

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION (LYNCHBURG)**

IN RE:)	
)	
JERRY FRANKLIN MEADOWS, SR. and)	CHAPTER 13
THERESA TUCKER MEADOWS,)	CASE NO. 06-62050-WA1-13
)	
Debtors.)	
<hr style="width: 40%; margin-left: 0;"/>)	
)	
DAIMLERCHRYSLER FINANCIAL)	
SERVICES AMERICAS, LLC)	
)	
Appellant,)	
)	
v.)	
)	
JERRY FRANKLIN MEADOWS, SR. and)	
THERESA TUCKER MEADOWS,)	
)	
Appellees.)	

**MEMORANDUM AND ORDER GRANTING
APPELLANT’S MOTION FOR DIRECT APPEAL**

This matter is before the court on the motion of the Appellant and Chapter 13 creditor, DaimlerChrysler Financial Services Americas, L.L.C. (“creditor”), requesting certification to take a direct appeal to the United States Court of Appeals for the Fourth Circuit from an order of the United States Bankruptcy Court for the Western District of Virginia, pursuant to § 1233 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”). 28 U.S.C. §158(d)(2). The creditor contends the Bankruptcy Court erred in overruling its objection to confirmation of the debtors’ Chapter 13 plan and holding that the Bankruptcy Code allows the debtors to surrender the creditor’s collateral, a financed automobile, in full satisfaction of its secured claim. The Chapter 13 debtors, Jerry Franklin Meadows, Sr. and Theresa Tucker

Meadows (collectively "Debtors"), have not filed a response to the creditor's motion for certification. Because the Bankruptcy Court's order involves a question of law as to which there is no controlling decision of the United States Court of Appeals for the Fourth Circuit or of the Supreme Court of the United States, this Court grants the creditor's motion for certification.

I. FACTS

The parties have stipulated the following facts:

1. On November 28, 2005, Jerry Franklin Meadows, Sr. and Theresa Tucker Meadows ("Debtors") entered into a Retail Installment Contract ("Contract") with Smith Stokes Chrysler-Dodge-Jeep ("Dealership") for the purchase of a 2004 Dodge Ram, VIN 1D7HU18D74S570128 ("Vehicle").
2. The Dealership assigned all of its rights and interest in and to the Contract and Vehicle to DaimlerChrysler in accordance with the terms of the Contract's assignment provision.
3. Under the Contract, the Debtors granted to DaimlerChrysler a security interest in the Vehicle, which security interest was perfected as evidenced by notation on Certificate of Title No. 80840202 issued by the Commonwealth of Virginia, Department of Motor Vehicles.
4. On December 29, 2006, Debtors filed in the United States Bankruptcy Court for the Western District of Virginia, Lynchburg Division, a petition for relief under Chapter 13, Title 11, United States Code, Case No. 06-62050 ("Petition").
5. On January 19, 2007, DaimlerChrysler filed a Proof of Claim for its secured claim of \$43,357.93, the outstanding payoff balance due at the time the Debtors filed the Petition. No Objections have been filed to date.
6. On January 29, 2007, Debtors filed a Chapter 13 Plan ("Plan") which proposed to surrender the Vehicle in full satisfaction of DaimlerChrysler's claim.

7. On March 21, 2007, DaimlerChrysler timely filed the Objection.
8. DaimlerChrysler has a validly perfected, first priority, purchase money security interest in the Vehicle.
9. The debt owed DaimlerChrysler was incurred by the Debtors within the 910 days preceding the date of the filing of the Petition.
10. The Vehicle is a motor vehicle (as defined in 49 U.S.C. § 30102) acquired for the personal use of the Debtors.

II. DISCUSSION

On July 13, 2007, this court overruled the creditor's objection and confirmed the debtors' Chapter 13 plan. On July 23, 2007, the creditor timely filed a notice of appeal. On August 2, 2007, the creditor timely filed a request for certification of direct appeal to the Court of Appeals for the Fourth Circuit.

Pursuant to 28 U.S.C. § 158(d)(2)(A)(i)-(iii), enacted as part of the BAPCPA, the Court of Appeals for the Fourth Circuit will have jurisdiction over the instant appeal if this court certifies the existence of one or more of three circumstances:

- (i.) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the [United States Court of Appeals for the Fourth Circuit] or of the Supreme Court of the United States, or involves a matter of public importance;
- (ii.) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or
- (iii.) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.

