

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 05-BK-15702-JAF

DAVID J. PARISH,

Debtor.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This case came before the Court upon the Motion to Value Claim 1 (One) of CitiFinancial Auto Corporation filed by the Debtor and the Motion to Strike Debtor's Notice of Valuation of Collateral filed by CitiFinancial Auto Corporation f/k/a TranSouth Financial Corporation. On March 1, 2006, the Court held a hearing and, at the conclusion, took the matter under advisement.

FINDINGS OF FACT

David J. Parish (the "Debtor") filed a Chapter 13 petition on November 15, 2005. On December 15, 2005, the Debtor filed a Motion to Value Claim 1 (One) of CitiFinancial Auto Corporation ("the Creditor"). On December 28, 2005, the Creditor filed a Motion to Strike Debtor's Notice of Valuation of Collateral of CitiFinancial Auto Corporation.

The Creditor holds a purchase money security interest in the Debtor's vehicle, a 1999 Mercury Villager. The parties agreed that the Debtor purchased the vehicle sometime after one year before the filing of the petition but within 910 days of the filing.

At the March 1, 2006, hearing, the Creditor argued that the Debtor's Motion to Value is inappropriate because section 506 does not apply to the Creditor's claim. The Debtor, however, argued a contrary interpretation of the Code and suggested that section 506 applies.

CONCLUSIONS OF LAW

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) became effective October 17, 2005. The Debtor filed the instant petition on November 15, 2005; therefore

BAPCPA applies. BAPCPA amended 11 U.S.C. § 1325(a)(5) with an unnumbered, hanging paragraph located at the end of section (a) (hereinafter, "the Amendment"). It states that

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 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)(5) (2005).

Statutory interpretation requires a court to "presume that a legislature says in a statute what it means and means in a statute what it says there." See, e.g., United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241-242, 109 S. Ct. 1026, 1030-1031 (1989). The inquiry should begin and end with the statutory text if the text of the statute is unambiguous. Id. at 254, 112 S. Ct. 1146 (stating that when the words of a statute are unambiguous, the "judicial inquiry is complete"). However, a court may refer to legislative history and other tools if the statutory language is unclear. Id. at 241, 109 S. Ct. at 1030.

The Court finds that the language of the Amendment is unambiguous. Stated simply, section 506 provides that a secured creditor's claim is secured only to the extent of the value of its collateral. Prior to the Amendment, a court, upon the filing of a motion to value, could bifurcate a secured creditor's claim into both a secured claim, to the extent of the value of the collateral, and an unsecured claim, to the extent the amount of the creditor's claim exceeds the value of the collateral. However, as a result of the Amendment, section 506 is now inapplicable in two scenarios. First, if a creditor (1) has a purchase money security interest securing a debt, (2) the collateral for which consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor,

and (3) the debt was incurred within the 910-day period preceding the date of the filing of the petition, then section 506 is inapplicable and the entire amount of the creditor's claim is secured. See In re Horn, 2006 WL 416314 (Bankr. M.D. Ala. Feb. 23, 2006). The second scenario where section 506 does not apply is where a creditor (1) has a purchase money security interest securing a debt, (2) the collateral for that debt consists of anything of value (other than a motor vehicle), and (3) the debt was incurred during the 1-year period preceding the filing.¹ In each of the two aforementioned scenarios, a secured creditor's claim is fully secured irrespective of the value of the collateral securing the debt.

In the present case, the first scenario is implicated. The Creditor holds a purchase money security interest in the Debtor's vehicle. Additionally, the parties agree that the Debtor purchased the vehicle within 910 days of the petition. Therefore, section 506 is inapplicable and the Creditor's claim is secured to the extent of the amount of its allowed secured claim. The second portion of the Amendment is not implicated because the Creditor has a purchase money security interest in a vehicle, as opposed to "any other thing of value." The Court notes that although the Amendment proscribes the application of section 506 to the facts of the present case, the Amendment does not preclude the applicability of section 1322(b)(2), which affords a debtor the ability to modify a secured claim (other than a secured claim secured by the debtor's principal residence), specifically, the ability to change the interest rate, change the number of payments and change the

amount of payments. See In re Robinson, 2006 WL 349801 (Bankr. W.D. Mo. Feb. 10, 2006).

Based upon the foregoing, the Court finds that section 506 is not applicable to the Creditor's secured claim. Therefore, the Court grants the Creditor's Motion to Strike the Debtor's Motion to Value. A separate order will be entered consistent with these Findings of Fact and Conclusions of Law.

DATED on March 10, 2006 in Jacksonville, Florida.

/s/ Jerry A. Funk

Jerry A. Funk

United States Bankruptcy Judge

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¹ In the latter portion of the Amendment, Congress did not re-state the requirement that a creditor hold a purchase money security interest in order for section 506 not to apply to a debt secured by collateral, consisting of anything of value (other than a motor vehicle), incurred within 1-year of the filing date. See 11 U.S.C. 1325(a)(5) (stating "... 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"). However, the Court, in arriving at this interpretation, reads "that debt," located in the second to the last clause of the Amendment following the comma and the disjunction "or," to refer to "the debt" that is the subject of the claim secured by a purchase money security interest, stated in the beginning of the section. Therefore, it is necessary that a creditor hold a purchase money security interest in the collateral, purchased within 1-year of the petition, consisting of anything of value (other than motor vehicle) in order for section 506 not to apply to such claim.