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4 UNITED STATES BANKRUPTCY COURT
5 EASTERN DISTRICT OF CALIFORNIA
6 SACRAMENTO DIVISION
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11 In re)
12 MICHAEL and DEBRA ALLEN,) Case No. 04-31240-A13G
13)) Docket Control No. PAM-1
14 Debtors.) Date: April 18, 2005
15) Time: 9:00 a.m.
_____)

16 *On April 18, 2005 at 9:00 a.m. the court considered the*
17 *motion for relief from the automatic stay of Household Finance*
18 *Corp. and the stipulation for its resolution as proposed by the*
19 *parties. The text of the final ruling appended to minutes of the*
20 *hearing follows. This final ruling constitutes a "reasoned*
explanation" for the court's decision and is accordingly posted
to the court's Internet site, www.caeb.uscourts.gov, in a text-
searchable format as required by the E-Government Act of 2002.
The original of this final ruling is appended to the minutes of
the April 18 hearing.

21 **FINAL RULING**

22 There is a confirmed plan in this case. It requires the
23 debtor to make post-petition installment payments on a long-term
24 debt owed to the movant. The movant's collateral is the debtor's
25 residence. The plan provides for the cure of a pre-petition
26 arrearage owed to the movant.

27 The secured creditor filed a motion for relief from the
28 automatic stay. The motion asserted that the debtor had breached

1 the obligation to make post-petition installments directly to the
2 movant.

3 The parties advised the court that they had resolved that
4 motion by stipulation. They have agreed to an adequate
5 protection order. The proposed adequate protection order will
6 not be entered because it conflicts with the three guidelines set
7 out below.

8 1. With one proviso, the court will not approve a
9 stipulated adequate protection order that provides for ex
10 parte relief in the event of a violation of its terms. The
11 court will approve such a stipulation if the breach
12 warranting ex parte termination of the automatic stay
13 consists of the failure to cure an existing post-petition
14 monetary default within 60 days of the entry of the adequate
15 protection order.

16 2. If it will take a debtor more than 60 days to cure a
17 post-petition default, absent good cause, the default must
18 be cured by modifying the plan to provide for the cure
19 through the trustee.

20 3. Once a post-petition default has been cured, the
21 adequate protection order must end. If the default has been
22 cured, there is no need for an adequate protection order.
23 Therefore, the court will not enter orders permitting ex
24 parte relief or authorizing the motion for relief from the
25 automatic stay to be restored to calendar if the debtor
26 defaults on some future obligation. A new motion must be
27 filed.

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1 The traditional role of an adequate protection order is to
2 protect a creditor's interest in the debtor's property after the
3 filing of the petition until the confirmation of the plan. Once
4 the plan is confirmed, the plan makes provision for the adequate
5 protection of the claim. There is no need to make provision for
6 payment of a claim outside of the plan once the plan is
7 confirmed. See In re Cason, 190 B.R. 917, 932 (Bankr. N.D. Ala.
8 1995); In re Johnson, 63 B.R. 550 (Bankr. D. Colo. 1986); In re
9 Moore, 13 B.R. 914 (Bankr. D. Or. 1981). The only post-
10 confirmation role for an adequate protection order is to insure
11 that a relatively minor plan default is cured promptly.

12 A more onerous adequate protection order that operates after
13 confirmation of the plan amounts to a secret plan modification.
14 That is, other creditors, the trustee, and the United States
15 Trustee know nothing about it and they have no opportunity to
16 object to it. They may wish to complain if the adequate
17 protection offered to just one creditor is unduly preferential.

18 Or, if the adequate protection order hobbles the debtor's
19 ability to complete the plan, other parties in interest may wish
20 to be heard. Since most chapter 13 debtors, including this
21 debtor, are in chapter 13 in an effort to save their homes, any
22 secret provision that unnecessarily hinders this effort is a
23 concern to all creditors. If the stay is terminated pursuant to
24 the stipulation, a debtor is likely to dismiss the case or permit
25 the trustee to dismiss it. As a result all other creditors
26 suffer.

27 The court will not permit one creditor and the debtor to get
28 together and modify the plan without notice to every other party

1 interest even though the modification potentially affects all
2 other creditors. The requirement of Rules 2002(b) and 3015(b),
3 (d), (e), and (g) that the trustee, the United States Trustee,
4 and other creditors be served with the plan or a summary of it is
5 seriously compromised, even negated, if the debtor and one
6 creditor can modify the plan in this fashion.

7 By permitting the debtor to cure post-petition defaults to
8 secured creditors through an adequate protection order, usually
9 all that is accomplished is that one default is traded for a
10 different default. Generally speaking, all of a debtor's
11 disposable income is devoted to the plan. See 11 U.S.C. §
12 1325(b). How, then, will the debtor make the plan payment and
13 the ongoing direct payment to the secured creditor as well as the
14 "catch-up" payment required by the adequate protection order?
15 More often than not, the only way to do it, is to stop making the
16 plan payment which then prompts the chapter 13 trustee to request
17 the dismissal of the case.

18 For these reasons, the court will generally not depart from
19 the three guidelines laid out above absent very good cause. The
20 stipulation offered in this case departed from them without good
21 cause being demonstrated. Specifically, the stipulation
22 continues for the remainder of the case even though the debtor
23 has cured the default and the stipulation permits ex parte relief
24 until the end of the case.

25 The court will approve the stipulation provided it is
26 modified to provide for its expiration within 6 months and to
27 require 14 days' notice of a hearing on a renewed motion if there
28 is a default during the 6-month period.