



SO ORDERED,

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: May 25, 2017**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

JOEANN PATRICK,

CASE NO. 17-00431-NPO

DEBTOR.

CHAPTER 13

ORDER SUSTAINING OBJECTION TO SECURED CLAIM

This matter came before the Court for hearing on May 1, 2017 (the "Hearing"), on the Objection to Secured Claim (the "Objection") (Dkt. 15) filed by the debtor, Joeann Patrick (the "Debtor"), and the Response to Objection to Secured Claim (the "Response") (Dkt. 24) filed by Community Bank ("Community") in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Frank H. Coxwell ("Coxwell") represented the Debtor, Michael MacInnis ("MacInnis") represented Community, and Justin B. Jones appeared on behalf of Harold J. Barkley Jr., the standing chapter 13 panel trustee. After fully considering the matter and being fully advised in the premises, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

Notice was proper under the circumstances.

Facts

1. The Debtor filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code on February 7, 2017 (the “Petition”) (Dkt. 1). She filed her schedules (the “Schedules”) (Dkt. 5) and her chapter 13 plan (the “Plan”) (Dkt. 7) contemporaneously with the Petition. On the Schedules, the Debtor listed Community as a secured creditor holding a claim in the amount of \$8,000.00, secured by a 2007 Pontiac G6 (the “Pontiac”), with a value of \$3,575.00. (Schedules at 12). In the Plan, the Debtor proposed to pay Community the value of the Pontiac over the life of the Plan at a five-percent (5%) annual rate of interest. (Plan at 2).

2. The Debtor filed the Objection on March 1, 2017, proposing to pay Community the value of the Pontiac at a five-percent (5%) annual rate of interest. (Obj. at 1). In the Objection, the Debtor described the collateral as “PMSI Vehicle—2007 Pontiac G6.” (*Id.*). The Objection further provided that if Community timely filed a proof of claim, and the vehicle loan was acquired less than 910 days before the day the Petition was filed,¹ she would “pay the amount owed as set forth in such claim plus 5% interest over the life of the [Plan].” (*Id.*). If Community filed a timely proof of claim indicating that the vehicle loan was acquired within the 910-day Period, however, the Debtor would “pay the value plus 5% interest over the life of the plan” (*Id.*).

3. Community filed the Response on March 30, 2017, arguing that its claim should be paid in full under § 1325(a)(9)(*).²

¹ 11 U.S.C. § 1325(a)(9)(*) includes debt that “was incurred within the 910-day period preceding the date of the filing of the petition (the “910-day Period”)” The Court will refer to 11 U.S.C. § 1325(a)(9)(*) as the “910-day Rule.”

² All code sections refer to the Bankruptcy Code found at title 11 of the U.S. Code unless
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4. Community filed a proof of claim (the “POC”) (Cl. No. 6-1) on March 31, 2017. The POC provided that Community has a secured claim in the amount of \$11,424.32 for “money loaned” secured by the Pontiac. (POC at 2). The POC further provided that the Pontiac has a value of \$11,424.32. (*Id.*). Attached to the POC were: (1) the Promissory Note (POC at 4-5), showing that Community loaned the Debtor \$13,399.62, at a 10.15% rate of interest on March 18, 2016; (2) the Consumer Security Agreement (POC at 6-8) evidencing that the Debtor granted Community a security interest in the Pontiac as security for the Promissory Note; (3) the Certificate of Title (POC at 9) showing that the Debtor held title to the Pontiac and that Community held a first lien as of June 25, 2015; (4) the Loan Inquiry (POC at 10) showing that on March 30, 2017, the balance of the loan was \$11,027.89, with interest accrued in the amount of \$512.13; (5) the Loan Payoff Inquiry (POC at 11) showing the current balance of the loan as of March 30, 2017, as \$11,027.89; and (6) the Loan Inquiry (POC at 12) showing that the last payment the Debtor made was on September 30, 2016.

