SO ORDERED,

Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: February 14, 2025

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:

KENARD D. CLINCY, **CASE NO. 24-01532-JAW**

DEBTOR. **CHAPTER 13**

ORDER SUSTAINING OBJECTION TO VALUATION
FILED BY KEESLER FEDERAL CREDIT UNION

This matter came before the Court for hearing on January 27, 2025 (the "Hearing"), on the Objection to Valuation (the "Objection") (Dkt. #12) filed by Keesler Federal Credit Union ("Keesler"); the Response Brief to Objection to Valuation (the "Response") (Dkt. #30) filed by Kenard D. Clincy (the "Debtor"); and the Reply Brief to Debtor's Response Brief to Keesler Federal Credit Union's Objection to Valuation (Dkt. #31) filed by Keesler in the above-referenced bankruptcy case. At the Hearing, Bryce C. Kunz represented the Debtor, and Robert Alan Byrd represented Keesler. At issue is whether the purchase-money status of Keesler's security interest in a motor vehicle was lost because of the presence of a cross-collateralization clause in a subsequent loan. After reviewing the pleadings, arguments of counsel, the briefs submitted by the parties (Dkt. #12; ##30-31), and the applicable law, the Court determines that the Objection should be sustained.

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Notice of the Hearing was proper under the circumstances.

Facts[1]

On July 28, 2023, the Debtor purchased a 2013 Chevrolet Tahoe with financing provided by Keesler (the "First Loan") (Dkt. #12 at 1; Cl. #2-1) and gave Keesler a security interest in the vehicle. (Dkt. #12 at 4-5).

Fifteen days later, on August 12, 2023, the Debtor obtained a loan from Keesler (the "Second Loan") (Dkt. #30 at 1; Cl. #4-1). The Second Loan agreement contained the following cross-collateralization provisions:

> **Security**: Collateral securing other loans with the Credit Union may also secure this loan.
> * * *
> 4. **SECURITY FOR LOAN** – This agreement is secured by all property described in the "Security" section of the Trust in Lending Disclosure. Property securing other loans you have with us also secures this loan, unless the property is a dwelling.
> * * * *
> **2. WHAT THE SECURITY INTEREST COVERS/CROSS COLLATERAL PROVISIONS** – The security interest secures the Loan and any extensions, renewals or refinancing of the Loan. **The security interest also secures any other loans, including any credit card loan, you have now or receive in the future from us and any other amounts you owe us for any reason now or in the future, except any loan secured by your principal dwelling.**

(Cl. #4-1 at 4-5, 7) (emphasis added).

Two days after the Second Loan, on August 14, 2023, the Debtor obtained a credit card from Keesler (the "Third Loan") (Dkt. #30 at 1; Cl. #3-1).

[1] The following findings of fact and conclusions of law are made pursuant to Rules 7052 and 9014(c) of the Federal Rules of Bankruptcy Procedure. The facts of the case are not disputed. (Dkt. #31 at 1).

The Debtor filed his chapter 13 bankruptcy petition on July 3, 2024, which is 341 days after he obtained the First Loan and well within the 910-day limit set forth in 11 U.S.C. § 1325(a).[2] (Dkt. #1).

As of the petition date, the Debtor owed Keesler $20,826.56 on the First (motor vehicle) Loan (Dkt. #12 at 1); $700.72 on the Second Loan (Dkt. #30 at 1); and $6,557.28 on the Third (credit card) Loan (Dkt. #30 at 1). Keesler filed three proofs of claim, one for each loan. Keesler identified the First Loan as a secured claim (Cl. #2-1) and the Second and Third Loans as unsecured claims. (Cl. #3-1, #4-1).

With his petition, the Debtor filed a proposed Chapter 13 Plan (the "Plan") (Dkt. #2). The Plan lists the motor vehicle as collateral for all three loans and crams down Keesler's claims to $12,712.50, the car's alleged present value. (Dkt. #2 at 2). The amount of Keesler's secured claim arising from the First Loan ($20,826.56) far exceeds what Debtor proposes to pay ($12,712.50). In its Objection, Keesler asserts that its claim arising from the First Loan is secured by purchase-money collateral and, therefore, is protected from bifurcation and cramdown. (Dkt. #12 at 1).

Discussion

In his Response, the Debtor frames the issue as "whether the [Second and Third Loans] obtained by Debtor, which dragged in existing collateral to secure the loan, thereby transformed the security interest from a purchase money security interest (PMSI) to a non-purchase money security interest (Non-PMSI)," allowing the Debtor to "cram down" Keesler's claim in the Plan. (Dkt. #30 at 1). The Debtor argues that because the motor vehicle secures subsequent loans unrelated to its acquisition, Keesler's initial PMSI was transformed into a non-purchase-money security interest. In other words, the Debtor argues that Keesler's extension of credit fifteen days after

[2] Unless otherwise noted, citations to statutes are to title 11 of the U.S. Code.

he acquired the vehicle destroyed the purchase-money character of its security interest and as a result, its secured claim is subject to bifurcation and cramdown pursuant to § 506(a) notwithstanding the hanging paragraph in § 1325(a).

