

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
DAVID C. MYERS ) CASE NO. 07-12354  
MILEY S. MYERS )  
 )  
Debtors )

**DECISION DENYING CONFIRMATION**

At Fort Wayne, Indiana, on March 14, 2008.

This matter is before the court to consider confirmation of the debtors' proposed chapter 13 plan and the objection thereto filed by DaimlerChrysler Financial Services. DaimlerChrysler is a secured creditor holding a lien upon debtors' 2004 Dodge Ram. Under the proposed plan it is to be paid in full, in accordance with the terms of the original note, through the trustee. By the terms of the note, the claim bears interest at the rate of 5.49% per annum. DaimlerChrysler has objected to confirmation arguing that this interest rate – the contract rate – is too low and that in order to satisfy the requirements of § 1325(a)(5)(B)(ii), it should receive at least the prevailing prime rate of interest. The matter has been submitted to the court for a decision upon the parties' stipulation of fact and the briefs of counsel.

The debtor bears the burden of proving that its proposed plan satisfies the requirements of the Bankruptcy Code and is worthy of confirmation. In re Chinichian, 784 F.2d 1440, 1443-44 (9th Cir. 1986). The requirements that the plan must fulfill are set out in § 1322(a) and § 1325 of the United States Bankruptcy Code. Of these, it is only § 1325(a)(5) that concerns the court at the present time. That portion of the Bankruptcy Code sets out the standards for confirmation where the treatment of secured claims is concerned. It requires one of three things. Either the creditor must

accept the plan, 11 U.S.C. § 1325(a)(5)(A), the debtor must surrender the creditor's collateral, 11 U.S.C. § 1325(a)(5)(C), or, if the debtor and the creditor cannot agree on mutually satisfactory treatment and the debtor wishes to retain possession of the collateral, the secured creditor must receive "value, as of the effective date of the plan . . . [that] is not less than the allowed amount of such claim." 11 U.S.C. § 1325(a)(5)(B)(ii). In other words, unless a secured claim is to be fully paid upon confirmation, the creditor is entitled to be paid with interest. What that rate of interest should be is the focus of the present dispute.

The debtor argues that paying DaimlerChrysler its contract rate of interest is sufficient because it is not modifying the creditor's rights and therefore this case does not present a scenario in which the plan is being "crammed down" upon the objecting creditor. This argument misconstrues the nature of what has come to be known as a cramdown. That occurs any time the court is being asked to consider confirmation over the objection of a secured creditor. In other words, any time the court is considering confirmation under § 1325(a)(5)(B) where the plan does not have the creditor's acceptance and does not propose to surrender its collateral. See, Till v. SCS Credit Corp., 541 U.S. 465, 468-69, 124 S.Ct. 1951, 1955 (2004)(citing Associates Commercial Corp., v. Rash, 520 U.S. 953, 957, 117 S.Ct. 1879 (1997)). Indeed, the debtor has cited no authority in support of its argument that when a secured creditor is being paid in accordance with the terms and conditions of the original loan, the contract rate of interest satisfies the requirements of § 1325(a)(5)(B)(ii).

The parties' arguments in this case – the debtor advocating a contract rate of interest and the creditor advocating nothing less than prime – mirror the positions taken by the plurality and the dissenting opinions of the Supreme Court in Till v. SCS Credit. There the Court was explicitly

confronted with the issue of how one goes about determining the appropriate rate of interest under § 1325(a)(5)(B) and the other provisions of the Bankruptcy Code which require that a creditor receive value as of the effective date of the plan. Both sides acknowledged that the appropriate means of doing so was to begin with a presumed rate of interest and then place the burden of proof upon whichever party wanted to deviate from that presumptive rate. They differed only in what the initial presumptive rate should be. Unfortunately for the debtors in this case, their argument is the one advocated by the dissent. It was the dissent in Till that thought the proper approach would be to begin with the contract rate and then require the debtor to prove that a lower rate was called for.<sup>1</sup> The plurality opinion felt that the appropriate point of beginning was prime rate and that the creditor bore the burden of proving that something more was required. Justice Thomas in his concurring opinion felt that prime alone would suffice.

Till controls the court's decision in this matter. As it interprets Till, in determining an appropriate rate of interest for the payment of secured claims, the court "begins by looking to the national prime rate." Id., 541 U.S. at 478-79, 124 S.Ct. at 1961. That rate may then be adjusted to account for "such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." Id. Nonetheless, doing so requires the party seeking an adjustment to present evidence concerning the adjustment called for. Id.

In this instance, there is no evidence warranting a departure from the prime rate of interest. The matter was submitted upon stipulations of fact and, insofar as they bear upon the rate of interest, those stipulations indicate only that the plan's proposed rate of 5.49% is less than the prime rate that

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<sup>1</sup>Unlike this case where the contract rate of interest is only 5.49%, the contract rate of interest in Till was 21% and the debtor's proposed plan sought to reduce that rate to 9.5%. Till, 541 U.S. at 470, 471, 124 S.Ct. at 1956, 1957.

prevailed at any time during the pendency of this case. While the plan may incorporate the same rate of interest called for by the contract between the debtor and the creditor, by itself, that is not a sufficient reason to deviate from the prime rate otherwise required. To reach that conclusion would essentially enshrine the position of the dissenters rather than to follow the reasoning of the Till plurality.

DaimlerChrysler's objection to confirmation of debtors' proposed chapter 13 plan is sustained and confirmation should be denied. An order doing so will be entered.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court