

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

In Re: JOHN J. WATERS)
TARA C. WATERS) Chapter 13
Debtors.) Case No. 06-50309
)
)

DECISION AND ORDER

At Harrisonburg in said District this 9th day of May 2007:

The matter before the court is the objection to the confirmation of the Debtors’ Modified Chapter 13 Plan by DaimlerChrysler Financial Services Americas, LLC (“DaimlerChrysler”). The issue on which the objection turns is whether the Debtors’ Modified Chapter 13 Plan complies with the provisions of 11 U.S.C. § 1325(a)(5). The court conducted a hearing on the objection in Staunton on February 28, 2007. Both parties submitted authorities in support of their respective positions. After due consideration of the evidence and authorities and for the reasons stated herein, the objection is overruled.

BACKGROUND

The facts relevant to a decision in this matter are not in dispute. On July 11, 2006, the Debtors filed a voluntary petition for relief pursuant to Chapter 13 of the Bankruptcy Code. DaimlerChrysler is the holder of an allowed claim,¹ secured by a purchase money security interest in a 2004 Chrysler Town & Country van. The Debtors purchased the vehicle within 910 days prior to the Debtors filing of their bankruptcy petition. The claim of

¹ Pursuant to Section 502(a), a claim filed by a creditor is deemed allowed unless a party in interest objects. Section 502(b) then provides for the disallowance of the claim if one of nine enumerate circumstances is present. In this case, no party in interest filed an objection to the proof of claim filed by DaimlerChrysler. Therefore, the secured claim filed by DaimlerChrysler is deemed allowed under Section 502(a). This issue is not contested by either party.

DaimlerChrysler is for an amount greater than the value of the vehicle.

Under the terms of their Chapter 13 Plan, the Debtors propose to surrender the vehicle in full satisfaction of DaimlerChrysler's claim.² DaimlerChrysler objects to this treatment of its claim under the terms of the Debtors' Plan. DaimlerChrysler contends that the language of Section 1325(a)(5) does not lead to the conclusion that the surrender of Debtors' vehicle satisfies its claim in full.

DISCUSSION

This court has jurisdiction over the parties and subject matter of this proceeding under 28 U.S.C. §§ 151, 157, and 1334. This is a case filed under Title 11. The court may hear this core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this District under 28 U.S.C. § 1409(a).

Prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Section 1325(a)(5) of the Bankruptcy Code permitted three options for the treatment of an allowed secured claim in a Chapter 13 plan. First, under subsection (A), a plan can be confirmed if the holder of a claim accepts the plan. Second, under subsection (B), a plan can be confirmed if the debtor provides for payment of not less than the value of the secured claim as of the effective date of the plan. Third, a plan can be confirmed if it provides that the debtor surrender the secured property to the holder of the secured claim.

Pre-BAPCPA Section 1325(a)(5), when read with Section 506(a) provides for the

² As of the date of this decision, the Debtors have filed three Chapter 13 plans in this case. See Docket Entries # 18, 37, and 58. The objection at issue in this matter was filed in response to the Debtors' first Modified Chapter 13 Plan. See Docket Entries # 37, 41. Although the Debtors filed a second Modified Plan, see Docket Entry # 58, it did not address DaimlerChrysler's objection.

bifurcation of the allowed secured claim into secured and unsecured portions if the value of the collateral is less than the value of the secured claim. United States v. Ron Pair Enters., Inc., 489 U.S. 235, 238-89 (1989) (“Subsection (a) of § 506 provides that a claim is secured only to the extent of the value of the property on which the lien is fixed; the remainder of that claim is considered unsecured.”).³ If Chapter 13 debtors choose to retain and pay for the collateral under their Chapter 13 Plan, then the debtors, utilizing Section 506(a), “cramdown” the debt by paying the value of the secured claim through the plan and pay the remaining unsecured portion pro rata with other unsecured creditors. See United Carolina Bank v. Hall, 993 F.2d 1126 (4th Cir.1993) (describing the cramdown option in Chapter 13 cases).

