

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

IN RE:

Gaye Calhoun Dennis,

Debtor(s).

C/A No. 19-02151-HB

Chapter 13

**ORDER SUSTAINING OBJECTION  
TO CONFIRMATION**

**THIS MATTER** is before the Court to consider confirmation of Debtor Gaye Calhoun Dennis' Chapter 13 plan, and the objection thereto filed by Creditor VW Credit, Inc. ("VW").<sup>1</sup> VW asserts the plan's bifurcation of its secured claim violates the "hanging paragraph" of 11 U.S.C. § 1325(a) because it holds a purchase money security interest ("PMSI") in a vehicle that was incurred within 910 days of the petition date. Dennis asserts the PMSI was not incurred within 910 days but was effective in 2014 when she entered a lease agreement with a purchase option.

On October 22, 2014, Dennis signed a lease for a Volkswagen Jetta (the "Lease"). The Lease stated the value of the vehicle was \$17,704.99. It provided Dennis would make monthly payments of \$249.95 for a period of four years, with a total payment amount of \$11,997.60. At the end of the Lease, Dennis could return the vehicle or exercise the option to purchase it for its stated residual value of \$9,031.20. During the lease period, the vehicle was titled in her name and that of the lender, and she paid the taxes and insurance.

On November 6, 2018, Dennis exercised the option to purchase the vehicle and financed the purchase price. She testified that she made payments to the same entity before and after exercising the option to purchase.

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<sup>1</sup> ECF Nos. 3 & 16.

On April 18, 2019, Dennis filed a petition for Chapter 13 bankruptcy relief. VW filed a secured claim in the amount of \$10,756.35. Attached to its claim is an itemization of the amount owed, a copy of the retail installment sales contract, and records indicating VW has a lien on the title to the vehicle as of November 2018.

The “hanging paragraph” of § 1325(a) prohibits bifurcation of a claim:

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[.]

11 U.S.C. § 1325(a)(\*). In determining whether a vehicle creditor’s claim qualifies to be treated as fully secured pursuant to the hanging paragraph, four requirements must be met: (1) the claim is secured by a PMSI; (2) the collateral is a motor vehicle; (3) the motor vehicle was acquired for the personal use of the debtor; and (4) the debt was incurred within 910 days before the debtor filed her petition. *In re Jett*, 563 B.R. 206, 208 (Bankr. S.D. Miss. 2017). “[T]he hanging paragraph of § 1325(a) is meant to protect secured car lenders which meet its requirements and not exclusively those secured car lenders financing new vehicles.” *In re Kirkman*, C/A No. 09-03214-jw, slip op. at 5 (Bankr. D.S.C. Jul. 17, 2009) (citing *In re Price*, 562 F. 3d 618, 628 (4th Cir. 2009)).

The meaning of PMSI as used in the hanging paragraph is controlled by state law. *Price*, 562 F. 3d at 624 (“when determining the substance of property rights and security interests in bankruptcy, ‘the basic federal rule is that state law governs.’” (quoting *Butner v. United States*, 440 U.S. 48, 57, 99 S. Ct. 914, 59 L. Ed.2d 136 (1979))). South Carolina’s Uniform Commercial Code defines the term “purchase-money security interest” as a security interest in goods that are “purchase-money collateral,” which are goods that secure a “purchase-money obligation.” S.C. Code. Ann. § 36-9-103(a), (b). A “purchase-money

obligation” is “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.” S.C. Code Ann. § 36-9-103(a).

The concept of “purchase-money security interest” requires a close nexus between the acquisition of collateral and the secured obligation. Thus, a security interest does not qualify as a purchase-money security interest if a debtor acquires property on unsecured credit and subsequently creates the security interest to secure the purchase price.

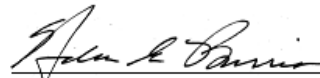
S.C. Code Ann. § 36-9-103, Official Comment 3.

Dennis executed the Lease in 2014 in exchange for possession and use of the vehicle for a period of 4 years. Once Dennis’ obligations under the Lease were satisfied, she exercised her option to purchase the Vehicle.<sup>2</sup> That was a “purchase money obligation” because her contractual obligations were for value given to enable Dennis to acquire rights in the vehicle, and the value was used for that purpose. *Kirkman*, C/A No. 09-03214-jw, slip op. at 7-8. Unlike a refinance of existing debt, there was no antecedent debt owed here that was extinguished by the financing provided to purchase the vehicle.

**IT IS, THEREFORE, ORDERED** that VW’s Objection to confirmation is sustained and confirmation of Dennis’ proposed plan filed on April 18, 2019 is denied.

**FILED BY THE COURT**  
**08/05/2019**



  
US Bankruptcy Judge  
District of South Carolina

Entered: 08/05/2019

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<sup>2</sup> See S.C. Code Ann. § 36-1-203(c)(6) (a transaction in the form of a lease does not create a security interest merely because the “lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed”).