ORDERED.

Dated: January 21, 2025

Roberta A. Colton
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re

Brian Keith Grass,

Debtor.

Case No. 8:24-bk-02036-RCT
Chapter 13

MEMORANDUM DECISION AND ORDER DENYING DEBTOR'S MOTION TO DETERMINE SECURED STATUS OF BRIDGECREST ACCEPTANCE CORPORATION

THIS CASE was considered on December 18, 2024 (the "Hearing"), for a continued hearing on Debtor's *Motion to Determine Secured Status of Claim Held by Bridgecrest Acceptance Corporation* (Doc. 25) (the "Motion") and the response to the Motion (Doc. 29) (the "Response") filed by Bridgecrest Acceptance Corporation ("Bridgecrest"). After hearing arguments from counsel, the Court offered the parties fifteen days to file supplemental briefing or list of authorities, after which time the Court would take the matter under advisement. Both parties accepted the Court's invitation (Docs. 34 & 35) (the "Supplemental Filings"). For the reasons that follow, the Motion (Doc. 25) is denied.

Background

The relevant facts are not in dispute. Debtor Brian Keith Grass filed this Chapter 13 case on April 13, 2024. In his schedules, Debtor listed assets including a 2019 Hyundai Elantra

Sedan 4D SE 2.0L I4 (VIN: 5NPD74LF1KH468944) (the "Vehicle").[1] The Vehicle is encumbered by a first priority lien in favor of Bridgecrest. Bridgecrest's lien, which is noted on the Vehicle's title, is a purchase money security interest arising out of a Simple Interest Retail Installment Contract (the "Contract"). As noted in the Contract, Debtor purchased the Vehicle on November 24, 2023, 141 days prior to filing his bankruptcy petition.[2]

In his Chapter 13 plan,[3] and through the Motion, Debtor proposes a cramdown of the Vehicle, valuing it at $9,350, and proposes to pay Bridgecrest the value of the Vehicle at 10% interest. Noting the date of purchase, Bridgecrest opposes the Motion asserting that a cramdown of the Vehicle is prohibited by the "hanging paragraph" of 11 U.S.C. § 1325(a).[4]

At the Hearing, counsel for the parties agreed that the Court's determination of the Motion necessarily would turn on operation of the hanging paragraph. Though they disagreed on whether Debtor acquired the Vehicle for personal use, they agreed that were the Court to find he had, the hanging paragraph would bar the proposed cramdown of the Vehicle. However, counsel also agreed that based on the undisputed fact that Debtor acquired the Vehicle within the year proceeding the petition, a threshold legal issue on the interpretation of the hanging paragraph might render a trial on Debtor's intended use unnecessary. Specifically, and as addressed herein, the Court is called upon to decide whether the hanging paragraph's use of the phrase "any other thing of value" encompasses motor vehicles.

Discussion

In a Chapter 13 case, a debtor's ability to value a secured claim under § 506 is limited by the "hanging paragraph" of § 1325(a), an unnumbered paragraph following § 1325(a)(9). The

[1] Doc. 1.
[2] Claim No. 5-1.
[3] Doc. 27.
[4] Unless otherwise noted, statutory references are to 11 U.S.C. §§ 101–1532 ("Code" or "Bankruptcy Code").

hanging 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 (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.[5]

The hanging paragraph was added to the Bankruptcy Code as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").[6] In the years since 2005, there has been a great deal of litigation regarding BAPCPA's provisions including many decisions interpreting the hanging paragraph.

When called upon to interpret the hanging paragraph, some courts find its language perfectly clear while others find, as do I, that the language is ambiguous.[7] When a statute is ambiguous, courts look to the purposes underlying its enactment as reflected in its legislative history.[8] Regarding the hanging paragraph, courts frequently comment that the legislative history is "not expansive"[9] or "sparse,"[10] but that it nonetheless makes clear that the drafters of the hanging paragraph "intended only good things for car lenders and other lienholders."[11]

Concerning the threshold issue framed by the parties, the hanging paragraph is subject to

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[5] The hanging paragraph is frequently cited as 11 U.S.C. § 1325(a)(9)(*). *See In re Littlefield*, 388 B.R. 1, 3 n.4 (Bankr. D. Me. 2008).

[6] Pub. L. 109–8, 119 Stat. 23 (2005).

[7] *Compare In re Tanguay*, 427 B.R. 663, 671–72 (Bankr. E.D. Tenn. 2010) (finding the hanging paragraph unambiguous), *and In re Parish*, No. 05-bk-15702-JAF, 2006 WL 1679710, at *1 (Bankr. M.D. Fla. Mar. 10, 2006) (same), *with In re Horton*, 398 B.R. 73, 75–76 (Bankr. S.D. Fla. 2008) (noting the hanging paragraph ambiguous), *and In re Littlefield*, 388 B.R. at 4 n.5 ("Given the statute's amenability to opposing plain meaning interpretations, it is ambiguous.").

[8] *See, e.g.*, *In re Horton*, 398 B.R. at 76; *In re Littlefield*, 388 B.R. at 4.

[9] *In re Duke*, 345 B.R. 806, 809 (Bankr. W.D. Ky. 2006).

[10] *AmeriCredit Fin. Srvs. v. Long (In re Long)*, 519 F.3d 288, 294 (6th Cir. 2008).

