IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re	
REFFARD DEAN DAMRON and BRENDA SUE DAMRON	No. 00-23171 Chapter 13
Debtors.	

M E M O R A N D U M

APPEARANCES:

AMY NEILL, ESQ.
H. SCOTT REAMS, ESQ.
TAYLOR, REAMS, TILSON & HARRISON
Post Office Box 1799
Morristown, Tennessee 37816-1799
Attorneys for Jefferson Federal Savings and Loan Association

ALAN C. LEE, ESQ.
Post Office Box 1357
Morristown, Tennessee 37816-1357
Attorney for Reffard Dean Damron and Brenda Sue Damron

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

This case is before the court on Jefferson Federal Savings and Loan Association's objection to confirmation of the debtors' chapter 13 plan. At issue is whether a note executed by one of the debtors is secured by collateral pledged in an earlier note. As discussed below, the court answers the question in the affirmative and accordingly will sustain the objection. This is a core proceeding. *See* 28 U.S.C. § 157(b)(2)(L).

I.

On November 17, 1999, debtor Brenda Damron executed a note and security agreement in favor of Jefferson Federal Savings and Loan Association ("Jefferson Federal") in the principal amount of $9,326.09, to be repaid with interest at 11.32% in thirty-six monthly installments of $306.53 each (the "1999 Note"). As collateral securing repayment of the obligation, the debtor granted Jefferson Federal a security interest in a 1995 Chevrolet Camaro (the "Camaro").

Ten months later, on September 22, 2000, Mrs. Damron executed a second note in favor of Jefferson Federal, agreeing to pay the sum of $1,577.20 plus interest of 14.5% in eighteen monthly installments of $97.74 each (the "2000 Note"). On the face of the 2000 Note is the following statement:

SECURITY - You have certain rights that may affect my

> property as explained on page 2. This loan **?** is **?** is not further secured.

Farther down under the heading of "**Security**" in the blocked truth-in-lending disclosure portion of the 2000 Note is the statement that:

> **?** collateral securing other loans with you may also secure this loan.

"You" is defined as "the Lender, its successors and assigns" on page 2 of the 2000 Note under the heading "**ADDITIONAL TERMS OF THE NOTE**."

On November 21, 2000, Mrs. Damron and her husband filed a petition initiating this chapter 13 case. The debtors' plan[1] treats the 1999 Note as fully secured by the Camaro in the amount of $6,800.00, with Jefferson Federal to be paid a monthly maintenance payment of $160 plus 10% interest. The 2000 Note, on the other hand, is relegated by the plan to unsecured status.

In its objection, Jefferson Federal contends that the Camaro secures both the 1999 and 2000 Notes and that the debtors have

---

[1]The debtors' plan has actually been confirmed pursuant to an order entered March 7, 2001. Prior to the confirmation order being entered, Jefferson Federal objected to confirmation, which objection was overruled by order entered February 27, 2001, for failure of counsel to appear in prosecution of the objection at an adjourned February 20, 2001 hearing. On March 8, 2001, Jefferson Federal filed a motion to reconsider which the court orally granted after a hearing on April 17, 2001, thus reinstating the objection.

undervalued the Camaro.[2] This assertion is based on the "collateral securing other loans" language in the 2000 Note quoted above and a "dragnet" provision in the 1999 Note on page 2 under the heading "**ADDITIONAL TERMS OF THE SECURITY AGREEMENT**":

> **SECURED OBLIGATIONS** - This security agreement secures this loan ... and any other debt I have with you now or later....

Jefferson Federal has filed a proof of claim in the amount of $8,710.13, representing the balance owed on both notes as of the date the bankruptcy case was filed.

In response to the objection, the debtors concede that their plan undervalues the Camaro and that in fact the Camaro is worth more than the total owed to Jefferson Federal on both notes. The debtors deny, however, that the Camaro secures the second obligation, noting that the Camaro is not listed as collateral on the face of the 2000 Note and the note specifically states that is "is not further secured." At a hearing on May 1, 2001, the parties stipulated the admissibility of the two notes and asked the court to rule on the issue as a matter of law. Subsequent to that hearing, Jefferson Federal filed a brief in

---

[2]Jefferson Federal also objected to the debtors' cramdown of the interest rate to 10% and asserted that the rate should be 11.32%. Conceding that objection, the debtors agreed to increase the interest rate to 11.32%.

support of its position.

II.

