



The relief described hereinbelow is SO ORDERED.

Signed August 14, 2007.

A handwritten signature in cursive script that reads "Robert D. Berger".

ROBERT D. BERGER
United States Bankruptcy Judge

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

In re:

**DAVID A. HUNT and
BOBBI J. HUNT,
Debtors.**

**Case No. 07-20627
Chapter 13**

ORDER DENYING OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN

Wells Fargo Auto Finance (“Wells Fargo”) objects to confirmation based on the plan’s treatment of its alleged 910-car claim.¹ The issue is a question of law regarding whether 11 U.S.C. § 1325(a)’s hanging paragraph applies to a 910-car purchase which includes refinanced negative equity from a prior loan.² Construing the retail installment contract under Missouri law, the Court finds the hanging paragraph does not apply.

¹ Doc. No. 14.

² *In re Young*, 237 B.R. 791, 795 (B.A.P. 10th Cir. 1999) (interpretation of a statute is decided as a matter of law).

Background

Debtors filed for Chapter 13 relief on March 28, 2007. They scheduled a 2005 Ford Freestar van as securing Wells Fargo's claim. Debtors valued the van at \$13,335.00 and provided a claim amount of \$21,177.28, leaving \$7,842.28 as unsecured. The plan proposed to pay Wells Fargo \$13,335.00 at 7 percent interest. Wells Fargo did not file a proof of claim but filed an objection to its claim being crammed down and asserted a 910-car claim in the contract balance amount of \$27,637.67.

The retail installment contract supporting Wells Fargo's objection was entered into on July 21, 2005. The contract shows a \$28,987.48 cash sales price less a \$6,000.00 cash down payment, resulting in an unpaid cash price balance of \$22,987.48. The total \$30,601.98 amount financed included the \$22,987.48 and (a) \$6,090.00 for a prior loan balance on a 2002 Chevrolet Cavalier; (b) \$109.00 for a tire and wheel guarantee; (c) \$317.00 for GAP insurance; (d) \$2.50 for title and lien fee; and (e) \$1,096.00 for a service contract. The contract was made under Missouri law.

Discussion

Kansas and Missouri law differ significantly regarding a purchase money security interest ("PMSI") consolidated with unsecured debt. Whether and to what extent a creditor holds a PMSI in a 910-car claim is crucial because the hanging paragraph only applies "if the creditor has a purchase money security interest securing the debt that is the subject of the claim."³ As this Court and other courts in the district have previously held, a 910-car claim is

³ The unnumbered paragraph following 11 U.S.C. §1325(a)(9).

limited to the PMSI which is the purchase price of the vehicle.⁴ Any debt from a previous vehicle refinanced with the purchase of the new car is not included in the 910-car claim.⁵ The holding is based on Kansas's dual status rule as discussed in *Vega* and *Hernandez-Simpson*. For contracts made under Kansas law, a secured debt may be comprised of both a purchase money component representing the collateral's price and a nonpurchase money component representing any other additional debt associated with the transaction.⁶ K.S.A. §84-9-103(e) allocates payments between PMSI and consolidated unsecured debt.⁷ As *Vega* noted, this statute is equally applicable to consumer transactions as to commercial transactions because the Kansas legislature specifically deleted from the uniform law the phrase "in a transaction other than a consumer-goods transaction" from subsections (e), (f), and (g) and declined to adopt subsection (h), which allows courts in other jurisdictions to use their discretion in determining an allocation in the consumer goods context.⁸ However, in Missouri, R.S.Mo. §400.9-103 is unchanged from the uniform law and remains limited to nonconsumer goods transactions. The inclusion of

⁴ *In re Smith*, Case No. 06-20508, (Bankr. D. Kan. November 6, 2006) (J. Berger); *In re Vega*, 344 B.R. 616 (Bankr. D. Kan. 2006) (J. Karlin); *Citifinancial Auto v. Hernandez-Simpson (In re Hernandez-Simpson)*, – B.R. –, 2007 WL 1464258 (D. Kan. May 17, 2007) (J. Robinson).

⁵ *Hernandez-Simpson*, 2007 WL 1464258, at *9.

⁶ *Vega*, 344 B.R. at 622; *In re Gibson*, 16 B.R. 257, 267 (Bankr. D. Kan. 1981).

⁷ K.S.A. §84-9-103(e) states: "Application of payment. If the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied: (1) In accordance with any reasonable method of application to which the parties agree; (2) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or (3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order: (A) To obligations that are not secured; and (B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred."

⁸ *Vega*, 344 B.R. at 623, n.29; *see, e.g., In re Pajot*, 2007 WL 2109892 (Bankr. E.D. Va. 2007) (prorating prepetition installment payments between PMSI and unsecured debt under Virginia's dual status rule).

subsection (h) allows the court to determine the proper allocation in consumer goods transactions and to apply previously established approaches.⁹

Under Missouri law, the previously established approach in consumer goods transactions is the transformation rule.¹⁰ The transformation rule extinguishes the PMSI in *all* items, including the most recently purchased items, when debts from prior purchases are consolidated and refinanced into a new loan.¹¹ Thus, under post-BAPCPA law, Missouri's transformation rule aligns Missouri with those jurisdictions which have already applied the transformation rule to a 910-car claim under 11 U.S.C. § 1325(a)'s hanging paragraph.¹² In those cases, the creditor does not have a PMSI. As a result, the hanging paragraph of 11 U.S.C. § 1325(a) does not prevent the debtors from bifurcating the creditors' claims into secured and unsecured portions.¹³

In this case, Wells Fargo combined \$6,090.00 in negative equity with the collateral's cash price. Debtors made a \$6,000.00 cash down payment at the time they purchased the vehicle. Wells Fargo argues the \$6,000.00 should be applied to the \$6,090.00 in refinanced negative equity - noting the Debtors could almost have paid off the prior car loan with the money. However, the contract clearly shows Wells Fargo in fact deducted the \$6,000.00 cash

⁹ R.S.Mo. §400.9-103(h) states: "The limitation of the rules in subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches."

¹⁰ *In re Parish*, 147 B.R. 187, 188-89 (Bankr. E.D. Mo. 1992); *In re Snipes*, 86 B.R. 1006, 1009 (Bankr. W.D. Mo. 1988).

¹¹ *Parish*, 147 B.R. at 189.

¹² *In re Peaslee*, 358 B.R. 545 (Bankr. W.D.N.Y. 2006); *In re Westfall*, 365 B.R. 755 (Bankr. N.D. Ohio 2007); *In re Price*, 363 B.R. 734 (Bankr. E.D.N.C. 2007).

¹³ *See also In re Bray*, 365 B.R. 850 (Bankr. W.D. Tenn. 2007).

from the Freestar's \$28,987.48 sales price. The Debtors had a payoff balance on their prior loan in the amount of \$8,590.00 from which Wells Fargo credited \$2,500.00 for Debtors' trade-in. The remaining \$6,090.00 was listed as an "Other Charge ... For Prior Loan Balance" and was added to the unpaid cash price balance of \$22,987.48 which, with the other items financed, totaled the \$30,601.98 "Amount Financed".

Conclusion

In this case, the existence of both purchase money and nonpurchase money in a consumer goods transaction entered into under Missouri law results in the transformation of all obligations into nonpurchase obligations. Accordingly Wells Fargo's loan to Debtors is a nonpurchase money transaction which is not subject to the hanging paragraph of §1325(a).

Wells Fargo Auto Finance's Objection to Confirmation is OVERRULED.

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