If a debtor chooses to surrender the vehicle under Section 1325(a)(5)(C), then the creditor files a claim for any resulting deficiency balance after sale of the collateral by the creditor. Id. The resulting deficiency balance would be treated as an allowed unsecured claim and is paid pro rata with other unsecured creditors through the Chapter 13. Id.

³ Section 506 is entitled “Determination of secured status.” Subsection (a), provides, in pertinent part:

(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor’s interest.

(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

11 U.S.C. § 506(a) (2007). The enactment of BAPCPA, added paragraph (2) to Section 506(a). Pre-BAPCPA Section 506(a) is now designated as paragraph (1).

Thus, as a practical matter prior to the enactment of BAPCPA, Chapter 13 debtors were able to surrender their vehicle under Section 1325(a)(5)(C) as a part of their Chapter 13 plan, as long as the plan provided for payment of any unsecured deficiency claim. For the most part, this procedure remains intact post-BAPCPA.⁴ However, BAPCPA did amend Section 1325(a) to include a paragraph following Section 1325(a)(9), commonly referred to as the “hanging paragraph,” 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 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.

See 11 U.S.C. § 1325(a).

The BAPCPA addition of the hanging paragraph to Section 1325(a) requires the court to determine whether a debtor may surrender collateral to a creditor subject to the hanging paragraph and extinguish the debt altogether under a Chapter 13 plan.

A. The Parties’ Positions

The issue presented concerns the effect of the hanging paragraph on a claim secured by collateral surrendered to the secured creditor pursuant to Section 1325(a)(5)(C). The parties do not dispute that the claim of DaimlerChrysler is subject to the terms of the hanging paragraph. The parties agree that the Debtors purchased the motor vehicle for their personal use within 910 days preceding the date of filing Chapter 13. The parties also agree that

⁴ With the addition of Section 506(a)(2), BAPCPA did change the valuation of certain personal property owned by an individual in a case under Chapter 7 or 13. Compare 11 U.S.C. § 506(a)(2) (2007) with 11 U.S.C. § 506(a) (2004).

Section 506 is made inapplicable to creditors subject to the terms of the hanging paragraph (herein “910 creditor”) under Section 1325(a)(5) by the terms of the hanging paragraph. Finally, the parties agree that the Debtors may surrender the vehicle to DaimlerChrysler under Section 1325(a)(5)(C) and that the debt owed DaimlerChrysler is greater than the value of the vehicle. The parties do, however, dispute whether surrender of the vehicle under Section 1325(a)(5)(C) satisfies the allowed secured claim of DaimlerChrysler in full.

The Debtors reason that, in the absence of Section 506, bifurcation of the secured claim into secured and unsecured portions is not possible. Therefore, the Debtors contend the vehicle is fully secured and that the surrender of their fully secured vehicle satisfies the secured claim in full.

DaimlerChrysler argues that it is entitled to be paid any resulting deficiency after surrender of the vehicle as part of its allowed secured claim. It contends that such a result flows from the language of the statute itself and is further supported by the legislative history of BAPCPA. In the alternative, DaimlerChrysler argues that it is entitled to retain an unsecured claim for any deficiency.

B. Application of the Hanging Paragraph to Section 1325(a)(5)(C)

A number of courts have addressed the interpretation and application of the hanging paragraph on a claim secured by collateral that has been surrendered under Section 1325(a)(5)(C). A majority of courts have ruled in favor of the position asserted by the Debtors, holding that the surrender of a vehicle to a 910 creditor under Section 1325(a)(5)(C)

fully satisfies the allowed secured claim.⁵ A minority of cases support DaimlerChrysler's position that a 910 creditor is entitled to a deficiency claim after surrender of the collateral, although the reasoning of these courts is split amongst the alternative approaches set forth by DaimlerChrysler.⁶

i. Ambiguity of the Hanging Paragraph and Reference to Legislative History

According to DaimlerChrysler, reliance on the legislative history of the hanging paragraph to determine its effect on Section 1325(a)(5)(C) is necessary because the language of the hanging paragraph is ambiguous. *Id.* DaimlerChrysler argues that the legislative history of the hanging paragraph supports its contention that it is entitled to be paid any deficiency after surrender of the vehicle as part of its allowed secured claim.

