

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION

IN RE: )  
 ) CHAPTER 13  
 ) CASE NO. 06-10223-JDW  
JAMES WYLEE DEAN and )  
STACIE L. DEAN, )  
 )  
 )  
DEBTORS. )

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtor:

Franklin D. Hayes  
Post Office Box 2377  
Douglas, Georgia 31533

For Nuvell Financial Services:

Mark A. Gilbert  
106 South Patterson Street, Suite 240  
Valdosta, Georgia 31601

## **MEMORANDUM OPINION**

This matter comes before the Court on the objection of Nuvell Financial Services to confirmation of Debtors' Chapter 13 plan. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(L). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

### **Findings of Fact**

Debtors James and Stacie Dean filed a Chapter 13 petition on March 16, 2006. On the petition date, Debtors owed Nuvell Financial Services \$14,571.72 for a 2004 Kia Spectra valued at \$8,475. In their Chapter 13 plan, Debtors proposed to pay Nuvell \$8,475 plus interest at a rate of 7.5%. Nuvell objected to confirmation of the plan, arguing that it was entitled to payment of the full amount of its claim plus interest. The parties stipulate that the amount of the claim is greater than the fair market value of the car plus interest calculated at the prime rate plus a risk factor. The parties further stipulate that Nuvell holds a purchase money security interest in the car and that the car was purchased within 910 days prior to the bankruptcy filing. The Court held a hearing on the objection on July 11, 2006. For the following reasons, the Court will overrule the objection contingent upon Debtors filing a modified plan.

### **Conclusions of Law**

At issue in this case is whether the hanging paragraph at the end of 11 U.S.C. § 1325(a) requires a debtor to pay interest to a creditor whose collateral is a motor vehicle purchased by the

debtor for personal use within 910 days prior to filing a bankruptcy petition. For the reasons provided in In re Carver, 338 B.R. 521, 526 (Bankr. S.D. Ga. 2006) (Walker, J.), and In re Green, No. 06-50410-JDW (Bankr. M.D. Ga. Aug. 30, 2006) (Walker, J.) (slip op.), the Court holds as follows: Pursuant to a Chapter 13 plan, a creditor who holds a claim described in the hanging paragraph to § 1325(a) must receive the greater of (1) the full amount of the claim without interest; or (2) the amount the creditor would receive if the claim were bifurcated and crammed down with interest calculated in accordance with Till v. SCS Credit Corp., 541 U.S. 465, 124 S. Ct. 1951 (2004), paid on the value of the collateral.

In this case, the parties have stipulated that payment of the claim in full without interest will provide a greater distribution to Nuvell than a cram down. Because the plan proposes cram down treatment of the claim, it does not conform to the Court's holding. Because Nuvell is not entitled to payment in full plus interest, the Court will overrule its objection. However, the Court will also require Debtors to file a modified plan that conforms to the rule announced in this Opinion.

An Order in accordance with this Opinion will be entered on this date.

END OF DOCUMENT