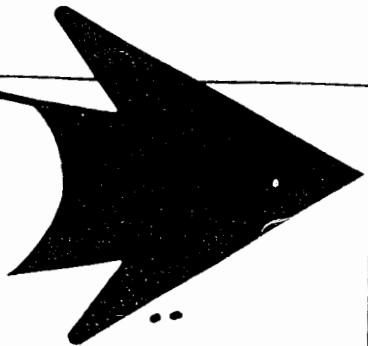


# THE ARROW

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## CHAPTER 13: IN THE LAP OF LUXURY

Let us suppose that you have financed a large recreational vehicle for Joe Debtor for a total cash price, not including finance charges, of \$35,000.00. Joe's payments to you run approximately \$360.00 per month, but twelve months into the installment contract, Joe is having trouble making his payments as agreed.

Since you keep a close watch on your delinquencies, you have your collection attorney file a replevin action for repossession and sale of the recreational vehicle shortly after Joe falls ninety (90) days past due. After Joe is served with the Complaint and summons, but before he is by law required to file an Answer to the lawsuit, however, you receive a notice that Joe has filed a Chapter 13 petition instead.

Joe's Chapter 13 Plan provides that you are to be paid in full to the extent of your secured claim, which he lists as being only \$15,000.00, but you are to receive only five percent (5%) of your remaining unsecured claim of approximately \$20,000.00. There are about twenty (20) other holders of unsecured claims who are to receive the same five percent (5%) payment. The only other

secured creditor, Friendly Savings & Loan, the first mortgage holder on Joe's real estate, is to receive its regular payments outside the Plan.

What options do you, who we assume would be unhappy with such a plan, have in Joe Debtor's Chapter 13 proceeding? For the sake of our example, you should assume also that the Plan does provide for the payment of what Joe and his attorney list in his budget as his "disposable income" for the length of Joe's Plan.

Well, 11 U.S.C. §1325(b) provides that a Chapter 13 Plan is not to be confirmed over your objection unless the following conditions are met:

1. The distribution under the Plan pays all claims in their entirety; or,

2. The Plan provides that all the debtor's disposable income is used for Plan payments.

"Disposable income," however, is defined as that income which is not reasonably necessary for (1) maintenance or support of the debtor and his dependents; or (2) for expenditures necessary for the continuation, preservation, and operation of the debtor's business. You

may assume for illustration purposes that the recreational vehicle in question is not used in Joe's business since he works as a television newscaster. In addition, Joe is single and has no dependents.

Based upon the above, it is clear that you may make an objection to Joe's Plan on the ground that the recreational vehicle which you financed for Joe is a luxury and unnecessary to the debtor's support or business interests, and the Plan payments which are to be made for that portion of your claim which the debtor acknowledges as secured are therefore not permissible. Not only are these payments not "reasonably necessary" under the terms of the statute, but they would also dissipate the payments which would otherwise be available to the general, unsecured creditors.

Our example assumes that you would rather have your collateral back and apply the proceeds to your balance promptly, rather than accept payments over time on your secured claim. Your objection to the Chapter 13 Plan's confirmation in such a case should

be coupled with a motion to terminate stay for cause, which motion should recite essentially the same reasons set forth in the objection. You could also certainly argue "bad faith" on the part of Joe Debtor, since to keep the recreational vehicle at the expense of Joe's unsecured creditors appears to be an abuse of the Chapter 13 process.

An objection to the Plan on the basis of bad faith and the fact that otherwise disposable income is being earmarked for retention of a luxury item is also a strategy available to any general, unsecured creditors willing to fight confirmation of the debtor's Plan. Ample case law exists to support such an objection which any bankruptcy judge should find persuasive.□

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