

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

IN RE:)
) CHAPTER 13
) CASE NO. 05-18114-JDW
CURTIS DEWAYNE VAIL,)
)
)
DEBTOR.)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtor: Franklin D. Hayes
Post Office Box 2377
Douglas, Georgia 31533

For Wells Fargo: Thomas F. Bohan
Post Office Box 26937
Macon, Georgia 31221

MEMORANDUM OPINION

This matter comes before the Court on the objection of Wells Fargo Financial Acceptance to confirmation of Debtor's Chapter 13 plan. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(L). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

Debtor Curtis Vail filed a Chapter 13 petition on December 20, 2005. On the petition date, Debtor owed Wells Fargo Financial Acceptance \$18,300 for a 2005 Chrysler Sebring that Debtor valued at \$12,612. The contract rate for the purchase of the vehicle was 18.15%. In his Chapter 13 plan, Debtor proposed to pay Wells Fargo the full amount of its claim with no interest. Wells Fargo objected to confirmation of the plan, arguing that it was entitled to interest on the full amount of the claim. The parties stipulate that the amount of the claim is greater than the fair market value of the car plus interest calculated at the prime rate plus a risk factor. The parties further stipulate that Wells Fargo holds a purchase money security interest in the car and that the car was purchased within 910 days prior to the bankruptcy filing.

The Court held a hearing on the objection on May 15, 2006. At the hearing, the Court overruled the objection and confirmed Debtor's plan. The Court enters this opinion and accompanying order to supplement its oral ruling.

Conclusions of Law

At issue in this case is whether the hanging paragraph at the end of 11 U.S.C. § 1325(a) requires a debtor to pay interest to a creditor whose collateral is a motor vehicle purchased by the debtor for personal use within 910 days prior to filing a bankruptcy petition. For the reasons provided in In re Carver, 338 B.R. 521, 526 (Bankr. S.D. Ga. 2006) (Walker, J.), and In re Green, No. 06-50410-JDW (Bankr. M.D. Ga. Aug. 30, 2006) (Walker, J.) (slip op.), the Court holds as follows: Pursuant to a Chapter 13 plan, a creditor who holds a claim described in the hanging paragraph to § 1325(a) must receive the greater of (1) the full amount of the claim without interest; or (2) the amount the creditor would receive if the claim were bifurcated and crammed down with interest calculated in accordance with Till v. SCS Credit Corp., 541 U.S. 465, 124 S. Ct. 1951 (2004), paid on the value of the collateral.

In this case, the parties have stipulated that payment of the claim in full without interest will provide a greater distribution to Well Fargo than a cram down. Because the plan proposes to pay the claim in full, Well Fargo's objection to confirmation is overruled.

An Order in accordance with this Opinion will be entered on this date.

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