

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT HAMMOND

IN RE: )  
WANDA ANN CABELL )  
 ) BANKRUPTCY NO. 10-20675  
 )  
Debtor )

MEMORANDUM OPINION  
DECISION  
AND  
ORDER

I

Statement of Proceedings

This Chapter 13 case is before the Court on the Initial Objection to Confirmation filed by Credit Acceptance Corporation (“Credit”) /on April 26, 2010, and on Amended Objection to Confirmation filed by Credit on March 10, 2010.

The Initial Objection asserted that Credit held a Purchase Money Security Interest in the Debtor’s 2005 Ford Freestar Motor Vehicle (“Motor Vehicle”) incurred within 910 days preceding the date the Debtor’s Chapter 13 Petition, which was filed on February 27, 2010; that the Motor Vehicle was acquired for the personal use of the Debtor; and, that pursuant to the “hanging paragraph” found in the first clause of §1325(a)(9) the Debtor could not cram down the value of the Motor Vehicle as provided by the Debtor’s Plan.

The Amended Objection to Confirmation filed by Credit asserts, in the alternative, that if the Motor Vehicle is found to have been acquired by the Debtor for a business purpose, rather than for personal use, the Plan is objectionable on the basis that the Motor Vehicle was acquired by the Debtor within one year of the Debtor’s Chapter 13 Petition, and because the debt by the Debtor is secured by

“any other thing of value; the Plan of the Debtor cannot be confirmed pursuant to the second clause of “hanging paragraph”.<sup>1</sup>

An Evidentiary Hearing was held on both the Initial Objection and the Amended Objection on December 8, 2010. It was orally stipulated by the parties in open Court that the Debtor acquired the Motor vehicle within one year of the Petition date and that Credit held a Purchase Money Security Interest thereon. Pursuant to Findings of Fact and Conclusions of Law as orally stated and recorded in open court on December 8, 210, the Court decided that the initial Objection of Credit should be DENIED, in that the Court found that the Motor Vehicle was used by the Debtor primarily for (See Docket No. 87) business purposes rather than for the personal use of the Debtor.

The Court reserved it Ruling on the Amended Objection by Credit and issued a Briefing Schedule (Docket No. 88).

Credit filed its Brief in Support of its Amended Objection on January 10, 2011. The Debtor filed her Memorandum of Law in Opposition to the Objection on January 10, 2011. Neither party filed an Answer Brief.

## II

### The Brief by Credit

Credit has cited the cases of In re Littlefield, 388 B.R. 1 (Bankr. D. Me. 2008); In re Tanguay, 427 B.R. 427 (Bankr. D. Tenn 2010); and, In re Curtis, 345 B.R. 756 (Bank. D. Utah 2006) in support

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<sup>1</sup> The “hanging paragraph” found at §1325(a)(9) states as follows:

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 period 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 (emphasis supplied).

of its Amended Objection.

### III

#### The Memorandum on Law By the Debtor

The Debtor relies primarily on the case of In Re Hayes, 376 B.R. 655 (Bankr. M.D. Tenn 2007) as well as the cases of In re Ford, 2008 WL 1925153 (Bankr E.D. Wis April 29, 2008); and In re Thompson, 2009 WL 1758757 (Bankr N. D. Ohio, June 17, 2009).

### IV

#### Discussion and Conclusions of Law

The Court in In re Hayes, 376 B.R. 655 (Bankr. M. D. Tenn 2007) stated as follows:

The hanging sentence first requires identification of what the collateral “consists of.” The hanging sentence has different rules for two classes of collateral - “motor vehicle” or “any other thing of value.” If the collateral consists of a motor vehicle, protection from bifurcation under the hanging sentence requires proof of three elements: (1) the creditor has a purchase money security interest; (2) the debt was incurred within 910 days preceding the petition; and (3) the motor vehicle was acquired for the personal use of the debtor. If the collateral is “any other thing of value” then the creditor must prove that it has a purchase money security interest and that the debt was incurred within one year preceding the petition.

