

IN THE UNITED STATES BANKRUPTCY COURT

2007 MAR -2 P 3:51 *JP*

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>06-10820</u>
Antonia L. Grant	)	
	)	
Debtor	)	
_____	)	
	)	
American Honda Finance,	)	
	)	
Movant	)	
	)	
v.	)	
	)	
Antonia L. Grant, Debtor	)	
	)	
and	)	
	)	
Barnee C. Baxter,	)	
Chapter 13 Trustee	)	
	)	
Respondents	)	
_____	)	

**ORDER**

This matter comes before the Court on an objection to confirmation filed by American Honda Finance ("Honda"). This is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(L). For the reasons discussed below, the objection to confirmation is OVERRULED.

**FINDINGS OF FACT**

In June 2004, Antonia L. Grant ("Debtor") purchased a 2000

Honda Accord within the 910 days preceding the date Debtor filed for bankruptcy. Debtor provided undisputed testimony that the Accord was purchased to be used by Debtor's wife. At the time of the purchase, and for more than a year and a half thereafter, Debtor's wife was the sole user of the Accord. Debtor testified he did not drive the Accord on the road because he had his own vehicle. The only times Debtor drove the Accord was when he washed it, or filled it with gas, for his wife.<sup>1</sup> Debtor further testified his wife kept all the keys to the Accord. After Debtor and his wife separated, she returned the Accord to Debtor because she was not able to make the payments.<sup>2</sup>

Honda filed a proof of claim asserting a secured claim in the amount of \$13,738.92. Debtor's proposed chapter 13 plan attempts to bifurcate Honda's claim pursuant to 11 U.S.C. §506<sup>3</sup> into

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<sup>1</sup> Debtor testified he washed the car at home and filled the gas tank from a tank kept at Debtor's home place.

<sup>2</sup> Debtor purchased the Accord on June 7, 2004 and filed for bankruptcy two years thereafter on June 26, 2006. At the hearing in September 2006, Debtor testified he had been separated for 7 months and that his wife had returned the Accord to him 4 months ago.

<sup>3</sup> 11 U.S.C. §506(a)(1) provides in pertinent part:

An 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 in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's

a secured claim of \$8,000.00, representing the purported value of the car, with interest accruing at 8.5%, and the remaining balance being treated as an unsecured claim.

Honda objects to confirmation of Debtor's chapter 13 plan arguing its claim is covered by the unnumbered paragraph added to 11 U.S.C. §1325 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") and therefore must be paid in full and cannot be bifurcated under §506. Conversely, Debtor argues the vehicle was not "acquired for the personal use of the debtor" and therefore the anti-bifurcation language 11 U.S.C. §1325 does not apply. For the reasons discussed below, the Court overrules Honda's objection to confirmation.

#### **CONCLUSIONS OF LAW**

This Court must decide whether the Accord was purchased for the personal use of the Debtor within the meaning of the unnumbered paragraph following 11 U.S.C. §1325(a)(9) which was added by BAPCPA and provides in pertinent part:

For purposes of [§ 1325(a)(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 [sic] preceding the date of the filing of the petition, and the collateral

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interest . . . is less than the amount of such allowed claim.

for that debt consists of a motor vehicle ...  
**acquired for the personal use of the debtor....**

11 U.S.C. § 1325(a) (\*)<sup>4</sup>(emphasis added).

Honda argues its claim falls within the parameters of 11 U.S.C. §1325(a) (\*) and therefore must be treated as fully secured.

The facts of this case are similar to those addressed by In re Jackson, 338 B.R. 923 (Bankr. M.D. Ga. 2006) where the debtor purchased a vehicle for the use of his non-debtor wife. The court held that ". . .the vehicle must have been acquired for the use of a particular person-debtor-for the hanging paragraph to apply." In re Jackson, 338 B.R. at 926. This Court has found the reasoning of In re Jackson persuasive in a recent opinion, In re Hampton, Ch. 13 Case No. 06-10429 (Bankr. S.D. Ga. March 1, 2007). Under In re Hampton ". . . in order for the hanging paragraph to apply, [the creditor's] claim must be a purchase money security interest, the debt must have been incurred within 910 days prior to the bankruptcy filing, and the vehicle must have been purchased for the personal use of the 'particular person-debtor.'" In re Hampton, Ch. 13 Case No. 06-10429 (Bankr. S.D. Ga. March 1, 2007) citing In re Chaney, Ch. 13 Case No. 06-50775, slip op. at 8 (Bankr. S.D. Ga. Feb. 7, 2007).

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<sup>4</sup> For ease of reference, this provision is referred to in this opinion as "11 U.S.C. §1325(a) (\*)" or the "hanging paragraph."

In the case sub judice, Debtor has established the vehicle was not "acquired for the personal use of the Debtor" and therefore the hanging paragraph does not apply to Honda's claim. According to Debtor, the Accord was purchased for his wife. At the time of the purchase and for more than a year and a half thereafter, Debtor's non-debtor, and now estranged, wife was the sole user of the Accord. Debtor testified that during this time, he did not drive the Accord on the road because he had his own vehicle. According to Debtor, prior to their separation, the only times he drove the Accord was when he washed it, or filled it with gas, for his wife. Furthermore, Debtor testified he did both of those tasks in his own yard. Debtor did not even have a set of keys to the vehicle. After the separation, Debtor's wife returned the vehicle to him because she was unable to make the required payments. Based upon these facts, the Court does not find that the Accord was "acquired for the personal use of the Debtor."

IT IS THEREFORE ORDERED the objection to confirmation filed by Honda is OVERRULED. Furthermore, the clerk is ORDERED to schedule a continued confirmation hearing at which time the valuation of the Accord and proposed interest rate will be considered.

  
SUSAN D. BARRETT  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 2<sup>nd</sup> Day of March, 2007.