5. At the Hearing, Coxwell and MacInnis agreed that Community originally loaned the Debtor money in June of 2013 (the “2013 Loan”) to purchase the Pontiac and granted Community a purchase money security interest (“PMSI”) in the Pontiac. Subsequently, the 2013 Loan was refinanced by Community in March of 2016 (the “2016 Refinancing”). Coxwell argued that the 2016 Refinancing extinguished the PMSI status of the 2013 Loan so that it no longer falls under the purview of the 910-day Rule.³ MacInnis acknowledged that there is a split of authority

indicated otherwise.

³ The basis for the 910-day Rule stems from the unnumbered “hanging paragraph” immediately following § 1325(a)(9). The 910-day Rule allows a secured creditor satisfying certain requirements, discussed herein, to have its claim paid in full without regard to the

across the country as to whether a creditor's PMSI status is extinguished by a refinancing. While some courts have adopted the dual status rule, others have adopted the transformation rule.⁴ According to MacInnis, whether Community possesses a PMSI hinges on whether the 2016 Refinancing constituted a novation where the existing PMSI is extinguished or a true renewal where the PMSI survived. MacInnis contended that Community is protected by the anti-bifurcation provision of the 910-day Rule because the underlying debt was not paid in full prior to the 2016 Refinancing and the 2016 Refinancing was a true renewal of the 2013 Loan.

Discussion

In order for Community to receive the anti-bifurcation protection afforded by the 910-day Rule, it must satisfy the following elements: (1) the creditor's security interest is a PMSI; (2) the debt was incurred within the 910-day Period; (3) the collateral is a motor vehicle; and (4) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a). The parties disputed only the first element above, with the Debtor arguing that the 2016 Refinancing extinguished the PMSI status of the POC and Community arguing that it has a PMSI despite the 2016 Refinancing. Under the second element, if the debt was not incurred within the 910-day Period, the Debtor is

collateral's value. 11 U.S.C. § 1325(a)(9)(*).

⁴ Under the transformation rule, "if collateral is used to secure a debt other than its own purchase price, the creditor's original [PMSI] in the collateral is transformed into a non-[PMSI]." *In re Spears*, Case No. 16-00575-NPO (Bankr. S.D. Miss. Sept. 6, 2016) (citing *In re Shaw*, 209 B.R. 393 396 (Bankr. N.D. Miss. 1996)). "In other words, '[u]nder the transformation rule, the secured creditor does not have a PMSI because the non-purchase money component . . . transforms the entire claim into a non-[PMSI].'" *Id.* at 5-6 (citing *In re Busby*, 393 B.R. 443, 448 n.5 (Bankr. S.D. Miss. 2008)). In a refinancing, the transformation rule holds that a PMSI is transformed into a non-PMSI because the collateral secures an antecedent debt rather than a debt incurred as all or part of the price of the collateral. Under the dual status rule, "[a] security interest may be [PMSI] to some extent and a non-[PMSI] to some extent." *Id.* at 6 (citing *In re Busby*, 393 B.R. at 450-51).

permitted to bifurcate Community's claim under § 506(a)(1) into secured and unsecured components based on the value of the Pontiac.

The Debtor filed the Petition on February 7, 2017, 910 days from which was August 12, 2014. Coxwell and MacInnis agreed at the Hearing that the 2013 Loan was executed in June of 2013. June of 2013, was outside the 910-day Period, but the 2016 Refinancing occurred within the 910-day Period. Although no court within the Fifth Circuit Court of Appeals has addressed whether the 910-day Rule applies when a loan was originally executed outside of the 910-day Period but was refinanced within the 910-day Period, courts in other jurisdictions have held that the 910-day Rule does not protect a secured creditor when a refinanced loan was originally obtained outside of the 910-day Period. *See, e.g., In re Naumann*, No. 09-32092, 2010 WL 2293477 (Bankr. S.D. Ill. June 8, 2010); *In re Cunningham*, No. 11-32684, 2012 WL 1604686 (Bankr. W.D.N.C. May 8, 2012); *In re Bibbs*, No. 14-10847, 2015 WL 1843252 (Bankr. D. Kan. Apr. 20, 2015). If the Court determines that the 2013 Loan was not incurred within the 910-day Period by virtue of the 2016 Refinancing, it will be unnecessary to consider the first element in the 910-day Rule, which would require the Court determine whether the transformation rule or the dual status rule applies, and, to that end, whether the 2016 Refinancing was a novation or a renewal of the 2013 Loan under Mississippi law.