Keesler contends that the Debtor's Plan is unconfirmable because it "devalues its collateral at $12,712.50." Keesler posits that its PMSI survived the subsequent loans and that it is entitled to the balance owed on the First Loan ($20,826.56). Keesler contends that its PMSI in the motor vehicle is protected from bifurcation by the hanging paragraph in § 1325(a). (Dkt. #12 at 1). Keesler further asserts that it "has not used the 'dragnet' language . . . to enhance its claim as to the 2013 vehicle." (Dkt. #31 at 1). Keesler does not include the balances owed on the Second and Third Loans in the amount of its secured claim and is adamant that it does not seek to cross-collateralize the Second and Third Loans.

A. § 1325(a)'s Hanging Paragraph

Plan confirmation is governed by § 1325. A chapter 13 plan that includes treatment of an allowed secured claim is confirmable if the creditor accepts the plan or the debtor surrenders the property to the creditor. 11 U.S.C. § 1325(a)(5)(A),(C). In the absence of consent or the surrender of property, a plan is confirmable only if "the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim." 11 U.S.C. § 1325(a)(5)(B). Under § 506(a), "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest… is a secured claim *to the extent of* the value of such creditor's interest." 11 U.S.C. § 506(a) (emphasis added). Using § 506 and § 1325(a)(5)(B) in this manner results in "bifurcation and cramdown because the secured claim is reduced to the present value of the collateral, while the remainder of the debt becomes unsecured,

forcing the secured creditor to accept less than the full value of its claim." *Ford Motor Credit Co. v. Dale (In re Dale)*, 582 F.3d 568, 572 (5th Cir. 2009).

A debtor's ability to bifurcate and cramdown an allowed secured claim, however, is limited by § 1325(a)'s hanging paragraph:

> 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…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.

11 U.S.C. § 1325(a). This paragraph excepts certain allowed secured claims from § 506's "extent of the value" treatment. 8 COLLIER ON BANKRUPTCY ¶ 1325.06 (16th ed. 2024). The hanging paragraph applies if: "(1) the creditor has a purchase money security interest which secures the debt; (2) the debt was incurred within 910 days of the date the petition was filed; (3) the collateral securing the debt is a motor vehicle; and (4) the motor vehicle was acquired for the personal use of the debtor." *In re Jett*, 563 B.R. 206, 208 (Bankr. S.D. Miss. 2017) (quoting *In re Busby*, 393 B.R. 443, 448 (Bankr. S.D. Miss. 2008)). Of these requirements, only the nature of Keesler's security interest is in dispute.

B. Keesler held a PMSI in the motor vehicle arising from the First Loan.

Whether a security interest is a PMSI is determined by state law. *Dale,* 582 F.3d at 573. In Mississippi, "a purchase money security interest is an interest taken in goods securing a loan made for the purchase of those same goods." *In re Jett*, 563 B.R. at 209; *see also* ENCY. OF MISS. LAW 66:39 (updated Oct. 2023); MISS. CODE ANN. § 75-9-103(a)(2). There is no dispute that the Debtor used the proceeds from the First Loan to purchase the 2013 Chevrolet Tahoe and that Keesler's

security interest in the motor vehicle was purchase-money in nature.[3] It is also undisputed that neither the Second nor Third Loans refinanced or extinguished the First Loan.

C. The Transformation Rule does not apply to Keesler's PMSI.

The transformation rule, which some courts follow,[4] "holds that a purchase money security interest is transformed into a nonpurchase money security interest when the proceeds of a renewal loan are used to satisfy the original note because the collateral now secures an antecedent debt rather than a debt for the purchase of the collateral." *In re Jett*, 563 B.R. at 210 (quoting *In re Naumann*, No. 09-32092, 2010 WL 2293477, at *2 (Bankr. S.D. Ill. June 8, 2010)).

The Debtor recognizes that a PMSI in a transaction involving a second loan can exist but argues that the PMSI would extend only as "to a new good purchased with that additional money." (Dkt. #30 at 5) (quoting *In re Jett*, 563 B.R. at 206 n.12 (quoting *Roberts Furniture Co. v. Pierce (In re Manuel)*, 507 F.2d 990 (5th Cir. 1975)). In support of the application of the transformation rule to Keesler's PMSI, the Debtor largely relies on *In re Jett*, a bankruptcy case in this judicial district. 563 B.R. at 208. The facts of *Jett*, however, are distinguishable.