28 U.S.C. § 158(d)(2)(B) provides that the court "shall" make the certification if it determines, either on its own motion or on the request of a party, that one or more of the three certification

circumstances exists, or where a majority of the appellants and appellees requests certification. The court of appeals then has discretion to exercise jurisdiction. 28 U.S.C. § 158(d)(2)(A)(iii)(an appeal may be taken directly to the court of appeals if the certification procedures set forth in the statute are followed and “if the court of appeals authorizes the direct appeal of the judgment, order, or decree”) (emphasis added).

Here, the creditor claims that each of the three circumstances justifying certification are present. The court finds at least one circumstance compelling certification. The creditor’s appeal raises a question of law and interpretation of the BAPCPA for which there is no controlling Fourth Circuit or Supreme Court precedent: whether an unnumbered “hanging paragraph” the BAPCPA added to 11 U.S.C. § 1325(a) has the effect of allowing debtors to surrender their vehicle to the creditor in full satisfaction of the creditor’s claim even though the creditor’s claim is greater than the vehicle’s value.

Section 1325(a) establishes prerequisites for a confirmable Chapter 13 plan. With respect to an allowed secured claim there are three options that suffice for confirmation. First, the holder of the allowed secured claim may accept the plan. 11 U.S.C. § 1325(a)(5)(A). Second, the plan may provide for the debtor’s retention of the collateral, so long as it also provides for distributions to the holder of not less than allowed amount of the secured claim. 11 U.S.C. § 1325(a)(5)(B). Third, the debtor may surrender the secured property to the lien holder. 11 U.S.C. § 1325(a)(5)(C).

11 U.S.C. § 506(a) divides loans into secured and unsecured portions. Under that section an allowed claim is a secured claim to “the extent of the value of such creditor’s [collateral]” and an unsecured claim to the extent that the value of the creditor’s collateral is less than the amount

of the allowed claim. 11 U.S.C. § 506(a). However, the BAPCPA amended § 1325(a) to include a paragraph commonly referred to as the “hanging paragraph” following § 1325(a)(9), 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.

11 U.S.C. § 1325(a).¹

Therefore, the question that must be decided is:

what happens when as a result of the hanging paragraph, § 506 vanishes from the picture. The majority view among bankruptcy judges is that, with § 506(a) gone, creditors cannot divide their loans into secured and unsecured components. Because § 1325 (a)(5)(C) allows a debtor to surrender the collateral to the lender, it follows (on this view) that surrender fully satisfies the borrower’s obligations. If this is so then many secured loans have been rendered non-recourse, no matter what the contract provides. [citations omitted]. The minority view is that Article 9 of the Uniform Commercial Code plus the law of contracts entitle the creditor to an unsecured deficiency judgment after surrender of the collateral, unless the contract itself provides that the loan is without recourse against the borrower. [Citations omitted]. That unsecured balance must be treated the same as other unsecured debts under the Chapter 13 plan.

In Re Wright, 2007 WL 1892502 (7th Cir.)(Easterbrook, J.).

Here, the parties dispute the effect of the hanging paragraph on a claim secured by collateral surrendered to the secured creditor pursuant to § 1325(a)(5)(C).

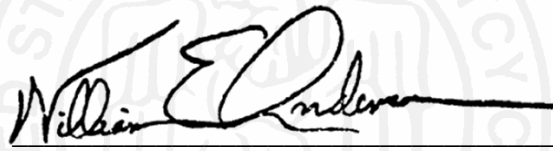
¹ The parties agree that the creditor’s claim is subject to the terms of the hanging paragraph.

However, as neither the Fourth Circuit nor the Supreme Court has considered the issue, this court grants the creditor's motion for certification.²

III. DECISION

Accordingly, the creditor's motion to certify this matter for direct appeal to the United States Court of Appeals for the Fourth Circuit is hereby GRANTED.

ENTER: This 24th day of August, 2007.

A handwritten signature in black ink, appearing to read "William E. Anderson", is written over a horizontal line.

William E. Anderson, Judge

² A disagreement also has emerged within the Fourth Circuit. Compare In re Kenney, Nos. 06-71975-A, 07-70359-A, 2007 WL 1412921 (Bankr. E.D.Va. May 10, 2007) (applying the majority position), with In re Long, No. 06-10601 (Bankr. W.D.N.C. Feb. 1, 2007) (applying the minority approach).

Given the conflict among courts across the country, including courts within the Fourth Circuit, certification also seems proper under 28 U.S.C. § 158(d)(2)(A)(ii.), which requires certification when the bankruptcy court's order "involves a question of law requiring resolution of conflicting decisions."

I ASK FOR THIS:

DaimlerChrysler Services North America, L.L.C.

By /s/ Steven L. Higgs
Of Counsel

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