The facts of *In re Naumann* are similar to those of the Bankruptcy Case and, there, the bankruptcy court held that a refinanced loan originally obtained outside of the 910-day Period does not fall within the 910-day Rule. *In re Naumann*, 2010 WL 2293477, at *4. In *In re Naumann*, the debtor-husband originally obtained a loan to purchase a vehicle outside of the 910-day Period. *Id.*, at *1. The debtors subsequently refinanced the loan within the 910-day Period. *Id.* In their

chapter 13 plan, the debtors proposed to bifurcate the creditor's claim, but the creditor argued that its interest was protected by the 910-day Rule. *Id.* After discussing the split of authority among the Circuits regarding whether the transformation rule or dual status rule applies when an original purchase money loan is refinanced, the bankruptcy court concluded that notwithstanding which rule applies, the claim could be bifurcated because it was not obtained within the 910-day Period. *Id.*, at *4. Like the Debtor and Community in the Bankruptcy Case, the parties in *In re Naumann* focused only on the first element of the 910-day Rule—whether the creditor's claim constituted a PMSI. *Id.* The bankruptcy court noted, however, that in order for the 910-day Rule to apply, the debt had to have been incurred within the 910-day Period. *Id.* The debtor-husband, however, originally incurred the loan to purchase the vehicle outside of the 910-day Period. *Id.* “Accordingly, the provisions of the [910-day Rule] do not apply and [the creditor's] claim may be properly bifurcated into secured and unsecured components under § 506(a)(1).” *Id.*; *see also In re Cunningham*, 2012 WL 1604686, at *5 (citing *In re Neumann* and rejecting the creditor's “theory that the refinancing of the Debtor's car represents a purchase.”).

Similarly, in *In re Bibbs*, the debtor originally obtained a loan to purchase a vehicle 921 days prior to filing her bankruptcy petition. *In re Bibbs*, 2015 WL 1843252, at *1. She then refinanced the loan within the 910-day Period. *Id.* The creditor argued that because she refinanced the loan within the 910-day Period, it was protected by the 910-day Rule. *Id.* The bankruptcy court, however, concluded that because the original loan was obtained outside of the 910-day Period, the 910-day Rule did not apply and the debtor could bifurcate the claim. *Id.*, at *3.

The Court agrees with the bankruptcy courts in *In re Neumann*, *In re Cunningham*, and *In*

re Bibbs. Section 1325(a)(5) expressly requires a debt to be incurred within the 910-day Period. 11 U.S.C. § 1325(a)(5). Thus, because the 2013 Loan was not obtained within the 910-day Period, it is irrelevant for purposes of determining the applicability of the 910-day Rule whether the 2016 Refinancing extinguished the PMSI status of the 2013 Loan.⁵ The Court finds that because the Debtor obtained the 2013 Loan outside of the 910-day Period, the 910-day Rule does not apply. Accordingly, the Debtor is permitted to bifurcate Community's claim. The Objection, therefore, should be sustained, and the Response should be overruled.

IT IS, THEREFORE, ORDERED that the Objection is hereby sustained.

IT IS FURTHER ORDERED that the Response is hereby overruled.

##END OF ORDER##

⁵ The Court does reach the issue of whether Community holds a PMSI in the Pontiac and nothing in this Order should be interpreted as the Court's opinion on whether the transformation rule or the dual status rule applies to refinanced PMSI loans when both the original loan and the refinanced loan fall within the 910-day Period. *See In re Jett*, 563 B.R. 206 (Bankr. S.D. Miss. 2017).