

FILED

NOV - 9 2006

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

GRANT PRICE
CLERK, U.S. BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA
DEPUTY
BY: _____

IN RE:

JUSTIN MARTIN CLEMONS and
CATHERINE MICHAELENE CLEMONS,

Debtors.

CASE NO. 06-12128-NLJ
Chapter 13

**ORDER OVERRULING COMPASS BANK'S
OBJECTION TO CONFIRMATION**

This matter came before the court for hearing on Compass Bank's Objection to Confirmation of Chapter 13 Plan. Debtors responded to the objection, then Compass Bank filed a Reply Brief.

FACTS

On May 4, 2005, Debtors entered into a retail installment agreement and security agreement with Auto Max for the purchase of a 2005 Dodge Neon ("Neon"). Subsequently, Auto Max assigned the retail installment agreement and the security agreement to Compass Bank, financier of the purchase. Compass Bank timely and property perfected its security interest in the Neon.

On August 25, 2006, Debtors filed their voluntary Chapter 13 Bankruptcy petition and plan. The date of their filing was less than 910 days after purchasing the Neon. As a part of their Chapter 13 Plan, Debtors propose to surrender the Neon to Compass Bank in full satisfaction of the underlying obligation thereon, to which treatment Compass Bank objected.

ISSUE, APPLICABLE LAW, AND DISCUSSION

The issue between the parties is one of first impression for this court. It is succinctly stated by Compass Bank as:

[w]hether 11 U.S.C. § 1325(a), as amended by BAPCPA, allows the Debtors to surrender Compass Bank's collateral in full and complete satisfaction of the underlying obligation to Compass Bank, or whether Compass Bank is entitled to assert an unsecured deficiency claim after its collateral is liquidated in a commercially reasonable manner.

Objection to Confirmation of Chapter 13 Plan at 1. The parties' arguments and authorities are fully set forth in their briefs and will not be repeated here.

Because this issue has arisen subsequent to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") there are few decisions addressing it. The cases supporting Compass Bank's position are *In re Duke*, 345 B.R. 806 (Bankr. W.D. Ky. 2006) and *In re Zehrung*, ___ F.Supp. ___, 2006 WL 3059908 (W.D. Wisc. 2006). Among the cases in the majority supporting Debtors' position are *In re Ezell*, 338 B.R. 330 (Bankr. E.D. Tenn. 2006), *In re Sparks*, 346 B.R. 767 (Bankr. S.D. Ohio, W.Div. 2006), *In re Payne*, 347 B.R. 278 (Bankr. S.D. Ohio 2006) and *In re Nicely*, 349 B.R. 600 (Bankr. W.D. Mo. 2006).

In interpreting a statute, the plain language of that statute is the starting point for the court. *United States v. Ron Pair Enters.*, 489 U.S. 235, 109 S.Ct. 1026 (1989). If that language is clear, the court has no duty to inquire beyond the plain language of the statute. *Id.* Additionally, where the statutory language is clear and

unambiguous, the court is precluded from speculating as to Congress' intent. *Payne*, 347 B.R. at 281-282 (citation omitted). It is only where the language is ambiguous or would produce an absurd result that the court may attempt to discern legislative intent. *Id.* at 282.

The court has reviewed the cases listed and is of the opinion the cases supporting Debtors' position are better reasoned and reach the correct result. In the *Payne* case, Judge Preston opines that:

This Court having studied the "hanging paragraph" of § 1325(a) finds the language unambiguous and clear. The "hanging paragraph" of § 1325(a) does not limit its application to claims treated under § 1325(a)(5)(B). It states quite simply, that "[f]or purposes of paragraph (5), section 506 shall not apply to a claim described in § 1325(a)(5)(C) as well. The plain meaning of this statute cannot be overcome by silence in the legislative history. While Congress may have intended to afford additional protections to creditors with the BAPCPA amendments, the Court is not satisfied that it intended a different result with the hanging paragraph of § 1325(a) than is set forth in the plain language. The Court agrees with the [creditor's] analysis that, despite its partial moniker of "Consumer Protection Act", many of the changes wrought by BAPCPA were instigated by the credit industry and Congress did not intend to lessen the rights of creditors through the BAPCPA amendments.

However, the Court cannot infer limitation on the application of the "hanging paragraph" which are not present. Had Congress intended to limit application of the statute, it could have easily done so within the language of the "hanging paragraph" of 1325(a) or within the language of § 506. Congress is assumed to know and understand the effect of its legislation, and this Court may not rewrite the statute as enacted by Congress.

From a practical standpoint, this application of § 1325(a)(5)

requires the creditor to forego the opportunity to take advantage of the provisions of § 506 should it liquidate the collateral for less than the amount it is due, just as it requires the debtor to do so should the debtor decide to retain the vehicle. While this may appear to be inconsistent with the overall goals of BAPCPA to provide greater protections to creditors, the Court is not prepared to say that this is an absurd result in light of the sparse guidance from Congress.

Payne, 347 B.R. at 282-283. See also *In re Ezell*, 338 B.R. at 342 (the hanging paragraph is equally applicable to revised § 1325(a)(5)(B) and revised § 1325(a)(5)(C); surrender of the collateral subject to the hanging paragraph satisfies the allowed secured claim in full).

DECISION

This court finds that Judge Preston's analysis in *Payne* is well-reasoned and cogently summarizes the pertinent findings of the other courts in the majority on this issue. Accordingly, this court adopts this analysis.

Based upon the foregoing, Compass Bank's objection to confirmation of Debtors' plan is overruled.

IT IS SO ORDERED this 9th day of November, 2006.

BY THE COURT.


Judge Niles L. Jackson
U.S. Bankruptcy Court