



The relief described hereinbelow is SO ORDERED.

Signed July 02, 2008.

A handwritten signature in black ink, reading "Robert D. Berger", is written over a horizontal line.

ROBERT D. BERGER
United States Bankruptcy Judge

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

In re:

**TERRY D. RULE and
PEGGY L. RULE,
Debtors.**

**Case No. 06-22145
Chapter 13**

ORDER SUSTAINING OBJECTION TO CHAPTER 13 PLAN

Creditor Citifinancial Auto Corporation ("CA") objects to confirmation based on the plan's treatment of its 910-car claim. This matter constitutes a core proceeding¹ over which this Court has jurisdiction.² Based on the recent holding by the Tenth Circuit on the same issue, the Court sustains CA's Objection to Confirmation.

Factual Background

Debtors purchased a 2007 Ford Focus during the 910 days preceding their December 26, 2006, bankruptcy filing for their personal use. Debtors purchased the car from Thoroughbred Ford, Inc., which assigned the note and security agreement to CA. At the time of filing of this

¹ 28 U.S.C. § 157(b)(2)(L).

² 28 U.S.C. § 1334.

bankruptcy, the contract balance was \$17,074.15. Debtors scheduled \$12,000.00 as the vehicle's value. Debtors' plan proposes to surrender the vehicle in full satisfaction of the debt. CA objects to the plan and argues that upon recovery and sale of its collateral, 11 U.S.C. § 1325(a)(5)(C) requires the surrendered collateral be applied as a payment toward the contractual debt under state law with any remaining deficiency being an allowed unsecured claim. Debtors respond that pursuant to the last sentence of 11 U.S.C. § 1325(a), commonly referred to as the hanging paragraph,³ CA's claim may not be valued into secured and unsecured components; thus, surrender of the collateral under §1325(a)(5)(C) satisfies the claim in full.

Conclusion

The Tenth Circuit recently held a creditor holding a 910-car claim may have a deficiency claim if the debtor surrenders the vehicle as part of a Chapter 13 plan.⁴ Debtors' plan attempts to surrender a 910-car in full satisfaction of the claim. Accordingly, Debtors' plan may not be confirmed because it fails to account for any deficiency which may result after recovery and sale of the collateral. Citifinancial Auto's Objection to Confirmation is SUSTAINED.

Debtors are directed to file an amended plan in conformity with this Order.

IT IS SO ORDERED.

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

³ The last sentence of § 1325(a) reads: "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 preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) 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."

⁴ *In re Ballard*, 526 F.3d 634 (10th Cir. 2008).