



**SO ORDERED,**

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

**Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: May 15, 2017**

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

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

**IN RE:**

**FREDERICK W. HEBLON, JR AND  
SUSAN RENEE HEBLON,**

**CASE NO. 16-03312-NPO**

**DEBTORS.**

**CHAPTER 13**

**ORDER (1) OVERRULING TRUSTEE'S OBJECTION  
TO PROPOSED ORDER ON SNAP-ON OBJECTIONS;  
(2) OVERRULING OBJECTION TO CONFIRMATION OF PLAN; AND  
(3) OVERRULING OBJECTION TO SECURED CLAIMS AND OTHER RELIEF**

This matter came before the Court for hearing on March 20, 2017 (the "Hearing"), on the Trustee's Objection to Proposed Order on Snap-On Objections (the "Trustee's Objection") (Dkt. 76) filed by J.C. Bell, the chapter 13 panel trustee (the "Trustee"); the Snap-On Credit, LLC, Response to Trustee's Objection to Proposed Order on Snap-On Objections (the "Response") (Dkt. 80) filed by Snap-on Credit LLC ("Snap-on Credit"); and the Order to Show Cause (the "Show Cause Order") (Dkt. 72) issued by the Court in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case").<sup>1</sup> At the Hearing, Samuel J. Duncan ("Duncan") appeared on behalf of the

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<sup>1</sup> After the Hearing, the Court entered the Order Dismissing Order to Show Cause (Dkt. 83).

Trustee, John H. Henley (“Henley”) appeared on behalf of Snap-on Credit, and Douglas M. Engell (“Engell”) appeared on behalf of Frederick W. Heblon, Jr. (“Fred Heblon”) and Susan Renee Heblon (collectively, the “Debtors”) in the Bankruptcy Case. 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 of the Hearing was proper under the circumstances.

### **Facts**

1. The Debtors filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code (Dkt. 1) and their chapter 13 plan (the “Plan”) (Dkt. 2) on October 7, 2016 (the “Petition Date”). The Debtors proposed to make sixty (60) monthly plan payments of \$700.00. (Plan at 1). The Plan provided that the Debtors would pay Snap-on Credit the value of its collateral, \$500.00, at a five percent (5%) annual rate of interest. (*Id.* at 2). The Debtors proposed to pay their general unsecured creditors five percent (5%) of their claims. (*Id.*)

2. Snap-on Credit filed a proof of claim (the “POC”) (Cl. No. 1-1) on October 12, 2016. According to Snap-on Credit, it had a secured claim in the total amount of \$7,667.52 for “Goods sold.” (POC at 2). Snap-on Credit’s claim was secured by “Tools of Trade” purportedly valued at \$7,667.52. (*Id.*) From 2012 through 2016, Fred Heblon periodically purchased tools from Snap-On Tools Company, LLC (“Snap-on Tools”), and Snap-on Credit financed those purchases. In support of its secured claim, Snap-on Credit attached to the POC: (1) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated February 23, 2016 (the

“February Contract”) (POC at 5-8), demonstrating that the total of Fred Heblon’s previously unpaid balance and the new amount financed was \$7,483.45, and the “Appendix A” describing the new tools purchased (POC at 9); (2) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated August 21, 2015 (POC at 10-13), demonstrating that the total of Fred Heblon’s unpaid balance and the new amount financed was \$7,429.92, and the “Appendix A” describing the new tools purchased (POC at 14); (3) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated March 20, 2015 (POC at 15-18), demonstrating that the total of Fred Heblon’s unpaid balance and the new amount financed was \$6,491.66, and the “Appendix A” describing the new tools purchased (POC at 19); (4) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated October 10, 2014 (POC at 20-23), demonstrating that the total of Fred Heblon’s unpaid balance and the new amount financed was \$6,494.77, and the “Appendix A” describing the new tools purchased (POC at 24); (5) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated April 3, 2014 (POC at 25-28), demonstrating that the total of Fred Heblon’s unpaid balance and the new amount financed was \$6,595.44, and the “Appendix A” describing the new tools purchased (POC at 29); (6) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated March 21, 2014 (POC at 30-33), demonstrating that the total of Fred Heblon’s unpaid balance and the new amount financed was \$6,141.03, and the “Appendix A” describing the new tools purchased (POC at 34); (7) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated September 20, 2013 (POC at 35-37), demonstrating that the total of Fred Heblon’s unpaid balance and the new amount financed was \$4,993.93, and the “Appendix A” describing the new tools purchased (POC at 38); (8) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated February 22, 2013 (POC at

39-41), demonstrating that the total of Fred Heblon's unpaid balance and the new amount financed was \$4,866.89, and the "Appendix A" describing the new tools purchased (POC at 42); (9) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated August 10, 2012 (POC at 43-45), demonstrating that the total of Fred Heblon's unpaid balance and the new amount financed was \$4,967.85, and the "Appendix A" describing the new tools purchased (POC at 46); (10) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated March 30, 2012 (POC at 47-49), demonstrating that the total of Fred Heblon's unpaid balance and the new amount financed was \$4,660.60, and the "Appendix A" describing the new tools purchased (POC at 50); and (11) the Retail Installment Contract between Fred Heblon and Snap-on Credit dated March 2, 2012 (POC at 51-53), demonstrating that the total of Fred Heblon's unpaid balance and the new amount financed was \$4,250.85, and the "Appendix A" describing the new tools purchased (POC at 54).<sup>2</sup> Also attached to the POC was the UCC Financing Statement, which Snap-on Credit filed on August 21, 2015, describing its alleged purchase money security interest ("PMSI") in the tools from Snap-on Tools (the "Tools").

3. The Retail Installment Contracts provided that each time Fred Heblon purchased tools from Snap-on Tools, which were financed by Snap-on Credit, the cost of those tools was "added on" to the previous balance of his account at Snap-on Credit, creating a revolving account. (Retail Installment Contracts at 2). The Retail Installment Contracts also provided that with each additional tool purchase, Fred Heblon granted Snap-on Credit a security interest in the tools purchased that day, as well as "all goods and equipment manufactured or distributed by Snap-on

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<sup>2</sup> The Court will refer collectively to the retail installment contracts as the "Retail Installment Contracts."

Incorporated or bearing Snap-on Incorporated trademarks or logos . . . .” (*Id.*).

4. The Debtors filed the Objection to Secured Claims and Other Relief (the “POC Objection”) (Dkt. 25) on November 14, 2016. In the POC Objection, the Debtors proposed to pay Snap-on Credit the \$500.00 value of the collateral at a five percent (5%) annual rate of interest, or, in the event that the POC constituted a purchase money security interest (“PMSI”) loan “acquired less than one (1) year before the petition, pay the amount owed as set forth in such claim plus 5% interest . . . . (POC Obj. at 1). The Notice of Objection to Secured Claims (the “POC Objection Notice”) (Dkt. 26) was entered on November 14, 2016, informing Snap-on Credit that it was required to file a response to the POC Objection within thirty (30) days of November 14, 2016. (POC Obj. Notice at 1). The POC Objection Notice provided that if Snap-on Credit did not file a response to the POC Objection, the Court would sustain the POC Objection. (*Id.*). No response to the POC Objection was filed, and on December 20, 2016, the Court entered the Order on Objection to Secured Claims (the “POC Objection Order”) (Dkt. 38).

5. Snap-on Credit filed the Objection to Confirmation of Plan (the “Confirmation Objection”) (Dkt. 40) on December 20, 2016, arguing that the Plan should not be confirmed. According to Snap-on Credit, the Plan “fails to provide for a proper payment of [its] secured claim. [The POC] should be paid in full or Debtor[s] should be required to pay full value of the Collateral plus interest at the rate of 5.0% per annum.” (Confirmation Obj. at 1).

6. In addition to the Confirmation Objection, Snap-on Credit filed the Response to Debtor’s [*sic*] Objection to Secured Claim (the “Response to POC Objection”) (Dkt. 41) on December 20, 2016. According to Snap-on Credit, Fred Heblon owes it \$7,667.52 pursuant to the POC, and the Plan fails to adequately treat its claim. (Resp. to POC Obj. at 1).

7. On December 21, 2016, Snap-on Credit filed the Snap-on Credit, LLC, Motion to Vacate Order and Reconsider Response to Debtor's Objection to Secured Claim (the "Motion to Vacate POC Objection Order") (Dkt. 44). In the Motion to Vacate POC Objection Order, Snap-on Credit acknowledged that although the deadline to file a response to the POC Objection was December 14, 2016, the POC Objection Order was entered "[a]pproximately 35 minutes" before Snap-on Credit filed the Response to POC Objection on December 20, 2016, after the deadline. (Motion to Vacate POC Obj. Order at 1). According to Snap-on Credit, it "failed to respond prior to December 14, 2016, due to technical transmission problems and filed its response immediately upon becoming aware of the problems." (*Id.*). Snap-on Credit also argued that the POC Objection was "confusing as to whether or not a response was necessary,"<sup>3</sup> and that the Debtors would not be prejudiced if the Court reconsidered the POC Objection Order. (*Id.*). After the Court issued the Notice of Hearing (Dkt. 45) notifying the parties about the Motion to Vacate POC Objection Order, no objections or responses were filed. The Court entered the Order Granting Snap-on Credit, LLC, Motion to Vacate Order and Reconsider Response to Debtor's [*sic*] Objection to Secured Claim (Dkt. 64) on January 19, 2017.

8. The Court set the Confirmation Objection, the POC Objection, and the Response to POC Objection for hearing on February 6, 2017. (Dkt. 51, 65). Prior to the hearing on the Confirmation Objection, the POC Objection, and the Response to POC Objection, the Debtors and Snap-on Credit reached an agreement, with Henley to submit the agreed order. *See* MISS. BANKR.

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<sup>3</sup> As the Court previously mentioned, the POC Objection Notice clearly stated that if a response was not filed "on or before 30 days," the POC Objection would be sustained. (POC Obj. Not. at 1). Thus, Snap-on Credit was on notice that if it did not want the POC Objection to be sustained, it had to respond to the POC Objection within thirty (30) days. Any "confusion" was unjustified.

L.R. 9013-1(e) (requiring that after a hearing, “the prevailing party shall submit an order or judgment, consistent with the court’s ruling, within 14 days of the hearing . . .”). On February 27, 2017, the Court issued the Show Cause Order, requiring Engell, Henley, and the Trustee to appear and “show cause why sanctions or other relief should not be imposed for failure to submit the appropriate order or judgment” resulting from the parties’ agreement reached prior to the scheduled hearing. (Show Cause Order at 1).

9. On March 14, 2017, the Trustee filed the Trustee’s Objection, arguing that the POC Objection and the Confirmation Objection should be resolved consistently with this Court’s prior decision in *In re Spears*, Case No. 16-00575-NPO (Bankr. S.D. Miss. Sept. 6, 2016). (Trustee’s Obj. at 1). Accordingly, the Trustee argued that the POC “should be treated as ‘fully unsecured.’” (*Id.*). Attached to the Trustee’s Objection was the proposed agreed Order on Objection to Confirmation and on Debtor’s [*sic*] Objection to Secured Claim (the “Proposed Order”) (Trustee’s Obj. Ex. A) signed by Henley and Engell but not by the Trustee.

10. Snap-on Credit filed the Response on March 16, 2017. In the Response, Snap-on Credit argued that it had resolved the issues it raised both in the Confirmation Objection and in the POC Objection with Fred Heblon as reflected in the Proposed Order, and the “Trustee did not file a response to any of such matters.”<sup>4</sup> (Resp. at 1). The Trustee filed the Trustee’s Objection,

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<sup>4</sup> This argument is disingenuous given that Snap-on Credit failed to file a timely response to the POC Objection despite the clarity of the POC Objection Notice. Nonetheless, the Trustee could not have known what the Proposed Order provided until it was actually submitted to him. In other words, the Proposed Order was not part of the notice, and the Trustee could not have known its terms until it was submitted to him for approval. Thus, he could not have objected on the grounds that the Proposed Order violated *Spears* until he actually received and reviewed the Proposed Order.

“raising the sole objection that the proposed order does not comply with the Court’s decision in *In Re: Spears*, No 16-00575 . . . .” (*Id.*). According to Snap-on Credit, the Court’s decision in *Spears* does not “directly” apply to it because it was not a party in that case.<sup>5</sup> (*Id.*). In the event that the Court finds that *Spears* does apply to it, however, Snap-on Credit contended that the Proposed Order does not conflict with that decision because “where there is a revolving account, part of which falls within the one year period of the ‘hanging paragraph’ of § 1325<sup>6</sup> and part of which falls outside of the one year time period, then a transformation rule would apply such that all transactions would be considered as falling outside the one year period for purposes of the ‘hanging paragraph.’” (*Id.* at 1-2). The Proposed Order “provides for an agreed value of \$3,500 as opposed to the full debt of the claim, which would be in compliance with the *Spears* Decision.” (*Id.* at 2).

11. At the Hearing, Duncan reiterated the Trustee’s arguments in the Trustee Objection that because the Retail Installment Contracts created a revolving account between Fred Heblon and Snap-on Credit, the Court’s decision in *Spears* applies. According to Duncan, he declined to sign the Proposed Order because it contradicted the Court’s treatment of a revolving account in *Spears*.

12. Henley contended at the Hearing that *Spears* involved the “hanging paragraph” of §1325—if a portion of the credit was incurred outside of one year and the remaining portion was

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<sup>5</sup> Regardless of whether Snap-on Credit was a party in *Spears*, the doctrine of *stare decisis* “is a foundation stone of the rule of law.” *Kimble v. Marvel Entm’t, LLC*, 135 S. Ct. 2401, 2409 (2015) (quotation omitted). Thus, this Court’s prior decisions apply to Snap-on Credit.

<sup>6</sup> Hereinafter, all code sections refer to the Bankruptcy Code found at title 11 of the U.S. Code unless indicated otherwise.



incurred within one year, the whole transaction was transformed into non-purchase money. Henley argued that although the Court correctly decided *Spears*, it is distinguishable from the Bankruptcy Case because Snap-on Credit perfected its interest by filing Uniform Commercial Code (“UCC”) financing statements.<sup>7</sup> If a creditor’s interest is not perfected, according to Henley, then its claim is unsecured. Because Snap-on Credit filed the UCC Statements for each of its transactions with Fred Heblon, Henley contended that Snap-on Credit has a perfected security interest in the entire amount of the POC under § 1325(a)(4) and that *Spears* does not apply. He also stated that every tool Fred Heblon owns that bears the Snap-on Tools trademark was used as collateral for the newly incurred debt. In other words, every tool Fred Heblon owns bearing Snap-on Tool’s name or trademark serves as collateral under each of the Retail Installment Contracts, of which Fred Heblon had notice each time he signed one of the Retail Installment Contracts, according to Henley.

13. Engell argued at the Hearing that the facts of the Bankruptcy Case differ from the facts of *Spears* because in *Spears* there was no way to allocate the payments to the extent that each item of collateral could be traced to purchase money. Engell distinguished *Spears* from the Bankruptcy Case, explaining that the Debtors and Snap-on Credit reached the agreement outlined in the Proposed Order—to bifurcate the POC with the tools having a value of \$3,500.00.

### **Discussion**

In ruling on the POC Objection and the Confirmation Objection, the Court must determine whether it is proper for the Debtors, in their chapter 13 plan, to treat a portion of Snap-on Credit’s

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<sup>7</sup> The UCC financing statements were entered into evidence at the Hearing as Snap-on Credit’s Exhibit 1, which will be collectively referred to as the “UCC Statements.”

claim as secured, with the remainder treated as unsecured. Based on the Retail Installment Contracts and Henley's, Duncan's, and Engell's explanation of Snap-on Credit's business practices at the Hearing, it is apparent that each time Fred Heblon purchased a tool from Snap-on Tools, the newly incurred balance was added to the total balance of his account with Snap-on Credit. Not only did the newly purchased tools become subject to Snap-on Credit's lien, but each time Fred Heblon executed one of the Retail Installment Contracts, he granted Snap-on Credit a security interest in all tools bearing Snap-on Tool's name or trademark, regardless of whether he purchased them directly from Snap-on Tools or financed their purchase with Snap-on Credit. Snap-on Credit claims that the total balance owed to it by Fred Heblon pursuant to the Retail Installment Contracts is \$7,667.52. (POC at 1). In the Proposed Order, the parties agreed to treat \$3,500.00 of the POC as secured and the remaining \$4,167.52 as unsecured. (Proposed Order at 1). The Court must determine whether its prior decision in *Spears* applies to the facts of the Bankruptcy Case and, if it does, whether the treatment of the POC in the Proposed Order complies with that decision. Then, the Court will determine the proper disposition of the POC Objection and the Confirmation Objection.

## **I. Background Law**

Section 1325(a)(5) provides for the permitted treatment of a secured claim in a chapter 13 plan. A chapter 13 plan cannot be confirmed unless secured creditors either: (a) accept the plan; (b) receive their collateral by way of abandonment; or (c) "[are] paid, with interest, an amount equal to the value of the collateral securing the debt over the life of the plan, with the creditor retaining its lien on the collateral." *In re Shaw*, 209 B.R. 393, 394 (Bankr. N.D. Miss. 1996)

(citing 11 U.S.C. § 1325). The first two options are not affected by the “hanging paragraph,”<sup>8</sup> but § 1325(a)(5)(B) “allows a plan to provide for payment of a secured claim through periodic payments including interest at a rate providing to the creditor the present value of the secured claim.” *In re Steele*, No. 08-40282-DML-13, 2008 WL 2486060, slip op., at \*2 (Bankr. N.D. Tex. June 12, 2008). This provision, commonly known as the “cramdown” provision, is subject to the “hanging paragraph,” and, when read in conjunction with § 506(a)(1), “ordinarily allows a debtor to retain property that secures a creditor’s claim by payment to the creditor over time of the present value of the lesser of the claim or the collateral’s value.” *Id.* (footnotes & citation omitted). By removing § 506 from the operation of § 1325(a)(5), the “hanging paragraph” “limits cramdown treatment to that which provides a creditor, to the extent qualifying for treatment under [the “hanging paragraph”], with the present value of the creditor’s claim, regardless of the value of the collateral.” *Id.*

Although the “hanging paragraph” is often applied to vehicles purchased within 910 days of filing for bankruptcy, it also applies to “any other thing of value, if the debt was incurred during the 1-year period preceding filing.” 11 U.S.C. § 1325(a). “The only clear intent discerned from the legislative history on the hanging paragraph is that Congress intended to provide more protection to creditors with purchase money security interests.” *In re Duke*, 345 B.R. 806, 809 (Bankr. W.D. Ky. 2006). Pursuant to the “hanging paragraph,” “[s]ecured debts falling within

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<sup>8</sup> The unnumbered “hanging” paragraph immediately following § 1325(a)(9) gives lenders payment in full of their secured claims if: (a) the creditor’s security interest is a PMSI; (b) the debt was incurred within 910 days prior to filing the petition; (c) the collateral is a motor vehicle; and (d) the motor vehicle was acquired for the debtor’s personal use. 11 U.S.C. § 1325(a). Additionally, bifurcation of a secured claim is precluded “if collateral for that debt consists of any other thing of value,” and “if the debt was incurred during the 1-year period preceding that filing.” *Id.*

the hanging sentence must be treated as fully secured by the plan—without regard to the actual value of the collateral.” Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY, 4TH EDITION, § 103.1, at ¶ 5, SEC. REV. Nov. 10, 2010, www.ch13online.com.

## **II. *Spears and Shaw***

In *Spears*, the Court held that the “transformation rule” applies to revolving accounts. *In re Spears*, Case No. 16-00575-NPO, slip op. at \*10-14. The facts of the Bankruptcy Case are similar to those of *Spears*. In *Spears*, the debtors filed their bankruptcy petition on February 23, 2016. *Id.*, at \*2. Prior to filing the petition, they had purchased several items of furniture from Byars Furniture Company, Inc.: a sectional couch on April 16, 2014; a mattress on July 3, 2014; and a washer and dryer on July 7, 2015. *Id.* Thus, the sectional couch and mattress were purchased over one (1) year before the petition was filed, but the washer and dryer were purchased less than one (1) year before the petition was filed. *Id.*, at \*3. Accordingly, the Court was tasked with determining whether bifurcation of a secured claim was permitted when a portion of the debt was incurred within one year of the petition date and a portion was incurred more than one year before the petition date. *Id.* Similarly, in the Bankruptcy Case, there are eleven (11) Retail Installment Contracts total, only one of which was executed within one (1) year prior to the Petition Date: the February Contract, which was executed on February 23, 2016 (February Contract at 1). The other ten (10) Retail Installment Contracts were executed between the dates of March 2, 2012, and August 21, 2015. (POC at 10, 15, 20, 25, 30, 35, 39, 43, 47, 51). The Debtors cannot agree to treat \$3,500.00 of the POC as secured if such treatment is not permitted under *Spears*.

In *Spears*, the Court discussed two (2) different rules courts have adopted to determine the appropriate treatment for a claim that falls partially within the “hanging paragraph” and partially

outside of it: the transformation rule and the dual status rule. *In re Spears*, Case No. 16-00575-NPO, slip op., at \*5. Under the transformation rule, “if collateral is used to secure a debt other than its own purchase price, the creditor’s original purchase money security interest in the collateral is transformed into a nonpurchase money security interest.” *Id.* (citing *In re Shaw*, 209 B.R. at 396). “In other words, ‘[u]nder the transformation rule, the secured creditor does not have a PSMI because the non-purchase money component . . . transforms the entire claim into a non-purchase money security interest.’” *Id.* at 5-6 (citing *In re Busby*, 393 B.R. 443, 448 n.5 (Bankr. S.D. Miss. 2008)). Under the dual status rule, on the other hand, “[a] security interest may be purchase-money security interest to some extent and a non-purchase money security interest to some extent.” *Id.* at 6 (citing *In re Busby*, 393 B.R. at 450-51). Accordingly, if the Court applies the transformation rule to the Bankruptcy Case, “the fact that part of the debt was incurred outside of the one (1)-year preceding the Petition date would transform the entire claim into a claim subject to § 506.” *Id.* Adopting the dual-status rule would have the effect of allowing the secured claim to be bifurcated, with the Debtors being required “to pay value of the collateral for the portion of the debt incurred outside of the one (1) year preceding the Petition date, and pay the amount owed for the debt incurred within the one (1) year preceding the Petition date.” *Id.*

In *Spears*, the Court recognized the specific issue with revolving credit accounts: “[t]he problem here begins with the fact that the security agreement filed with the court shows about \$150 paid on about \$900 total debt, for 7 pieces of furniture and a TV set, with no clues as to what items are paid for and which are not . . . .” *Id.* at 7 (citing *Roberts Furniture Co. v. Pierce (In re Manuel)*, 507 F.2d 990, 993 (5th Cir. 1975)). In other words, the Court was unable to trace the PSMI. *Id.* Similarly, in *Shaw*, the debtors purchased household goods and furniture from the

creditor on a revolving account and, like the debtors in both *Spears* and in the Bankruptcy Case, the debtors had multiple separate installment contracts with the furniture company. *In re Shaw*, 209 B.R. at 394. “With each succeeding purchase, the buyers executed a new contract, which incorporated not only the purchase price of the new merchandise, but also the balance remaining on the previous contract(s).” *Id.* The debtors desired to pay the creditor as a secured creditor only to the extent of the value of the merchandise listed on the most recent contract, but the creditor claimed its claim was fully secured by a PMSI in all of the merchandise. *Id.* The bankruptcy court first concluded that the creditor had a PMSI only in the most recently purchased merchandise before adopting the transformation rule and holding that because the creditor provided no evidence demonstrating express contractual language allocating payments that would allow it to trace the PMSI, the entirety of the creditor’s claim was unsecured. *Id.* at 396. The bankruptcy court noted that had the seller contractually provided some method for determining the extent to which each item of collateral secured its purchase money, the dual status rule may apply to allow a portion of the claim to be treated as secured. *Id.*

Although the Court recognized in *Spears* “that the Courts applying the transformation rule did so before 2005,” it explained its decision to apply the transformation rule to revolving credit accounts:

In *In re Manuel*, which is binding precedent regarding revolving credit accounts, the Fifth Circuit was tasked with determining the status of a creditor’s claim when the debtors incurred the debt on a revolving account basis. On the other hand, the post-BAPCPA cases dealt with the status of the negative equity portion of a claim, and almost all of those cases involved the debtor’s purchase of a new vehicle. The purpose of the hanging paragraph—which was to protect creditors from debtors who purchased goods and/or vehicles shortly before filing bankruptcy—is not frustrated by adopting the transformation rule in regard to revolving accounts.

*In re Spears*, Case No. 16-00575-NPO, slip op., at \*11. In revolving account arrangements, “the ‘hanging paragraph’ is not frustrated by applying the transformation rule.” *Id.* Accordingly, only in revolving credit lending relationships, the Court adopted the transformation rule.

### **III. Disposition of POC Objection and Confirmation Objection**

In the Bankruptcy Case, the Court shares the same concerns it did when it decided *Spears*. Each time Fred Heblon purchased tools from Snap-on Tools, he executed a new contract with Snap-on Credit, which incorporated not only the purchase price of the new merchandise, but also the balance remaining on the previous contracts. Snap-on Credit, however goes one step further than the lenders in the aforementioned cases by retaining a secured interest in any and all Snap-on Tools in Fred Heblon’s possession, including those he purchased directly from Snap-on Tools as well as those that he did not purchase directly from Snap-on Tools. Because of this, the Court is unable to ascertain which portion of the POC is purchase money. Additionally, the Court is unable to identify any contractual language that provides a method for determining the extent to which each item of collateral secures purchase money, and when each particular tool will be paid off so that Snap-on Credit no longer has an interest in that tool. On the contrary, because Snap-on Credit retains a security interest in *all* tools bearing the Snap-on Tools Trademark until the entirety of the revolving balance is paid off, all of the Tools will remain subject to a lien as long as he has any balance with Snap-on Credit.

The Court is cognizant of the fact that the “hanging paragraph” was intended to “remedy a perceived abuse by debtors who would purchase a new vehicle [or any other thing of value] shortly before, or even on the eve of, filing a bankruptcy petition and then immediately strip down the secured claim of the vehicle lender as part of their Chapter 13 Plan.” *In re Brodowski*, 391 B.R.

393, 402 (Bankr. S.D. Tex. 2008). Fred Heblon, however, did not attempt to abuse the bankruptcy system. Instead, he purchased the Tools over the course of almost four (4) years, and Snap-on Credit attempted to retain a claim secured by all of the Tools, including tools Fred Heblon did not directly purchase from it, until Fred Heblon paid the entirety of his balance. The Court agrees with the Texas court that noted that the purpose of applying the transformation rule to revolving accounts like the one in the Bankruptcy Case is based on the “underlying policy . . . to prevent overreaching creditors from retaining title to all items covered under a consolidation contract until the last item purchased is paid for.” *Borg-Warner Acceptance Corp. v. Tascosa Nat’l Bank*, 784 S.W. 2d 129, 134-35 (Tex. App. 1990); *In re Spears*, Case No. 16-00575-NPO, slip op., at \*13. The Court holds that the transformation rule applies to the revolving account between Fred Heblon and Snap-on Credit in the Bankruptcy Case. Accordingly, Snap-on Credit does not possess a PMSI in the Snap-on Tools.

Although Snap-on Credit does not have a PMSI in the Debtor’s tools from Snap-on Tools, an important fact distinguishes *Spears*, *Shaw*, and the Bankruptcy Case. Under Mississippi law, the filing of a financing statement is not required in order to perfect a PMSI in consumer goods. MISS. CODE ANN. § 75-9-309(1). Because the Court has determined that Snap-on Credit does not have a PMSI in the Tools, its interest is not perfected unless it filed a financing statement. MISS. CODE ANN. § 75-9-310(a). In *Shaw* and *Spears*, the creditor did not file a UCC financing statement—those creditors relied solely on the special protection afforded to PMSI holders under MISS. CODE ANN. § 75-9-309(1). After the bankruptcy court in *Shaw* determined that the creditor did not hold a PMSI in the collateral described in all but the most recent contract, it found that the creditor held only an unperfected security interest. *Id.* at 397. In the absence of a UCC financing



statement, “the respective claims of [the creditor] are secured to the extent of the value of the collateral described on the most recent contract entered into with each of the three debtors.” *Id.* In other words, the bankruptcy court in *Shaw* permitted the creditor to be treated as secured only to the extent of the value of the collateral described in the last-executed contract.

In *Spears*, on the other hand, the filing of a UCC financing statement was not raised in the pleadings or at the hearing, and, therefore, the Court found that the creditor’s claim was fully unsecured when its PMSI status was lost under the transformation rule. *Id.* at \*13-14. Additionally, in *Spears*, the debtors attempted to pay the creditor the amount owed, rather than the value of its collateral. *Id.* at \*2. The Court did not permit the debtors to do so because the creditor did not have a PMSI in the collateral and the creditor in *Spears* presented no evidence that it filed a UCC financing statement.

In the Bankruptcy Case, Snap-on Credit did file the UCC Statements. Thus, unlike the creditors in *Shaw* and *Spears*, it provided proof that it did not rely solely on MISS. CODE ANN. § 75-9-302, but perfected its security interest by filing the UCC Statements. In the Bankruptcy Case, it appears that Snap-on Credit and the Debtors recognize that Snap-on Credit does not have a PMSI. Although the Proposed Order is not entirely clear, the Court presumes that the Debtors and Snap-on Credit are attempting to bifurcate the POC, treating \$3,500.00 as the value of the Tools in the Debtor’s possession under § 1325(a)(5)(B)(i). In other words, it appears the Debtors and Snap-on Credit have agreed that the Tools have a value of \$3,500.00 and, therefore, that amount of the POC is secured under § 1325(a)(5)(B)(i), and the remainder is unsecured and unprotected by the anti-bifurcation provision in the hanging paragraph. Because Snap-on Credit filed the UCC Statements, its interest is secured despite the fact that, under the transformation rule,

it no longer holds a PMSI in the Tools. Accordingly, the treatment of the POC proposed in the Proposed Order should be permitted.

### **Conclusion**

The Retail Installment Contracts created a revolving account between Fred Heblon and Snap-on Credit. The Court finds that, consistent with its decision in *Spears*, the transformation rule applies to revolving accounts like the one in question. Accordingly, because there is no contractual method the Court can utilize to trace which portion of the POC is purchase money—i.e. which tools have been paid off—Snap-on Credit does not have a PMSI in the Tools. Because Snap-on Credit filed a UCC financing statement, however, its interest is secured to the extent of the value of the Tools, which the parties have agreed is \$3,500.00. The Court finds that, under § 1325(a)(5)(B)(i), the POC may be bifurcated, with the agreed value of the Tools—\$3,500.00—treated as secured under the Plan.

IT IS, THEREFORE, ORDERED that the Trustee's Objection is hereby overruled.

IT IS FURTHER ORDERED that the Confirmation Objection is hereby overruled to the extent that it is inconsistent with this Order.

IT IS FURTHER ORDERED that the POC Objection is hereby overruled to the extent that it is inconsistent with this Order.

##END OF ORDER##