[11] *DaimlerChrysler Fin. Srvs. Americas LLC v. Barrett (In re Barrett)*, 543 F.3d 1239, 1246 (11th Cir. 2008) (quoting *Graupner v. Nuvell Credit Corp. (In re Graupner)*, 537 F.3d 1295, 1297 (11th Cir. 2008)); *see In re Long*, 519 F.3d at 294; *see also In re Duke*, 345 B.R. at 809 (Bankr. W.D. Ky. 2006) ("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.").

two reasonable, but contrary, interpretations.[12] As one court keenly observed:

> The result hinges on the meaning of "other thing of value" as that term is used in the statute. Does it mean anything of value *other than a motor vehicle*, as most courts have concluded? Or . . . does it mean anything of value (including a motor vehicle), *other than a motor vehicle acquired for personal use*?[13]

As suggested above, two views on this issue have emerged. A majority of courts find that "any other thing of value" does not apply to motor vehicles. These courts, often citing "plain meaning" or utilizing the interpretative principal that "the specific governs the general," or both, conclude that because the first half of the hanging paragraph refers specifically to motor vehicles, the second half of the paragraph must necessarily refer to "other thing[s]" that are not motor vehicles. In contrast, a minority of courts, noting that the first half of the hanging paragraph refers to "motor vehicle[s] . . . *acquired for the personal use of the debtor*,"[14] find that "any other thing of value" in the second half of the paragraph necessarily includes motor vehicles that are not acquired for a debtor's personal use. Interestingly, these minority courts often use the same approaches to statutory interpretation as the majority yet reach a contrary result.[15]

Unsurprisingly, Debtor asks that I adopt the majority view and that the matter proceed to trial on the issue of whether he acquired the Vehicle for personal use. On the other hand, Bridgecrest asks that I, like my colleague,[16] adopt the minority view and deny the Motion.

This is a tough call. Both views have strong arguments. But after due consideration of the Motion, the Response, and the Supplemental Filings, together with the arguments of

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[12] *Compare, e.g.*, *In re McPhilamy*, 555 B.R. 382, 394–96 (Bankr. S.D. Tex. 2017) (concluding that the phrase "any other thing of value" does not apply to motor vehicles), *with, e.g.*, *In re Tanguay*, 427 B.R. at 672 (finding that the phrase "any other thing of value" applies to "[a]ny collateral acquired [within one year of the bankruptcy] . . . through a purchase money security interest, regardless of whether it is for personal or non-personal use, . . . includ[ing] motor vehicles acquired for non-personal use").

[13] *In re Horton*, 398 B.R. at 76 (citing *In re Littlefield*, 388 B.R. 1).

[14] § 1325(a)(9)(*) (emphasis added).

[15] *Compare, e.g.*, *In re McPhilamy*, 555 B.R. at 394–96 (taking the majority view), *with, e.g.*, *In re Tanguay*, 427 B.R. 663 (taking the minority view).

[16] *In re Book*, Case No. 8:18-bk-03993-CPM, Doc. 44 (Bankr. M.D. Fla. Apr. 5, 2019).

counsel made at the Hearing, and after a thorough review of the case law and the limited legislative history,[17] the Court finds that the minority view, as exemplified by *In re Littlefield*[18] and *In Tanguay*,[19] is more persuasive and the Court will adopt the same.

That said, the Court is not delighted by this outcome. Some debtors who purchase vehicles for use in their businesses, such as ride-share drivers, may delay seeking bankruptcy protection to avoid the hanging paragraph. And in such cases, unsecured creditors may lose out from receiving the benefit of increased earnings that vehicles intended for business purposes often provide.[20] But as the *Littlefield* court observed, it is not my place to "impose my view of proper bankruptcy policy in place of Congress's."[21]

Conclusion

Based upon the Court's adoption of the minority view, the Motion (Doc. 25) is **DENIED**. A trial on Debtor's intended use of the Vehicle at the time of its purchase is unnecessary. However, based upon the Court's ruling, an amended Chapter 13 plan is required. Accordingly, within fourteen (14) days of entry of this Decision and Order, Debtor shall file an amended plan that treats Bridgecrest's claim properly and in accord with this decision.

It is **SO ORDERED**.

Service of this Decision and Order shall be by CM/ECF only. Proof of service is not required. Local Rule 9013-3(b).

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[17] The legislative history of the hanging paragraph consists primarily, if not entirely, of the House Judiciary Committee Report. H.R. REP. NO. 109-31(I), at 72 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 88, 140. Helpful to understanding this history are the titles for the section and subsection of BAPCPA that enacted the hanging paragraph. Section 306 is entitled "Giving Secured Creditors Fair Treatment in Chapter 13," while § 306(b) is entitled "Restoring the Foundation for Secured Credit." BAPCPA, Pub. L. 109–8, § 306,119 Stat. 23 (2005).

[18] 388 B.R. 1.

[19] 427 B.R. 663.

[20] Obviously, Uber and Lyft were not around when BAPCPA was enacted. Nevertheless, any argument that Congress intended to encourage retention of assets which enhance the business prospects of Chapter 13 debtors is belied by fact that other business assets or tools secured by purchase money security interests fall squarely within the phrase "any other thing of value" in the hanging paragraph. Debtors facing this issue may be better served looking to Subchapter V of Chapter 11.

[21] *In re Littlefield*, 388 B.R. at 6.