UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

Heather Murphy-Hicks, **Chapter 13**
Debtor. **Case # 20-10016**

ORDER
ON DEBTOR'S MOTION TO MODIFY INTEREST RATE ON "910-VEHICLE" SECURED CLAIM

The Debtor filed this Chapter 13 case on January 17, 2020 (the "Petition Date"). On January 22, 2020, the Debtor filed an embedded motion to determine the value of collateral regarding a 2018 Jeep Renegade (doc. # 8, the "Motion"). The Motion seeks to value the collateral at $24,940.00 and to allow Santander Consumer USA ("Santander") a secured claim in the same amount, at an interest rate of 5.00% (see doc. # 8-2). While Santander did not file an objection to the Motion, on February 5, 2020, it filed a proof of claim asserting a secured debt in the amount of $24,087.87, at an interest rate of 26.06% (claim # 2-1). Santander attached to its proof of claim a copy of the vehicle sale contract dated July 25, 2018, indicating the vehicle is primarily for "personal, family, or household" use, and granting Santander a purchase money security interest ("PMSI") in the vehicle (id. at p. 5).

The hanging paragraph of § 1325 of the Bankruptcy Code governs the Motion; it 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 (as defined in section 30102 of title 49) 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). As the Second Circuit has explained:

> By preventing recourse to section 506(a)'s provision for the bifurcation of a claim into its secured and unsecured parts, [the hanging paragraph] has generally been interpreted [to prohibit cramdown] of [purchase money security interests] secured by an automobile purchased within 910 days of the debtor's bankruptcy filing.

> A debtor who chooses to retain a vehicle purchased within this period must now either reach agreement with the creditor as to what is owed or must pay the entire claim, treating it as fully secured.

AmeriCredit Fin. Servs. v. Tompkins, 604 F.3d 753, 757 (2d Cir. 2010) (citations and quotation marks omitted).

Here, the Debtor purchased the vehicle for personal use 541 days prior to her Petition Date and does not dispute that Santander has a PMSI in the vehicle. The Debtor values the vehicle at $16,267.00 elsewhere in the Motion (see doc. # 8, p. 2, § 3.2), i.e., a figure less than the outstanding balance on the Santander debt. However, this is a "910-vehicle" claim and subject to the hanging paragraph's prohibition against bifurcation under § 506. Hence, the value of the collateral does not determine the amount of the secured claim. Based on the record in this case, and the Debtor's valuation in the proposed order at a figure equal to the amount of Santander's secured claim (see doc. # 8-2), it is evident the Debtor is not seeking to improperly "cram down" this vehicle under § 506.

Rather, it appears the Debtor's Motion seeks solely to modify the interest rate for this claim, from the contract rate of 26.06% (see claim # 2-1) to a reduced rate of 5.00% (see doc. # 8, p. 2, § 3.2; see also doc. # 8-2). This raises two questions:

(1) whether the hanging paragraph prohibits modification of the interest rate when a claim is secured by a 910-vehicle; and

(2) if not, whether the proof of claim is prima facie evidence of the proper interest rate, pursuant to Bankruptcy Rule 3001(f).

The Bankruptcy Court for the Southern District of New York addressed the first question in In re Velez, 431 B.R. 567 (Bankr. S.D.N.Y. 2010) (Glenn, J.):

> The language of the hanging paragraph expressly precludes bifurcation of claims under section 506(a), but it is silent about modifying any other terms applicable to chapter 13 plan treatment of an allowed secured claim. Both before and after Congress added the hanging paragraph to section 1325 as part of the BAPCPA Code amendments in 2005, courts have permitted modification of the repayment terms of allowed secured claims so long as sections 1325's confirmation standards are otherwise satisfied, with the exception of claims secured by a debtor's principal residence which may not be modified because of section 1322(b)(2). See 11 U.S.C. § 1322(b)(2) (stating that a plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence"). **By referring to section 506, but not to section 1322(b)(2), the hanging paragraph prohibits bifurcation of claims secured by 910-vehicles, but it does not prohibit modification of other contractual rights of a secured creditor including the proper interest rate**.

Id. at 570 (emphasis added). This Court is persuaded by its sister court's analysis, and adopts the rationale of Velez. Accordingly, THIS COURT FINDS the hanging paragraph of § 1325 does not prohibit the Debtor from modifying the interest rate for Santander's claim.

Turning to the second question, Bankruptcy Rule 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). However, as the Bankruptcy Court for the Northern District of New York found,

> [T]he proof of claim does not determine the amount of the secured portion of a claim pursuant to Code § 506(a). Rather, the valuation of a secured claim for purposes of Code § 506(a) is part of the confirmation process. As further explained by the Hon. Keith M. Lundin, U.S. Bankruptcy Judge,
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> > … [I]f notice was adequate and the procedural due process rights of the secured claim holder are respected, a bankruptcy court order fixing the value of collateral, determining the allowed amount of a secured claim or defining what the secured claim holder will receive in satisfaction of its lien rights is binding on all parties without regard to the label on the process.

In re Coss, 2005 Bankr. LEXIS 3182, *13–14, 2005 WL 5419055 (Bankr. N.D.N.Y.) (Gerling, C. J.) (citations omitted). Applying the same reasoning as Coss, THIS COURT FINDS Bankruptcy Rule 3001(f) does not provide that the proof of claim is prima facie evidence of the proper interest rate of a claim. Rather, the determination of the proper interest rate of a claim is part of the confirmation process, and such a determination does not, in any way, challenge the validity or amount of the claim. Cf. Coss, 2005 Bankr. LEXIS 3182 at *14 (citing In re Williams, 276 B.R. 899, 908 (C.D. Ill. 1999) ("[d]etermining the secured portion of the creditor's claim in no way challenges the validity of the lien")).

Based on the rationale and findings set forth above, IT IS HEREBY ORDERED Santander's claim (# 2-1) is allowed as a secured claim in the amount of $24,087.87, as set forth in Santander's proof of claim.*

IT IS FURTHER ORDERED the Debtor's Motion is granted such that the Debtor shall pay Santander's allowed secured claim in that amount with interest at the rate of 5.00% per annum, which is a reduction from the interest rate set forth in the proof of claim.

SO ORDERED.

March 2, 2020
Burlington, Vermont

Colleen A. Brown
United States Bankruptcy Judge

* This is the amount Santander's set out on its proof of claim (#2-1); it is slightly less than the figure in Debtor's Motion. Accordingly, and for statistical purposes, the Property ___ is / _X_ is not valued below the amount of the claim.