⁵ *In re Anderson*, No. 06-60760 (W.D. Va. Sept. 25, 2006); *In re Ezell*, 338 B.R. 330 (Bankr. E.D. Tenn. 2006); *In re Payne*, 347 B.R. 278 (Bankr. S.D. Ohio 2006); *In re Long*, No. 06-30651, 2006 Bankr. LEXIS 1605, 2006 WL 2090246 (Bankr. E.D. Tenn. July 12, 2006); *In re Brown*, 346 B.R. 868 (Bankr. N.D. Fla. 2006); *In re Sparks*, 346 B.R. 767 (Bankr. S.D. Ohio 2006); *In re Osborn*, 348 B.R. 500 (Bankr. W.D. Mo. 2006), *aff'd*, No. 06-6061WM, 2007 Bankr. LEXIS 497, 2007 WL 542435 (B.A.P. 8th Cir. Feb. 23, 2007); *In re Nicely*, 349 B.R. 600 (Bankr. W.D. Mo. 2006); *In re Evans*, 349 B.R. 498 (Bankr. E.D. Mich. 2006); *In re Pool*, 351 B.R. 747 (Bankr. D. Or. 2006); *In re Bayless*, No. 06-31517, 2006 Bankr. LEXIS 3304, 2006 WL 2982101 (Bankr. E.D. Tenn. Oct. 18, 2006); *In re Maggett*, No. BK06-80573, 2006 Bankr. LEXIS 2756, 2006 WL 3478991 (Bankr. D. Neb. Oct. 19, 2006); *In re Feddersen*, 355 B.R. 738 (Bankr. S.D. Ill. 2006); *In re Turkowitch*, 355 B.R. 120 (Bankr. E.D. Wis. 2006); *In re Gentry*, No. 06-50204, 2006 Bankr. LEXIS 3281, 2006 WL 3392947 (Bankr. E.D. Tenn. Nov. 22, 2006); *In re Durham*, No. 06-23034, 2006 Bankr. LEXIS 3953, 2006 WL 4058354 (Bankr. D. Utah Dec. 14, 2006); *In re Moon*, 359 B.R. 329 (Bankr. N.D. Ala. 2007); *In re Steakley*, No. 06-31181, 2007 Bankr. LEXIS 496, 2007 WL 259570 (Bankr. E.D. Tenn. Jan. 26, 2007); *In re Quick*, Nos. 06-10729-M, 06-11031-M, 2007 Bankr. LEXIS 219, 2007 WL 269808 (Bankr. N.D. Okla. Jan. 26, 2007); *In re Keck*, No. 06-32392, 2007 Bankr. LEXIS 464, 2007 WL 470349 (Bankr. E.D. Tenn. Feb. 9, 2007); *In re Rice*, No. 06-32334, 2007 Bankr. LEXIS 548, 2007 WL 541809 (Bankr. E.D. Tenn. Feb. 16, 2007); *Capital One Auto Fin. v. Bivins (In re Bivins)*, No. 06-51778 RFH, 2007 Bankr. LEXIS 519, 2007 WL 624385 (Bankr. M.D. Ga. Feb. 23, 2007).

⁶ See *In re Patricia*, 355 B.R. 616 (Bankr. E.D. Mich. 2006) (holding that Section 506 is not relevant to a creditor's claim for an unsecured deficiency balance when a debtor surrenders collateral under Section 1325(a)(5)(C) BAPCPA, because state law grants the creditor a right to the deficiency claim); *In re Hoffman*, 359 B.R. 163, 166 (Bankr. E.D. Mich. 2006) (holding that the allowed secured claim may be bifurcated, even in light of the hanging paragraph, because the hanging paragraph applies only "[f]or the purposes of [Section 1325(a)(5)]" and thus has "has no impact on other provisions of the Bankruptcy Code which protect the 910 creditor's right to an unsecured deficiency claim").

(DaimlerChrysler Mem. Supp. Obj. 6-8).