In *Jett*, the second loan was a *renewal* loan that the debtor used to pay off the first loan's balance and bore no connection to the debtor's acquisition of the motor vehicle that secured the first loan. *Id.* at 210-12 (citing MISS. CODE ANN. § 75-9-103(a)(2)). Because the renewal loan did not add new collateral and was secured by the first loan's purchase-money collateral, the *Jett* Court ruled that the original purchase-money nature of the creditor's security interest was lost when the first loan was extinguished. Here, the Second and Third Loans did not renew or extinguish the

[3] The First Loan is secured by the motor vehicle, regardless of whether it receives purchase-money protection under § 1325(a)'s hanging paragraph. "*Jett*, and all other cases examining the transformation rule or dual status rule are simply determining whether a security interest is entitled to purchase money priority." *In re Gayten*, 664 B.R. 711, 717 n.6 (Bankr. S.D. Miss. 2024).

[4] Chief Bankruptcy Judge Katharine M. Samson explained the split of authority as to whether a security interest loses its purchase-money nature under either the transformation rule or the dual status rule in *In re Jett*, 563 B.R. at 210.

First Loan, and no additional collateral was pledged in the subsequent loans, so *Jett* is not factually analogous.

In support of its argument that its PMSI survived the Second and Third Loans, Keesler relies on *In re Gayten*. 664 B.R. 711 (Bankr. S.D. Miss. 2024), another case from this judicial district. In *Gayten*, the debtor obtained four loans from a credit union: one was used to purchase a vehicle (a PMSI), a second was for $2,000, a third was used to purchase a lawnmower (another PMSI), and the fourth was used to purchase another vehicle (a third PMSI). *Id.* at 714. The question in *Gayten* was whether the future advance provisions in the loan documents had transformed the PMSIs arising from the third and fourth loans into non-purchase money security interests. If so, the loans could be crammed down in the plan.[5] The *Gayten* Court concluded that the PMSIs survived because new collateral (the lawnmower and vehicle) secured the loans. *Id.* at 718.

Here, the Second and Third Loans are not secured by newly acquired collateral and are not renewal loans that extinguished the First Loan. (Dkt. #30 at 5). These facts make this case slightly different from both the *Jett* and *Gayten* cases.

D. Cross-Collateralization Clauses & Transformation Rule

Even though *Gayten* is not factually analogous, Keesler asserts the same legal position as the creditor in that case. Neither Keesler nor the creditor in *Gayten* is exercising the cross-collateralization provisions in their agreements, and neither is "dragging in" any additional collateral to secure a subsequent loan.

The Debtor counters that once Keesler included the cross-collateralization clause in the Second Loan, it could not label the Second and Third Loans as unsecured just to protect the purchase-money nature of its claim. (Dkt. #30 at 6). In response to this argument, Keesler points out,

[5] *Gayten* also involved issues of over and undersecured collateral, but that analysis is not relevant here. 664 B.R. at 718-20.

and the Court agrees with, the ruling in *Gayten* that "the mere inclusion of the cross-collateral clauses should not transform [the creditor's] PMSIs." *Gayten,* 664 B.R. at 719-20 (collecting cases which have concluded the same)[6]; (Dkt. #31 at 2). Keesler is adamant that it is not relying on the cross-collateralization clause.[7] That position is consistent with the proofs of claims that identify the Second and Third Loans as unsecured claims. (Cl. #3-1, #4-1). Keesler instead solely relies on the hanging paragraph in § 1325(a) to protect its secured claim from being crammed down in the Plan, which is permissible under the statute and case law.[8] Because the cross-collateralization clause is not being asserted here, the First Loan is not transformed into a non-purchase money security interest.

Conclusion

The hanging paragraph of § 1325(a) applies to the First Loan to protect Keesler's secured claim arising from a PMSI in the 2013 Chevrolet Tahoe from being bifurcated and crammed down in the Debtor's Plan. Its secured claim may not be bifurcated under § 506 and cannot be devalued in the Debtor's Plan. For these reasons, the Court finds that Keesler's Objection should be sustained.

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

##END OF ORDER##

---

[6] *In re Robinson*, No. 19-13895, 2019 WL 4923244, at *1 (Bankr. S.D. Fla. Oct. 4, 2019); *In re Matthews*, 378 B.R. 481 (Bankr. D.S.C. 2007); *Meadows v. Household Retail Servs., Inc. (In re Griffin)*, 9 B.R. 880 (Bankr. N.D. Ga. 1981); *In re McAllister*, 267 B.R. 614 (Bankr. N.D. Iowa 2001).

[7] In its objection, the creditor in *Gayten* asserted that it did not exercise the future advance clause. *Gayten*, 664 B.R. at 720; *see also In re Matthews*, 378 B.R. at 488 (where the creditor objected to the plan and asserted that it did not use the cross-collateral clause to extend the collateral, and the court did not transform the PMSI).

[8] *Cf. In re Villareal*, 566 B.R. 859 (Bankr. S.D. Tex. 2017) (where the creditor failed to file a response, meaning it did not assert that it did not use the cross-collateral clauses, and the Texas bankruptcy court applied Texas state law and asked whether the subsequent loans had "an attenuated connection to the acquisition or maintenance of the vehicle" or were used as a renewal loan to extinguish the original PMSI, both of which would have resulted in a transformation of the original PMSI).