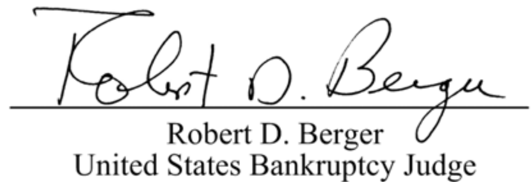
The relief described hereinbelow is SO ORDERED.

SIGNED this 12th day of January, 2018.



Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

ELIZABETH ANNE GRAMMER,

Debtor.

Case No. 17-21724
Chapter 13

ORDER SUSTAINING OBJECTION AND DENYING CONFIRMATION OF PLAN

This matter comes before the Court on the objection of creditor Meritrust Credit Union ("Meritrust") to Elizabeth Grammer's proposed Chapter 13 plan. The Court held a pretrial hearing on Meritrust's objection on December 19, 2017. For the reasons stated below, Meritrust's objection is sustained and confirmation of Ms. Grammer's plan is denied.

On July 26, 2015, Elizabeth and Keith Grammer borrowed $29,072.70 from Meritrust at 3.35% APR for the purchase of a 2015 Kia Soul. That original loan agreement (the "2015 Loan") required 72 monthly payments of $447.56 each, beginning on September 24, 2015.

On September 29, 2016, Ms. Grammer (but not Mr. Grammer) refinanced the balance of the 2015 Loan, or $24,815.12, with Meritrust at 3.652% APR. This second loan agreement (the "2016 Loan") required 62 monthly payments of $434.55 each, beginning on November 24, 2016, with one final payment of $434.47 on January 24, 2022.

Ms. Grammer filed this Chapter 13 bankruptcy case on September 6, 2017, and Meritrust filed a $22,252.86 secured claim for the existing balance on the 2016 Loan. Ms. Grammer's proposed plan would apply 11 U.S.C. § 506(a) to Meritrust's claim, such that Meritrust would have a secured claim of $12,800.00 (the value of the Kia), and an unsecured claim for the remainder of the loan balance. Meritrust objects to the plan on the grounds that Meritrust has a "910 claim," or a secured claim for the entire $22,252.86 loan balance, pursuant to the "hanging paragraph" in 11 U.S.C. § 1325(a), which provides:

> 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 debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor . . . .

At oral argument, Ms. Grammer did not dispute that the 2015 Loan created a purchase-money security interest[1] securing the debt, that the debt at issue was incurred within 910 days of her petition, or that the collateral for the debt consists of a motor vehicle acquired for her personal use. Rather, Ms. Grammer argued that the 2016 Loan changed the purchase-money security interest created by the 2015 Loan into a non-purchase-money security interest.

Under Kansas law, "[a] purchase-money security interest does not lose its status as such,

[1] *Cf.* Kan. Stat. Ann. 84-9-103 (defining "purchase-money security interest" in goods under Kansas law).

even if . . . the purchase-money obligation has been renewed, refinanced, consolidated, or restructured." Kan. Stat. Ann. 84-9-103(f)(3). Thus, the 2016 Loan did not extinguish Meritrust's purchase-money security interest if it simply refinanced the 2015 Loan. Ms. Grammer contends, however, that the differences between the 2015 Loan and the 2016 Loan—the changes to the interest rate, term, and monthly payments, along with the removal of Mr. Grammer from the loan—are such that the 2016 Loan is a novation (or, as phrased at oral argument, a "new note") rather than a refinancing agreement. In support of her argument, she cites *In re Bibbs*, No. 14-10847, 2015 WL 1843252, at *2 (Bankr. D. Kan. Apr. 20, 2015). This argument fails for three reasons.

First, in *Bibbs*, the issue was not whether a refinancing agreement *extinguished* a purchase-money security interest, but whether a refinancing agreement created a *new* purchase-money security interest for purposes of the 910-day window in section 1325(a). *See Bibbs*, 2015 WL 1843252, at *2. In *Bibbs*, the debtor refinanced an auto loan at the same interest rate, but with bi-weekly $125 payments rather than monthly $250 payments. *See id.* Reasoning that "the very modest change in these parties' relationship effected by the second note in no way affected the purchase-money status that was created by the first note and security agreement," *id.*, Judge Nugent held that the 910-day period began on the date of the original loan agreement, not the date of refinancing. *See id.* at *3. To accept Ms. Grammer's reasoning, then, would be to hold that the 2016 Loan created a *new* purchase-money security interest under *Bibbs*—a result Ms. Grammer surely does not intend.

Second, the differences between the 2015 Loan and the 2016 Loan are insufficient to render the 2016 Loan a novation under Kansas law. In Kansas:

> Novation is the substitution of a new debt for an existing debt which is thereby extinguished . . . . The controlling element is the

> intention of the parties, and absent a clear and definite intention on the part of all concerned to extinguish the old obligation by substituting a new one, there is no novation. Under Kansas law, a novation is never presumed, and the burden is upon the party asserting a novation to prove its existence.

In re Jackson, 358 B.R. 412, 420 (Bankr. D. Kan. 2007) (citing *Davenport v. Dickson*, 211 Kan. 306, 310 (1973)). Here, because there is no evidence of a clear and definite intention to extinguish Ms. Grammer's existing debt or the purchase-money security interest created by the 2015 Loan, Ms. Grammer has not met her burden of proving that the 2016 Loan was a novation. *See Jackson*, 358 B.R. at 420 (holding that refinancing by different lender, among other circumstances, was "insufficient to evidence a novation"); *cf. In re Billings*, 838 F.2d 405, 409-10 (10th Cir. 1988) (affirming district court's decision that refinancing did not extinguish purchase-money security interest for purposes of section 522(f)). Because the 2016 Loan was not a novation, it did not extinguish the purchase-money security interest created by the 2015 Loan.

Finally, the Court notes that the most significant difference between the 2015 and 2016 Loans is the removal of Mr. Grammer as a debtor. It is not uncommon for this type of refinancing agreement to occur following a divorce of the obligors. To hold that this agreement constitutes a novation, such that it extinguishes the original purchase-money security interest, would discourage creditors from allowing a divorced spouse to refinance a loan in his or her own name. This would, in turn, leave the other spouse liable on a loan for property he or she no longer owns, uses, or controls. This Court declines to adopt such a position. *Cf. Billings*, 838 F.2d at 409 ("The basic problem with the automatic 'transformation' rule is that it discourages creditors who have purchase money security interests from helping their debtors work out of financial problems without bankruptcy and without surrendering the collateral securing the debt.").

For all of the foregoing reasons, Meritrust's objection is sustained and confirmation of Ms. Grammer's plan is denied.

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