The starting point for the court's inquiry into congressional intent is the statutory language itself. Lamie v. U.S. Trustee, 540 U.S. 526, 534 (2004). "It is well established that 'when the statute's language is plain, the sole function of the courts--at least where the disposition required by the text is not absurd--is to enforce it according to its terms.'" Id. (quoting Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A., 530 U.S. 1, 6 (2000) (internal quotation marks omitted) (quoting United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241 (1989) (in turn quoting Caminetti v. United States, 242 U.S. 470, 485 (1917)))).

The language of the hanging paragraph is clear.⁷ The hanging paragraph plainly states, that "[f]or the purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph" See 11 U.S.C. § 1325(a). The provision contains no ambiguity. Although the language of the hanging paragraph has been described as confusing⁸ and poorly drafted,⁹ an awkward or even ungrammatical statute is not ambiguous. Lamie, 540 U.S. at 434.

⁷ See, e.g., Ezell, 338 B.R. 330 (finding the hanging paragraph is unambiguous and holding that the surrender of a vehicle satisfies an allowed secured claim in full); but see Duke, 345 B.R. 806 (holding that the hanging paragraph is ambiguous and that the surrender of a vehicle does not satisfy an allowed secured claim and that the creditor retained the right to file an unsecured deficiency claim after looking to the legislative history of the hanging paragraph for guidance). Notably, among the cases finding the hanging paragraph is unambiguous, a minority held that the surrender of a vehicle does not satisfy an allowed secured claim in full. See supra cases cited in note 6.

⁸ See Henry E. Hildebrand, III, Impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 on Chapter 13 Trustees, 79 Am. Bankr. L.J. 373, 386 n.65 (2005) ("Though it appears that the intent of the hanging paragraph is to preclude the claim splitting or 'cramdown' that is embodied in 506(a), the means by which such restriction was drafted is confusing, at best.").

⁹ In re Quevedo, 345 B.R. 238, 243 (Bankr. S.D. Cal. 2006), notes that "the hanging paragraph contains an obvious typographical error depicted by the in the Bankruptcy Code's text; it has no internal sub-structure; and Congress did not bother to name it. It is difficult to presume Congress said precisely what it intended to say when the statute is so poorly written." The court in Quevedo did not elaborate on the location of the typographical error and this court has failed to find any such error in its review of the hanging paragraph.

Absent any ambiguity or statutory language to the contrary, courts must enforce a statute by its terms. Ron Pair Enters., 489 U.S. at 238. In Ron Pair Enters. the Supreme Court addressed the interpretation of Section 506(b),¹⁰ which was “enacted as a part of the extensive 1978 revision of the bankruptcy laws.” Id. The Supreme Court noted that “[i]n such a substantial overhaul of the system, it is not appropriate or realistic to expect Congress to have explained with particularity each step it took. Rather, as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute.” Id. Therefore, “where . . . the statute’s language is plain, ‘the sole function of the courts is to enforce it according to its terms’”. Ron Pair Enters., 489 U.S. at 241 (quoting Caminetti, 242 U.S. at 485).

The hanging paragraph is clear and unambiguous in directing that, for the purposes of Section 1325(a)(5), Section 506 does not apply to a secured claim if the creditor holding the claim is a hanging paragraph creditor. Therefore, the court need not look to the legislative history of the hanging paragraph for guidance.

ii. Surrender of Collateral Subject to the Hanging Paragraph Satisfies an Allowed Secured Claim in Full

Having determined that the hanging paragraph is not ambiguous and applies to all of Section 1325(a)(5), the court must next determine the legal effect of the paragraph on subsection (C). Because the hanging paragraph applies to both subsections (B) and (C), decisions analyzing the legal effect of the hanging paragraph on subsection (B) are helpful. See Ezell, 338 B.R. at 388-341.

A majority of courts analyzing the legal effect of the hanging paragraph on subsection

¹⁰ BAPCPA did not amend Section 506(b).

(B) hold that preventing the bifurcation of an undersecured claim fixes the allowed secured claim at the amount filed. See, e.g., In re Wampler, 345 B.R. 730, 734 n.8 (Bankr. D. Kan. 2006). Doing so then renders the claim fully secured, which requires the payment of the entire, unbifurcated claim, as a secured claim under the terms of a confirmable Chapter 13 Plan. Id.

