



SO ORDERED.

SIGNED this 31 day of March, 2010.


JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

JOANN ARLENE STORY,

Case No. 09-41415

Chapter 13

Debtor.

**ORDER DENYING CONFIRMATION OF DEBTOR'S PLAN
AND SETTING DEADLINES**

This matter is before the Court on the Objection to Confirmation of Fifth Third Bank.¹ This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(K) and (L), and the Court has jurisdiction to enter a final order pursuant to 28 U.S.C. § 157(b) and 28 U.S.C. § 1334.

On March 30, 2010, the Court read its Findings of Fact and Conclusions of Law into the record after completion of a trial on the issue of the valuation of Debtor's 2004 Ford Escape. The Court incorporates by reference that oral decision. The Court found that Fifth Third Bank had

¹Doc. 17.

sustained its ultimate burden of demonstrating that Debtor's plan, which calls only for the payment of \$4,500, plus interest, on its claim, fails to meet the provisions of 11 U.S.C. § 1325(a)(5)(B)(ii). The creditor demonstrated that the appropriate value is \$7,510, plus post-petition interest. The Court noted its general approval of Judge Nugent's reasoning in *In re Cook*,² including his use of the National Automobile Dealers Association (NADA) Clean Retail value as a valid starting point for valuing personal use vehicles under the second sentence of 11 U.S.C. § 506(a)(2), with appropriate deductions, some of which are noted in the opinion.

IT IS THEREFORE, ORDERED, THAT Fifth Third Bank's Objection to Confirmation is Sustained. Debtor is granted 14 days in which to file an amended plan, if she has the financial ability, based on her existing financial situation, to pay the value determined (if she elects to retain this vehicle). If Schedules I and J on file do not show the ability to cash flow a plan with the added value, Debtor is similarly ordered to amend those, to reflect her actual income and expenses. The Court will assume the last Schedules I and J on file accurately reflect her existing income and expenses if they are not amended within 14 days.

IT IS SO ORDERED.

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²415 B.R. 529 (Bankr. D. Kan. 2009).