creditor's secured claim plus interest at a rate of 12% as provided by a local bankruptcy court rule. Id. After the vehicle was destroyed post-confirmation, the insurance company paid Ford the remaining debt of $14,967.42 with interest calculated at a rate of 13.5% as provided in the original note with the debtors rather than the 12% rate provided in the plan. Id. When this overpayment was combined with the principal payments that the creditor had already received from the trustee, Ford recovered $1,852.83 more than provided for by the plan. Id. The Court stated that "Ford's interest in the insurance proceeds flowing from the destruction of the secured collateral [was] only as great as its interest in the collateral itself." Id. at 1030. The 11th Circuit further found that "[s]ection 1327(a) of the Bankruptcy Code states that 'the provisions of a confirmed plan bind ... each creditor ... whether or not such creditor has objected to, has accepted, or has rejected the plan.'" Id. As a result, the Court held that Ford's interest "was defined at the time of confirmation of the Chapter 13 plan

as the remaining principal owed on the truck, with interest at a rate of 12%." Id. The Court concluded that while Ford was "certainly entitled to collect on its claim from the insurance proceeds as substitute collateral", it "was not entitled, however, to recover more than the amount of its secured claim as confirmed by the Chapter 13 plan." Id. at 1031. Likewise, it has also been held in the 11th Circuit that, with respect to section 1327(a), "a confirmed plan is res judicata as to any issues resolved or subject to resolution at the confirmation hearing. Among these issues is the amount of a secured claim." In re Meeks, 237 B.R. 856, 858-59 (Bankr. D. Fla. 1999). In this case, the secured claim at the time of confirmation was secured for $7,295.00 and Union did not object. Further, Union did not file an amended proof of claim prior to the confirmation hearing. Therefore, Roundup is entitled to recover only the amount of its secured claim at the time of confirmation of the plan. Accordingly,

IT IS ORDERED that the Debtors' Objection to Claim be and is hereby **SUSTAINED**.

IT IS FURTHER ORDERED that Roundup is required to return the insurance proceeds it was paid by Progressive in excess of its secured claim at the time of confirmation to the Chapter 13 trustee for proper disbursement. Roundup was paid $11,545.66 through Progressive and $2,468.94 through the trustee. The secured claim at the time of confirmation was secured for $7,295.00. Therefore, Roundup should return $6,719.60.

The Clerk of Court is directed to serve a copy of this Order upon Debtors, Debtors' counsel, the Respondent, the Chapter 13 trustee, and all parties in interest.

(SIGNATURES ON NEXT PAGE)

IT IS SO ORDERED, this 6 day of August, 2007.

C. RAY MULLINS
UNITED STATES BANKRUPTCY JUDGE