UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Timothy Robert O'Keefe,
ASF O'Keefe Enterprises, LLC and
Carla Joan Heinke
Debtors.

CHAPTER 13

Bky. 98-34396

ORDER

This matter came on for hearing on January 14, 1999, on confirmation of the Debtors', Timothy O'Keefe and Carla Heinke, Chapter 13 Plan. Navistar Financial Corporation, a secured creditor, objects to confirmation. Appearances are noted in the record. The Court, having heard arguments of council, reviewed the briefs and relevant records; and, now being fully advised in the matter, makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

The Debtors are in the trucking business and own four trucks as tenants in common. The vehicles were initially secured under two separate purchase money security agreements with Navistar Financial Corporation. One of the agreements covered two dump trucks, the other covered two semi tractors. Both obligations were defaulted prior to bankruptcy, and Navistar sought to cross collateralize the agreements as a condition of forbearance of repossession.

In connection with that attempt, Navistar obtained the signature of Ms. Heinke on a cross collateralization security agreement and financing statements on July 17, 1996. According to Navistar, the signature of Mr. O'Keefe was obtained as well, but not on the same day and not in the presence of Navistar's officer handling the transaction. The Debtors deny that Mr. O'Keefe was ever asked to sign the documents, and claim that he did not. Navistar eventually submitted signed documents to the Minnesota Department of Motor Vehicles, and had the new security interest recorded against the titles to the four vehicles.

At filing, the dump trucks were valued at $45,000 each, or $90,000. The semi tractors were worth $29,000 each, or $58,000. The balance owing on the original dump trucks note was $64,653.13, the

balance owing on the semi tractors note was $104,668.29. Navistar seeks to utilize the cross collateralization security agreement against the equity that would otherwise exist in the dump trucks to apply toward the deficiency on the semi tractor note. According to Navistar, the allowable amount of its secured claim as to the dump trucks is $90,000, including $25,346.87 as an offset against the $46,668.29 deficiency anticipated after application of proceeds from liquidation of the two semi tractors.

The Debtors claim that the cross collateralization security agreement is unenforceable because: 1) under Minnesota law all owners must participate in the grant and perfection of a security interest in an encumbering tenant's interest in a motor vehicle, and Mr. O'Keefe did not sign the documents; and, 2) no value was given for the agreement because it was an adhesion contract obtained under duress. The Plan treats the allowed amount of Navistar's secured claim as $62,000 regarding the dump trucks.

II.

Navistar argues that Mr. O'Keefe did sign the documents, but, for purposes of the present proceedings, the issue is irrelevant. According to Navistar, it is entitled to have the balance remaining on the original dump trucks note applied to Mr. O'Keefe's tenancy interest valued at $45,000 first; and then against the tenancy interest of Ms. Heinke. That application results in $25,346.87 of Ms. Heinke's tenancy interest being available to cover the cross collateralization agreement that she undeniably signed. Therefore, according to Navistar, the plan is not confirmable because under the uncontested facts the plan does not provide for the payment of the full allowed amount of Navistar's secured claim. The Court agrees.

The Debtors argue that, under Minnesota law, all owners of an interest in a motor vehicle must sign security and perfection documents in order for a security agreement to be enforceable against an encumbering tenant's interest. However, see: Farmer's Security State Bank of Zumbrota v. Voegele, 386 N.W.2d 760 (Minn. Ct. App. 1986); In re Heckmann's Estate, 291 N.W. 465 (Iowa 1940) (tenants in common can encumber their separate interests in personal property without the participation of other tenants in the same property). The Debtors rely on Minn. Stat. Section 168A.18 for their assertion that all tenant owners of a motor vehicle must join in creating an effective security interest in one tenant's interest. The statute provides in Minn. Stat. 168A.18, (1) and (2):

> If an owner creates a security interest in a vehicle:

> (1) The owner shall immediately execute the application in the space provided therefor on the certificate of title, or on a separate form the department prescribes, to name the secured party on the certificate, showing the name and address of the secured party, and cause the certificate, application, and the required fees and taxes to be delivered to the secured party.
>
> (2) The secured party shall immediately cause the certificate, application, and the required fees and taxes to be mailed or delivered to the department.
> Minn. Stat. 168A.18, (1) and (2) (1990).

The statute does not preclude a tenant in common from encumbering her ownership interest in a motor vehicle without joinder of other tenants. Under the undisputed facts of this case, Ms. Heinke granted Navistar a cross collateral security interest in her interest in the dump trucks, which was properly perfected.

The Debtors argue that no value was given for the grant since the agreement was obtained under duress and was an adhesion contract. However, agreements entered under duress caused by one's own adverse financial circumstances are not unenforceable because of the duress. Mirax Chemical Products Corp. v. First Interstate Commercial Corp., 950 F.2d 566 at 570 (8th Cir. 1991); Bond v. Charlson, 374 N.W.2d 423 (Minn. 1985). Nor is the cross collateral agreement an adhesion contract. Osgood v. Medical, Inc., 415 N.W.2d 896 at 899 (Minn. Ct. App. 1987) (whether the contract is one involving matters of great public importance or practical necessities is an element of adhesion contracts); Schlobohm v. Spa Petite, Inc., 326 N.W.2d 920 at 925 (Minn. 1982) (an adhesion contract is a contract generally not bargained for, but which is imposed on the public). Here, the cross collateralization agreement was the quid pro quo for Navistar's forbearance in repossessing the vehicles. Clearly, value was received by Ms. Heinke for the grant; and, the agreement was not an adhesion contract.

Accordingly, the allowable amount of Navistar's secured claim is $90,000. The Debtors' plan proposes to pay only $62,000, and is not confirmable for failure to provide for payment of the full amount of the allowable claim.

III.

Based on the forgoing, it is hereby ORDERED that confirmation of the Debtors Chapter 13 plan is denied.

Dated: February 4, 1999 By The Court:

DENNIS D. O'BRIEN
U.S. BANKRUPTCY JUDGE