



The relief described hereinbelow is SO ORDERED.

Signed October 16, 2006.

A handwritten signature in black ink that reads "Robert D. Berger". The signature is written in a cursive style and is positioned above a horizontal line.

ROBERT D. BERGER
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

SHAWN W. HUMPHREY,
Debtor.

Case No. 06-20783
Chapter 13

ORDER DENYING OBJECTION TO CONFIRMATION¹

Confirmation of Debtor's Chapter 13 Plan is pending before the Court. JPMorgan Chase Bank, N.A., a.k.a. Chase Manhattan Bank USA, N.A. ("JPMorgan Chase"), objects to confirmation based on the Plan's treatment of its claim. This matter constitutes a core proceeding² over which this Court has jurisdiction.³ Based upon the parties' stipulation of facts made on the record at a hearing on October 5, 2006, arguments of counsel, and their agreement

¹ Shawn W. Humphrey is represented by his attorney, David A. Reed. JPMorgan Chase Bank, N.A., a.k.a. Chase Manhattan Bank USA, N.A., is represented by its attorney, Linda Tarpley.

² 28 U.S.C. § 157(b)(2)(L).

³ 28 U.S.C. § 1334.

that the Court interpret 11 U.S.C. § 1325(a)'s "hanging paragraph" as a matter of law,⁴ the Court finds JPMorgan Chase's Objection to Confirmation is overruled.

Background

The parties stipulate that the facts of this case are similar to *In re Jackson*.⁵ Briefly stated, Debtor purchased a 2004 Volvo S40 Turbo motor vehicle during the 910 days preceding his June 7, 2006, bankruptcy filing. The car is financed by JPMorgan Chase, and Debtor is the sole purchaser and titleholder. Debtor and JPMorgan Chase stipulate that the car was actually purchased for the use of Debtor's non-debtor spouse. Debtor drives a 2001 Chevy Tahoe V8.

The Debtor's Plan proposes to cram down JPMorgan Chase's claim. The Debtor values the Volvo at \$16,200.00 while JPMorgan Chase asserts a claim for the contract balance of \$20,433.19. JPMorgan Chase objects to the Plan, asserting its claim may not be crammed down pursuant to the new provision of 11 U.S.C. § 1325(a) commonly referred to as the "hanging paragraph."

Discussion

The issue before this Court, as in *Jackson*, is the definition of "personal use" contained in the hanging paragraph. The unnumbered paragraph of §1325(a) reads, in pertinent part, as follows:

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day [period] preceding the date of the filing of the petition, and the collateral for that

⁴ *In re Young*, 237 B.R. 791, 795 (10th Cir. B.A.P. 1999) (interpretation of a statute is decided as a matter of law).

⁵ 338 B.R. 923 (Bankr. M.D. Ga. 2006).

debt consists of a motor vehicle . . . *acquired for the personal use of the debtor*, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing. (Emphasis added).

For the reasons stated in *Jackson*, this Court agrees that “personal use” means the vehicle must have been purchased for the use of the particular debtor for the hanging paragraph to apply. “Personal use” does not have the same meaning as “personal, family, or household use” referenced elsewhere in the Bankruptcy Code.⁶ Where Congress includes particular language in one section but omits it in another, statutory construction prescribes that such omission is intentional.⁷ Consequently, *Jackson* held that a car acquired within 910 days of the debtor’s filing for the use of his non-debtor wife was not subject to the hanging paragraph and could be subject to valuation and cram down. Likewise, the Volvo purchased for Debtor’s spouse is not subject to the hanging paragraph, and §§ 1325(a)(5)(B) and 506 shall apply for purposes of Plan confirmation.

Conclusion

The Court overrules JPMorgan Chase’s Objection to Confirmation.

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ROBERT D. BERGER
U.S. BANKRUPTCY JUDGE
DISTRICT OF KANSAS

⁶ *In re Jackson*, 338 B.R. at 926; *see also In re Press*, No. 06-10978, 2006 WL 2734335 (Bankr. S.D. Fla. 2006).

⁷ *In re Donald*, 343 B.R. 524, 537 (Bankr. E.D.N.C. 2006) (additional citations omitted).