The court in Ezell, 338 B.R. at 340, relying on decisions interpreting the effect of the hanging paragraph on subsection (B), concluded that if a debtor seeking to retain collateral under Section 1325(a)(5)(B) must treat the entire claim as secured and propose a plan paying the full amount of the claim, then a creditor must also be fully secured under Section 1325(a)(5)(C). Therefore, the court held that a 910 creditor is fully secured for the amount of its allowed secured claim in the absence of bifurcation under Section 506 and the surrender of fully secured collateral must satisfy the allowed secured claim in full. Id. at 342.

This court is in agreement with the court in Ezell. Under subsection (B), debtors proposing to retain collateral must treat the debt as fully secured. Given that the hanging paragraph does not differentiate between the treatment of claims under subsection (B) or (C), no reason exists to hold that collateral surrendered under subsection (C) is anything other than fully secured. Therefore, proposing to surrender fully secured collateral under subsection (C) in full satisfaction of an allowed secured claim poses no impediment to confirmation of plan. Furthermore, to allow a creditor to pursue a deficiency claim following surrender of collateral pursuant to Section 1325(a)(5)(C), would, in effect, bifurcate the secured creditor's claim, in violation the terms of the hanging paragraph. Evans, 349 B.R. at 501.

Notably, DaimlerChrysler also argues that, if collateral surrendered pursuant to

subsection (C) is fully secured, it is entitled to receive full payment of its claim regardless of whether the debtor retains the vehicle under Section 1325(a)(5)(B) or surrenders the vehicle under Section 1325(a)(5)(C). According to DaimlerChrysler, a plan which proposes surrender of collateral must also provide for payment of any remaining deficiency balance after surrender either as a secured claim or, alternatively, as an unsecured claim, under the terms of a confirmable plan.

Such reasoning is misplaced. Section 506 sets forth the method for valuing a secured claim, and, by default, the value of an unsecured deficiency claim after bifurcation. In re Montoya, 341 B.R. 41, 44 (Bankr. D. Utah 2006) (“The existence of a claim is usually determined by non-bankruptcy substantive law, whereas valuation of that claim is determined by § 506.”); Ezell, 338 B.R. at 339 (“Valuation of a creditor’s allowed secured claim under Pre-BAPCPA § 506(a) was ‘determined in light of the purpose of the valuation and of the proposed disposition or use of such property’ 11 U.S.C. § 506(a) (2004). Upon surrender under Pre-BAPCPA § 1325(a)(5)(C), liquidation value was clearly the yardstick by which the allowed secured claim was determined, while, for cramdown purposes under Pre-BAPCPA § 1325(a)(5)(B), replacement value was the criteria.”). Absent Section 506, the value of the allowed secured claim is fixed at the amount filed. In re Duhram, 2006 Bankr. LEXIS 3953, at *9, concluded that under the terms of the hanging paragraph “a fiction arises that the 910 collateral is worth the exact amount of the proof of claim. So when a debtor proposes to retain the collateral, the debtor must propose to pay the entire claim as filed. Likewise, where the debtor proposes to surrender the collateral, the fiction created by the hanging paragraph serves to render the secured claim completely satisfied.” Therefore, a 910

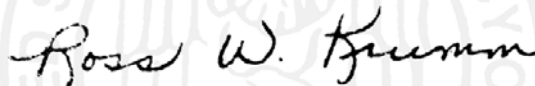
creditor is not entitled to assert any deficiency claim, whether secured or unsecured, following the surrender of collateral under Section 1325(a)(5)(C), because surrender of fully secured collateral satisfies an allowed secured claim in full leaving no deficiency.

CONCLUSION

The court finds that the plain language of the hanging paragraph prevents the bifurcation of a secured claim into secured and unsecured portions for the purpose of claims filed by 910 creditors. As such, the 910 creditor holds only a secured claim, which is treated as fully secured. The surrender of fully secured collateral satisfies an allowed secured claim in full. Accordingly, it is

ORDERED:

That DaimlerChrysler's Objection to the Confirmation of the Debtors' Chapter 13 Plan is OVERRULED.



Ross W. Krumm

Ross W. Krumm
U. S. Bankruptcy Judge