

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re
Andrea Estrada,
Debtor.

Chapter 13
Case No. 03-33013-svk

Memorandum Decision and Order on Motion for Relief from Stay

This case is governed by the Bankruptcy Code prior to the enactment of the amendments wrought by the Bankruptcy Abuse and Consumer Protection Act of 2005. The issue is the entitlement of a secured creditor to casualty insurance proceeds in excess of the amount of the creditor's allowed secured claim, by virtue of the creditor's security interest in the proceeds of the collateral. The Debtor's chapter 13 plan provided for payments to secured creditor Wells Fargo Financial Acceptance ("Wells Fargo") in the amount of \$10,100, plus interest. The Plan stated that "[s]ecured creditors shall retain their mortgage, lien or security interest in collateral until the amount of their allowed secured claims have been fully paid. Upon payment of the amount allowed by the Court as a secured claim in the Plan, the secured creditors included in the Plan shall be deemed to have their full claims satisfied" The Plan also contained the following provision: "Title to the Debtor's property shall revert in debtor on conversion, dismissal, or discharge." The Plan was confirmed on November 5, 2003.

Wells Fargo filed a proof of claim on November 17, 2003. The secured portion of the claim valued Wells Fargo's collateral (a 2001 Hyundai Sonata) at \$10,100, with interest of \$2,840.63. No objection was filed to Wells Fargo's proof of claim, and payments were duly made on the claim pursuant to the Debtor's Plan. Ironically, a lapse in insurance on the Sonata led Wells Fargo to file a Motion for Relief from Stay in June 2005. That Motion was resolved when the Debtor obtained replacement insurance, named Wells Fargo as a loss payee, and agreed that the stay would be terminated without further hearings if the Debtor defaulted in the future.

Sometime after that Motion was resolved, the Sonata was totally destroyed in an accident. The insurance company has issued a check in the amount of \$6,831.40 to cover the damage. The balance due on Wells Fargo's secured claim is \$5,219.67. Wells Fargo filed a Motion for Relief from Stay claiming the entire amount of the insurance proceeds, based upon a provision in the security agreement that grants Wells Fargo "a security interest in the [vehicle] and all accessions to and proceeds of such goods."

The Debtor objected to the Motion, arguing that Wells Fargo's lien on the insurance proceeds is limited to the unpaid balance of the allowed secured claim, and requesting that any excess proceeds should be retained by the Debtor to purchase a replacement vehicle. The chapter 13 Trustee took no position on the dispute, but suggested that excess insurance proceeds typically are given to the Trustee to be distributed pro rata through the plan, or directly to the Debtor. The Court took the matter under advisement.

It is universally held that secured creditors whose collateral is destroyed post-confirmation are only entitled to insurance proceeds up to the remaining balance of their allowed secured claims. Keith M. Lundin, *Chapter 13 Bankruptcy, 3d Edition* § 238.1, at 238-1 (2000 & Supp. 2004). This is because Bankruptcy Code § 1327(a) (which provides that confirmation of the plan is binding on the debtor and all creditors) operates to fix the rights of secured claim holders at confirmation of the plan, and post-confirmation destruction of the collateral does not change these rights. *In re Arkell*, 165 B.R. 432, 435 (Bankr. M.D. Tenn. 1994). Here, the confirmed Plan provided for Wells Fargo's secured claim to be paid \$10,100, plus interest. Upon payment of that amount, Wells Fargo's secured claim would be fully satisfied. Accordingly, Wells Fargo is entitled to receive the insurance proceeds up to the amount of this secured claim, less any payments received on the claim. That Wells Fargo's security agreement (or applicable law) provided that Wells Fargo's security interest extends to proceeds of the collateral does not change this result. *See id.*; *Ford Motor Credit Co. v. Stevens (In re Stevens)*, 130 F.3d 1027, 1029 (11th Cir. 1997) ("Ford's interest in the insurance proceeds flowing from the destruction of the secured collateral is only as great as its interest in the collateral itself"); *In re McDade*, 148 B.R. 42 (Bankr. S.D. Ill. 1992); *cf. Ford Motor Credit Co. v. Feher (In re Feher)*, 202 B.R. 966 (Bankr. S.D. Ill. 1996) (secured creditor has no interest in insurance proceeds from destroyed collateral when crammed down claim had been paid in full). Pursuant to these cases and §§ 506(a) and 1327(a) of the Bankruptcy Code, Wells Fargo's interest in the insurance proceeds is limited to the unpaid amount of Wells Fargo's allowed secured claim, which the parties have stipulated is \$5,219.67. The unsecured portion of Wells Fargo's claim will be paid along with the other unsecured claims through the plan. *See In re Habtemichael*, 190 B.R. 871 (Bankr. W.D. Mo. 1996).

Is the Debtor or the Trustee entitled to the insurance proceeds remaining after satisfaction of Wells Fargo's secured claim? As Judge Lundin notes, "[t]he excess of insurance proceeds over the balance of the allowed secured claim is payable to the trustee for the benefit of creditors or to the debtor, depending on the provisions of the confirmed plan. In some of these cases, the debtor is permitted to use the insurance proceeds to acquire a replacement car, and the prepetition lienholder is granted a substitute lien, but only to the extent of the balance of the allowed secured claim." Lundin, *Chapter 13 Bankruptcy* §238.1, at 238-1-238-9 (footnotes omitted). Here, the plan provides that the Debtor's property will not revert in the Debtor until conversion, dismissal, or completion of the plan. Accordingly, the excess insurance proceeds are property of the estate. *See In re Hoffmeister*, 191 B.R. 875, 878 (D. Kan. 1996); *cf. Fehrer*, 202 B.R. at 970-972 (vehicle reverted in the debtor at confirmation, subject only to the secured creditor's crammed down lien; the insurance policy and proceeds were thus property of the debtor, not the debtor's bankruptcy estate). Pursuant to the confirmed plan, which is binding on the Debtor as well as Wells Fargo, the excess insurance proceeds should be directed to the Trustee.

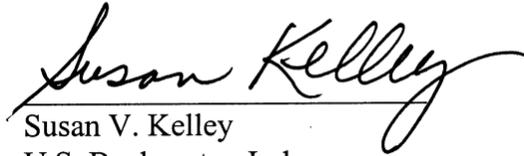
Because the Bankruptcy Code limits a secured creditor's interest in casualty insurance proceeds to the value of the collateral as determined at confirmation of the plan, and because the plan provided that the Debtor's property would not revert in the Debtor until completion of the plan, it is therefore,

ORDERED: that Wells Fargo's Motion for Relief from Stay is granted to the extent of its allowed secured claim, and that the insurance company must pay \$5,219.67 to Wells Fargo; and it is further,

ORDERED: that the remaining \$1,611.73 must be paid to the Trustee to fund the plan or refund to the Debtor to obtain a replacement vehicle, in the discretion of the Trustee.

Dated: June 14, 2006

By the Court:


Susan V. Kelley
U.S. Bankruptcy Judge