The collateral-specific distinction in the hanging sentence is evidence of Congressional intent to treat motor vehicle collateral differently than any other collateral. the collateral-specific rules in the hanging sentence can only be respected by separate analysis of each item of collateral.

\* \* \* \*

Congress made a different policy decision to treat motor vehicle collateral differently than any other thing of value. the conditions in the hanging sentence are dependent on what the collateral consists of.

Id. 376 B.R. at 664-665 (footnote omitted).

The Court in In re Ellegood, 362 B.R. 696 (E. D. VA 2007) stated as follows:

This Court agrees with the conclusions in In re Curtis [345 B.R. 756], and In re Parish [2006 WL 1679710]. The provisions of the “hanging paragraph” create two protected categories of secured debt, each requiring that

the creditor possess a purchase money security interest. Motor vehicles are excluded from the provisions of Section 506 of the Bankruptcy Code if the debt is incurred within the 910-day period prior to the bankruptcy filing. Collateral other than a motor vehicle is excluded if the debt is incurred within one year prior to the bankruptcy filing. Each instance, however, requires that the creditor possess a purchase money security interest in either the motor vehicle or other collateral.

Id. 362 B.R. at 704.

A plain reading of the language in the second clause of the “hanging paragraph” to §1325(a)(9) relating to “any other thing of value”, clearly indicates that Congress intended to create two distinct categories and that the first clause and the second clause thereof are mutually exclusive. Thus, the second clause does not apply to purchase money security interests in a motor vehicle acquired by the Debtor within one year of the Petition. See In re Thompson, 2009 Bankr. LEXIS 1993, at \*9, 2009 WL 1758757 at (4 (Bankr. N. D. Ohio June 17, 2009)); In re Horton, 398 B.R. 73, 75 (Bankr. S. D. Fla 2008); In re Ford, 2008 Bankr.LEXIS 1381, at \*18, 2008 WL 1925153, at 5-6 (Bankr. E. D. Wis. Apr. 29, 2008); In re Balsinde, 2007 Bankr.LEXIS 4058, at \*5, 2007 WL 4247642, at \*2 (Bankr. S. D. Fla. Nov. 2, 2007).

In Hortan, 345 B.R. 73, the secured lender argued, as does the Creditor in this case, that the second clause of the “hanging paragraph” applied since the motor vehicle in question was acquired within one year of the Petition. The Horton, Court rejected this argument and adopted the majority position that a motor vehicle acquired within one year of the Petition is not “an other thing of value”, (citing, In re Ellegood, 362 B.R. 696, 704 (Bankr. E. D. Va 2007), and rejecting the minority decision of In re Littlefield, 388 B.R. 1 (Bankr. D. Me 2008) cited by Credit.

The Court in In re Hickory, 370 B.R. 219 (Bankr. D. Neb. 2007) in discussing the legislative history to the “hanging paragraph” stated as follows:

The language used in the House report closely follows the plain language of the statute. In describing the collateral for a debt, incurred within

the 910 days preceding the bankruptcy filing, the statute specifically refers to a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor.” It is not simply a motor vehicle, but instead a motor vehicle acquired for the personal use of the debtor. The second part of the paragraph pertains only to the situation where collateral consists of any other thing of value—that is, the collateral is not a motor vehicle acquired for the personal use of the debtor. The plain language indicates that the modifier “acquired for the personal use of the debtor” applies to motor vehicles, and is not one of the applicable elements of the hanging paragraph when the collateral for the debt consists of any other thing of value.

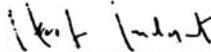
Id. 370 B.R. at 221 (citing In re Ellegood, 362 B.R. at 698-99 n.3 with approval).

The Court adapts the analysis and reasoning of the majority position. It is therefore,

**ORDERED, ADJUDGED, and DECREED**, that the Amended Objection to Confirmation filed by Credit Acceptance Corporation should be and is hereby **DENIED**.

The Clerk shall enter this Order on a separate document.

June 10, 2011

  
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**JUDGE, U. S. BANKRUPTCY COURT**

Distribution:

Debtor  
Attorney Casas  
Attorney McHargue  
Trustee  
U. S. Trustee