In a previous decision, this court recognized that "[d]ragnet clauses have long been recognized and enforced by Tennessee courts according to their terms." *See In re Lemka*, 201 B.R. 765, 767-68 (Bankr. E.D. Tenn. 1996) and cases cited therein. "The focus of the reported decisions by the Tennessee courts is whether the language contained in the dragnet clause is plain and unambiguous such that a layperson could comprehend its meaning." *Id.* at 768.

The debtors do not dispute the validity of the dragnet clause in the 1999 Note. The debtors contend, however, that because the 2000 Note does not list any collateral and specifically states on its face that the "loan is not further secured," the dragnet clause is inapplicable to the 2000 Note. Jefferson Federal, on the other hand, asserts that "further secured" means that there is no collateral in addition to what has already been pledged, an interpretation which it contends is consistent with other language on the face of the 2000 Note stating that "collateral securing other loans with you may also secure this loan."

In effect, the parties are arguing two different

interpretations of the word "further."[3] If "further" is interpreted as "otherwise," the statement that "this loan is not further secured" means "this loan is not otherwise secured," which would support the debtors' contention. If, on the other hand, "further" means "additionally," then the provision would read "this loan is not additionally secured," indicating there is no security other than what has been previously granted. This latter interpretation would be consistent with Jefferson Federal's position.

If the statement "this loan is not further secured" were the only reference to security, the debtors' interpretation would prevail since language in a contract must be construed against the drafter. However, there are other references in the 2000 Note to security which the court must examine. *See Diversified Energy Inc. v. Tennessee Valley Authority*, 223 F.3d 328, 339 (6th Cir. 2000)("contract must be read as a whole so as to give meaning and effect to all its provisions"); *D&E Constr. Co. v. Robert J. Denley Co.*, 38 S.W.3d 513, 519 (Tenn. 2001) ("a

[3]As an adverb, "further" has been defined as follows: 1. To a greater extent; more: *considered further the consequences of her actions*. 2. In addition; furthermore: *He stated further that he would not cooperate with the committee*. 3. At or to a more distant or advanced point: *went only three miles further; reading five pages further tonight*. AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 737 (3d ed. 1992).

contract's provisions must be interpreted in the context of the entire contract, viewed from beginning to end ... for one clause may modify, limit or illustrate another").

As previously stated, the 2000 Note on its face also states that "collateral securing other loans with you may also secure this loan." Of course, the use of the word "may" raises the question of whether "collateral securing other loans" does in fact secure this loan. However, the answer to this question is supplied on the second page of the 2000 Note under the heading "**ADDITIONAL TERMS OF THE NOTE**" as quoted below, reference to which is made on the face of the note: "**Security** - You have certain rights that may affect my property as explained on page 2."

> **OTHER SECURITY** - Any present or future agreement securing any other debt I owe you also will secure the payment of this loan. Property securing another debt will not secure this loan if such property is my principal dwelling and you fail to provide any required notice of right of rescission. Also, property securing another debt will not secure this loan to the extent such property is in household goods.

Thus, according to this provision on page 2 of the 2000 Note, collateral securing the 1999 Note also secures the 2000 Note unless that collateral consisted of household goods or the borrower's principal dwelling for which no right of rescission was afforded. Because the collateral for Mrs. Damron's previous

loan was a motor vehicle rather than her principal dwelling or household goods, then the second loan is also collateralized by the Camaro. In other words, the answer to the "may" question on the face of the 2000 Note is "yes."

This interpretation, which supports Jefferson Federal's objection, gives effect to all of the provisions of the 2000 Note regarding security. *See Bank of Commerce & Trust Co. v. Northwestern Nat'l Life Ins. Co.*, 26 S.W.2d 135, 138 (Tenn. 1930) ("It is ... the well-accepted rule that all the provisions of a contract should be construed as in harmony with each other, if such construction can be reasonably made, so as to avoid repugnancy between the several provisions of a single contract."). The debtors' argument, however, relies solely on an interpretation of one clause, an interpretation which at a minimum would render the remaining security provisions ambiguous or even contradictory. As such, this construction must be rejected. *See In re Hinderliter Indus., Inc.* 228 B.R. 848, 850 (Bankr. E.D. Tex. 1999) ("When interpreting a contract, courts shall read the contract as a whole and consider all parts as a part of the whole and not give undue force to certain words or phrases that would distort or confuse the primary and dominant purpose of the contract.").

III.

Based on the foregoing, an order will be entered sustaining Jefferson Federal's objection to confirmation and directing the debtors to amend their plan to provide for payment of Jefferson Federal's claim in the amount of $8,710.13 as fully secured with interest at 11.32%.

FILED: May 24, 2001

BY THE COURT

_____
MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE