SO ORDERED,

Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: March 29, 2024

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: DEVIN S. GAYTEN **CASE NO. 23-01117-KMS**

DEBTR **CHAPTER 13**

OPINION AND ORDER SUSTAINING FERGUSON FEDERAL CREDIT UNION'S OBJECTION TO CONFIRMATION (DKT. # 18)

The matter before the court is Ferguson Federal Credit Union's Objection, ECF No. 18, to treatment of its claims in Debtor Devin Gayten's chapter 13 plan, ECF No. 2. Debtor proposes to pay the value of Ferguson's collateral, a 2019 GMC Sierra and a 2020 Bad Boy Lawnmower, and to pay a zero distribution on remaining unsecured claims. Plan, ECF No. 2 at 2, 4. Ferguson seeks application of the "hanging paragraph" in 11 U.S.C. § 1325(a) to require payment of its claims as fully secured rather than at Debtor's proposed valuation. Because that section requires that a creditor's claim be secured by a purchase money security interest, the issue is whether Ferguson's purchase money security interest status was lost because of cross-collateral or future advance clauses in the loan and security agreements. After review of arguments and briefs submitted by the parties, ECF Nos. 39, 42, 43, and the law, the Court determines that Ferguson's objection to Debtor's plan should be sustained.

I. Jurisdiction

This Court has jurisdiction over the parties to and subject matter of this proceeding under 28 U.S.C. §§ 1334, 157. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B), (L).

II. Factual and Procedural Background

A. Debtor incurred loans with Ferguson Federal Credit Union within one year preceding his Chapter 13 bankruptcy.

1. The Loans

During 2022, Debtor obtained four loans from Ferguson that are documented in separate proofs of claim. *See* Cl. Nos. 6-2, 7-1, 8-1 and 9-1. On May 24, 2022, Debtor executed a loan and security agreement for $26,686.25 ("First Loan") for a 2015 Dodge Charger. Cl. No. 9-1 at 5. The balance on this loan is $23,405.90. *Id.* at 2. Debtor's plan proposes surrender of the vehicle, ECF No. 2 at 4, and there is no dispute regarding this treatment.[1] On the same date, Debtor obtained a loan for $2,066.60 ("Second Loan") that has a balance of $1,417.71.[2] Cl. No. 8-1 at 2, 5.

The third loan, dated August 23, 2022, in the amount of $3,909.05 ("Third Loan"), is secured by a 2022 Bad Boy MX 52" Cut Lawnmower ("Mower"). Cl. No. 7-1 at 5. Ferguson values the Mower at $4,099 with a balance due of $2,944.90. *Id.* at 2. That Ferguson's valuation is greater than the amount of its claim, suggests that the debt is oversecured. Debtor asserts the value of the Mower is $2,200. ECF No. 2 at 2; ECF No. 4 at 13

The fourth loan, dated November 23, 2022, for $50,316.35 ("Fourth Loan"), is secured by a 2019 GMC Sierra 1500 ("GMC"). Cl. No. 6-2 at 5. The balance due on this loan is $49,365.03. Cl. No. 6-2 at 2. Ferguson designated its claim for this loan as a "910 Claim."[3] *Id.* For purposes of confirmation, Ferguson contends that the value of the GMC is $40,000. ECF No. 42 at 2 n.1. Debtor asserts that

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[1] Debtor scheduled the debt for $23,000 with a value of $18,500, ECF No. 4 at 12, indicating Ferguson's status as undersecured.

[2] The loan is unsecured except as to cross-collateral asserted by Ferguson in its proof of claim. Cl No. 8-1 at 2.

[3] Under the § 1325(a) hanging paragraph, a claim may not be bifurcated into secured and unsecured components under § 506 and is treated as fully secured if the motor vehicle debt was incurred within the 910-day period before filing. 11 U.S.C. § 1325(a).

the value of the GMC is $35,000. ECF No. 4 at 12; ECF No. 2 at 2. So according to both Ferguson and Debtor, the GMC debt is undersecured.

2. Cross-collateral and future advance clauses.

All four loans contain similar cross-collateral provisions[4] expressed in the following clause in the Truth in Lending Disclosure section: "Security: Collateral securing other loans with the Credit Union may also secure this Loan. You are giving a security interest in Your shares and dividends and, if any, Your deposits and interest in the Credit Union; and the Property described below: [property description]." Cl No. 6-2 at 5; Cl. No. 7-1 at 5; Cl. No. 8-1 at 5; Cl. No. 9-1 at 5. The Security Agreement section of the loans contains the following clause, in relevant part:

> 2. What the Security Interest Covers/Cross Collateral Provisions – The security interest secures the Loan and any extensions, renewals or refinancings of the Loan. Unless prohibited by applicable law, 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. No. 6-2 at 7-8; Cl No. 7-1 at 7-8; Cl No. 8-1 at 7-8; Cl No. 9-1 at 7-8 (bolding omitted). The Loan Agreements also provide that "[i]n addition to [the] pledge of shares, the [credit union] may also have . . . a statutory lien on all individual and joint accounts." Cl. No. 6-2 at 7, Cl. No. 7-1 at 7, Cl. No. 8-1 at 7, Cl. No. 9-1 at 7.

B. Ferguson objects to Debtor's chapter 13 plan proposal to pay only value on its secured claims.

Debtor's plan proposes to surrender the 2015 Dodge Charger (First Loan), to pay a value of $35,000 on the GMC (Fourth Loan), to pay a value of $2,200 on the Mower (Third Loan), and to pay no distribution on the unsecured claim (Second Loan). ECF No. 2 at 2, 4. Ferguson objects, asserting purchase money security interests ("PMSI(s)") in its collateral and urging application of § 1325(a) to prohibit bifurcation of its secured claims for the Third and Fourth Loans. ECF No. 18. Ferguson seeks

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[4] Although the clauses are referred to here as "cross-collateral" clauses, they may be considered the equivalent of future advance or dragnet clauses.

payment on the GMC (Fourth Loan) in the full claim amount of $49,365.03. *Id.* at 1. And Ferguson asserts that through the cross-collateral clauses, the equity in the Mower (Third Loan) in the amount of $1,154.10 ($4,099 value minus $2,944.90 payoff) should be applied to the Second Loan balance of $1,417.71. *Id.* at 2.

III. Law and Analysis

A. The § 1325(a) hanging paragraph prevents bifurcation of an allowed secured claim.

Allowed secured claims are to be paid "*the value*, as of the effective date of the plan, of property to be distributed under the plan on account of such claim." 11 U.S.C. § 1325(a)(5)(B)(ii) (emphasis added). Under § 506, "[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). But the hanging paragraph in § 1325(a) provides an exception to the § 506 "extent of value" treatment of claims, allowing a creditor's PMSI to be treated as fully secured rather than as bifurcated under § 506.[5] The paragraph provides:

> 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).

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[5]According to *Collier on Bankruptcy*:

> [M]ost courts have held that the unnumbered "***hanging" paragraph*** was intended to prohibit the use of section 506(a) to bifurcate a secured claim into an allowed secured claim and an allowed unsecured claim as part of the cramdown permitted by section 1325(a)(5)(B) and, therefore, that such claims should be treated as fully secured claims regardless of the value of the collateral.

Collier on Bankruptcy ¶ 1325.06 (Richard Levin & Henry J. Sommer eds., 16th ed.).

Simplified, the requirements for application to a "motor vehicle" are that: "(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). For "any other thing of value," such as the Mower, the debt must be incurred within one year preceding the filing, as opposed to 910 days. 11 U.S.C. § 1325(a).

All the Loans were incurred within one year preceding the filing of the petition, satisfying the timing requirements in the § 1325(a) hanging paragraph. And the collateral securing the debts was acquired for Debtor's personal use. The only remaining requirement is that Ferguson have a PMSI securing the debt. The question is whether the purchase money nature of the security interests was transformed by cross-collateral or future advance provisions in the loan and security agreements, thus disqualifying the Third and Fourth Loans from the hanging paragraph.

B. Under Mississippi law, a security interest in goods is a purchase money security interest to the extent the goods are purchase money collateral.

State law determines the meaning of "purchase money security interest." *Ford Motor Credit Co, LLC v. Dale (In re Dale)*, 582 F.3d 568, 573 (5th Cir. 2009) ("Because the Code does not define 'purchase-money security interest' and that term does not have a common ordinary meaning, we agree with the great majority of courts to address this issue that state UCC law must be used to define the hanging paragraph's phrase 'purchase-money security interest.'").

Under Mississippi law, "[a] security interest in goods is a purchase-money security interest . . . [t]o the extent that the goods are purchase-money collateral with respect to that security interest." Miss. Code Ann. § 75-9-103(b)(1). "'Purchase-money collateral' means goods or software that secures a purchase-money obligation incurred with respect to that collateral . . . ." Miss. Code Ann. § 75-9-103(a)(1). And "'[p]urchase-money obligation' means an obligation of an obligor incurred as all or

part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." Miss. Code Ann. § 75-9-103(a)(2). "In short, 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* Jeffrey Jackson et al., *Encyc. of Miss. Law* 66:39 (updated Oct. 2023) (A PMSI is a security interest in which "the collateral provides security for payment of its own purchase price.").

The parties do not dispute that the Third and Fourth Loans were used to purchase property (the Mower and GMC) taken as collateral or that the Second Loan was not used to purchase property taken as collateral. So Ferguson's security interests in the Mower and GMC were PMSIs "[t]o the extent that the goods [were] purchase-money collateral with respect to that security interest," Miss. Code Ann. § 75-9-103(b)(1).

C. Debtor does not dispute that Ferguson is a secured creditor.

Debtor argues that: (1) the PMSIs were transformed for both the Mower and GMC when both were used as collateral for other loans; and (2) the future advance clauses in the Fourth Loan created a security interest in future loans, thereby transforming and eliminating the PMSI. ECF No. 39 at 1. Debtor asserts that Ferguson "assumed the risk of losing [its] PMSI" by including these clauses in the purchase agreements. ECF No. 39 at 7.

Debtor does not contend that the security interests themselves are not valid or that the cross-collateral and future advance clauses are not otherwise enforceable. *See* Debtor's Br., ECF No. 43 at 8 ("As part of the . . . loans, Ferguson demanded that all collateral . . . be collateral for that loan. Ferguson . . . got what it sought, but there are consequences. Chief among them is that while Ferguson retains a security interest for all four of its loans, they were all transformed into non-purchase money."). Indeed, under Mississippi law, cross-collateralization and future advance clauses are generally enforceable. *In re Windham*, 568 B.R. 263, 267 (Bankr. N.D. Miss. 2017) ("It is well-settled that both dragnet and future advance clauses are valid and enforceable in Mississippi." (citing *Shutze v. Credithrift of Am.,*

Inc., 607 So. 2d 55, 58–59 (Miss. 1992))); *In re Smink*, 276 B.R. 156, 166 (Bankr. N.D. Miss. 2001) (finding future advance clause in deed of trust enforceable). As to different types of clauses, *Windham* notes that "[a] 'future advance clause' applies only to future debts, and is simply one type of 'dragnet clause,' which, depending on its language, can apply to both antecedent and future debts." *Id.* at 267 n.2. The Mississippi Supreme Court has upheld future advances clauses "for more than a century," *Shutze v. Credithrift*, 607 So. 2d at 58, and has "repeatedly ruled, incident to a secured transaction, the debtor and secured party may contract that the lien or security interest created thereby shall secure other and future debts which the debtor may come to owe the secured party," *id.* at 59. So even if Ferguson's security interests are not PMSIs, it is undisputed that they are still otherwise perfected security interests, evidenced by the GMC's certificate of title and Mower's UCC Financing Statement attached to Ferguson's proofs of claim.[6] Cl. Nos. 6-2 at 10, 7-1 at 10, 8-1 at 10.

D. If the Third Loan is oversecured, Ferguson is entitled to apply the equity to secure the Second Loan without analysis of whether the § 1325(a) hanging paragraph applies.

Ferguson argues that the cross-collateral clauses allow any equity created by the oversecured Third Loan to be applied to the otherwise unsecured Second Loan, making the Second Loan secured to the extent of that equity. Questions of valuation are not currently before the Court. But if the value of the Mower exceeds the amount of the debt, then the Third Loan is fully secured and there is no need to determine whether the § 1325(a) hanging paragraph applies to prevent § 506 bifurcation and no need to decide if the PMSI nature of the debt was lost due to the cross-collateral or future advance clause. *See In re Sanders*, No. 06-70463, 2006 WL 3386739, at *2, 5 (Bankr. C.D. Ill. Nov. 20, 2006) (court allowed value in excess of PMSI claim to be applied to separate credit union obligation).

[6] Ferguson correctly asserts that "[i]f a security interest is transformed into a non-PMSI, it is still a security interest, it just may not be entitled to the preferences afforded to a PMSI, such as the 'hanging paragraph' under § 1325(a) or perfection without filing a UCC statement." Ferguson Br., ECF No. 42 at 5. "*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." *Id*.

E. To the extent that the Third Loan or the Fourth Loan are undersecured, the § 1325 hanging paragraph applies if Ferguson's security interests are PMSIs.

Because the Fourth Loan is undersecured and to the extent that the Third Loan may be undersecured, Ferguson may apply § 1325 to prevent § 506 bifurcation of its secured claims if the security interests are PMSIs.

Debtor argues that the Third and Fourth Loans transformed from PMSIs when they were used as collateral for other loans. ECF No. 39 at 2. Debtor relies on this Court's opinion in *Jett*, 563 B.R. 206, to argue that Ferguson's PMSI was transformed into a non-PMSI. However, *Jett* involved a renewal loan that was used to pay off a prior PMSI loan rather than to acquire the collateral. Therefore, the second loan in *Jett* was not one in which there was an "obligation . . . incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral." Miss. Code Ann. § 75-9-103(a)(2). In *Jett,* the Court applied a transformation rule[7] to hold that the PMSI was lost or extinguished in the renewal transaction because it did not involve a purchase or qualify as a PMSI under the Mississippi UCC. "Where no goods are purchased with the money

[7] The Court noted a split of authority in using a transformation or dual status rule:

> There is a split of authority among the circuits concerning whether a purchase money security interest is extinguished when the original purchase money loan is refinanced through renewal or consolidation with another obligation. One line of cases follows the "transformation rule," which holds that a purchase money security interest is transformed into a nonpurchase money security interest when the proceeds of a renewal note 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. The other line of cases follows the "dual status rule," which holds that a lien may be partially purchase money and partially nonpurchase money and that the purchase money aspect of a lien is not automatically destroyed by refinancing or consolidation with another debt.

In re Jett, 563 B.R. at 210 (citations omitted) (quoting *In re Naumann*, No. 09–32092, 2010 WL 2293477, at *2 (Bankr. S.D. Ill. June 8, 2010). "Mississippi's commercial code leaves the choice between the two rules within the discretion of the courts in a transaction involving consumer goods." *Id.* at 210 (citing Miss. Code Ann. § 75-9-103(h); *see also* Keith M. Lundin, *Lundin on Chapter 13* § 75.3, at ¶¶ 50-51, LundinOnChapter13.com (last visited March 2024) ("[T]he 2000 revision to U.C.C. § 9-103(b) adopted the dual-status rule with respect to *nonconsumer* debts but punted to the courts to determine the rule in *consumer* transactions. The hanging sentence thrust the bankruptcy courts into the midst of this unresolved issue of UCC law."); Miss. Code Ann. § 75-9-103 UCC cmt. 7.a. ("For non-consumer-goods transactions, this Article rejects the 'transformation' rule adopted by some cases, under which any cross-collateralization, refinancing, or the like destroys the purchase-money status entirely.").

obtained by loan, no purchase money security interest is created." *In re Jett*, 563 B.R. at 212. So the facts in *Jett* are different. For both the GMC and the Mower, the Loans involved the purchase of the collateral that was taken to secure the debt.

Debtor also argues that a future advance provision contained in the last of a sequence of loans transforms the PMSI. ECF No. 39 at 3-7. Recognizing that the last loan in a sequence usually retains its PMSI, Debtor, citing *Jett*, argues that "[t]he security interest here was transformed when it was entered into because it automatically brought in existing and future collateral." Reply Br., ECF No. 43 at 4. Again, *Jett* is not analogous because the Third and Fourth Loans were loans by which the collateral was acquired, while *Jett* was a renewal loan that paid off a prior PMSI.

Debtor further argues that "[c]ourts in in the Fourth and Eleventh Circuit have ruled that future advancement clauses transform the PMSI status of the last loan in a line of cross-collateralized loans, despite no subsequent loan." Debtor's Br., ECF No. 39 at 5 (arguing that a future advance clause is sufficient to extinguish or void the PMSI and citing *In re Jones*, 5 B.R. 655, 657 (Bankr. M.D.N.C. 1980) and *Southtrust Bank of Ala. Nat'l Ass'n v. Borg-Warner Acceptance Corp*, 760 F.2d 1240, 1243 (11th Cir. 1985) (superseded by statute)).

Debtor asserts that *Roberts Furniture Co. v. Pierce (In re Manual),* 507 F.2d 990 (5th Cir. 1975) is controlling, seizing on the statement that a "purchase money security interest cannot exceed the price of what is purchased in the transaction wherein the security interest is created." ECF No. 43 at 6 (quoting *In re Manual*, 507 F. 2d at 993). Like *Jett, Manual* involved the payoff of a purchase money security interest (in furniture) with a second loan. Unlike *Jett*, the proceeds of the second loan were also used to purchase a television. *In re Manual*, 507 F. 2d at 991. The bankruptcy court found under Georgia law that the television was the subject of a purchase money security interest and the furniture was not. *Id.* at 992.

But Debtor is incorrect that *Manual* is controlling. The Fifth Circuit affirmed only that the new transaction did not create a PMSI in the *furniture. Id.* at 993. Because no issue about the television was

preserved on appeal, the court expressed "no view as to whether a valid purchase money security interest was created with respect to the TV set." *Id.* at 994. Therefore, nothing in *Manual's* holding dictates that Ferguson's interest in the Mower and GMC are not PMSIs.

Ferguson contends that merely including a future advance clause (or cross-collateral clause) to potentially secure other loans does not transform the PMSI. Ferguson Br., ECF No. 42 at 10. *See In re Robinson*, No. 19-13895, 2019 WL 4923244, at *1 (Bankr. S.D. Fla. Oct. 4, 2019) ("There is nothing in the hanging paragraph of section 1325(a) that would lead the Court to conclude that the existence of the cross-collateralization clause in the security agreement . . . renders the hanging paragraph inapplicable."); *In re Matthews*, 378 B.R. 481, 486, 488-89 (Bankr. D.S.C. 2007) ("purchase money nature does not appear destroyed by the mere presence of certain contractual clauses" and "the presence of cross-collateralization clauses and . . . future advance clauses . . . does not deprive the Credit Union of a [PMSI] or the protection of 11 U.S.C. § 1325(a)(*))"; *Meadows v. Household Retail Servs., Inc. (In re Griffin)*, 9 B.R. 880, 881 (Bankr. N.D. Ga. 1981) (unexercised future advance clause was immaterial to status as PMSI); *In re McAllister*, 267 B.R. 614, 621 (Bankr. N.D. Iowa 2001) (future advance and after-acquired property clauses do not transform PMSI into non-PMSI).

Ferguson points out that in *Southtrust*, the court did not the address "whether mere inclusion of unexercised future advances and after-acquired property clauses voids a PMSI because [the court found] that [the secured creditor] exercised the clauses." Ferguson Br., ECF No. 42 at 7 (quoting *Southtrust,* 760 F. 2d at 1243). Ferguson asserts that it did *not* exercise its future advance clause, that no future advance of credit was made for the clause to apply, and that the value of the GMC is less than the balance, leaving no excess value to secure other debt. *Id.* Ferguson also distinguishes *Southtrust* on the fact that there, the court did not have a "way of determining which items of inventory were fully paid and no longer purchase-money collateral and which items of inventory remained purchase money collateral." Ferguson Br., ECF No. 42 at 7. Ferguson argues that here,

there is no confusion as to payment allocation, since the only item of collateral is the GMC and so "no question as to the extent of the PMSI status," *id.* at 8. Also, *Southtrust* involved commercial inventory financing not consumer debt. 760 F.2d at 1241.

Ferguson also argues that *Jones* does not apply, because there, as in *Jett*, the court "considered a PMSI loan that was refinanced and concluded that the refinancing terminated the purchase money character of the security interest." ECF No. 42 at 8 (citing *In re Jones*, 5 B.R. at 656 ("It is unnecessary for this Court to hold that the future advance clause destroys the purchase money character of the security interest since the refinancing alone extinguishes the purchase money character of the security interest.").

The Court agrees with Ferguson's analysis; *Jones* and *Southtrust* are inapposite. The mere inclusion of the cross-collateral clauses should not transform Ferguson's PMSIs.

IV. Conclusion and Order

The hanging paragraph of § 1325(a) applies to the Third and Fourth Loans for the purchase of the Mower and the GMC. Therefore, the purchase money security interests may not be bifurcated under § 506, and the claims must be treated as fully secured in Debtor's plan. If the Mower is oversecured, then the equity may be applied to secure the Second Loan.

IT IS THEREFORE ORDERED AND ADJUDGED that Ferguson Federal Credit Union's Objection to Confirmation of Debtor's Plan is sustained.

##END OF ORDER##