

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND DIVISION**

**IN RE:**

**ALAN B. DUFF and  
AMANDA J. DUFF**

**CASE NO. 13-10366  
CHAPTER 13**

**DEBTORS**

**ORDER**

This matter is before the Court on confirmation of the Debtors' Chapter 13 Plan [Doc. 4], the Trustee's Report and Recommendation as to Confirmation (recommending against confirmation of the plan) [Doc. 18], the Debtors' Brief [Doc. 23], the Trustee's Brief [Doc. 24], the Amended Trustee's Report and Recommendation as to Confirmation [Doc. 30] and the Supplement to Trustee's Brief [Doc. 31]. This matter was taken under submission after the confirmation hearing held on March 18, 2014.

Schedule B indicates the Debtor Alan B. Duff owns a "2006 Jeep Commander with over 164,478 miles and a dent in the back" (the "Jeep") with a current value of \$6,000. [Doc. 1, p. 13]. Santander Consumer USA filed proof of claim 1-1 asserting a \$14,764.96 claim and valuing the Jeep at \$12,225. Schedule H and attachments to the proof of claim show the Debtor's Father, Jeffrey Duff, is a co-owner of the Jeep and a co-obligor on the Santander debt. The Santander claim is not subject to the anti-modification provisions set forth in the "hanging paragraph" following § 1325(a)(9).

The disclosure of the Santander debt on Schedule D is substantially consistent at \$14,718. [Doc. 1, p. 16]. But, Schedule D also indicates the unsecured portion of the Santander debt is \$8,718.46. *Id.* Further, notwithstanding this disclosure, the Debtors' proposed plan treats the Santander debt in Part II.A.3 as a "Secured Claim Not Subject to Valuation under § 506" at the

contract rate of interest (16.6%). [Doc. 4, pp. 1-2] In its papers, the Debtors contend this treatment is justified by 11 U.S.C. § 1322(b)(1). [Doc. 23]

Section 1322(b)(1) provides:

**(b)** Subject to subsections (a) and (c) of this section, the plan may—

**(1)** designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

Section 1322(b)(1) provides that separate classification of unsecured claims is allowed, but there cannot be unfair discrimination. The Trustee argues that the current treatment is prejudicial to general unsecured creditors because it treats Santander different from other unsecured creditors. [Docs. 18, 24, 30, and 31] But the however clause qualifies the unfair discrimination prohibition to allow different treatment for consumer debts owed jointly with a third party in the appropriate circumstances. *See, e.g., Meyer v. Renteria (In re Renteria)*, 470 B.R. 838, 841-47 (B.A.P. 9th Cir. 2012); *In re Russell*, 503 B.R. 788 (Bankr. S.D. Ohio 2013).

Any decision on unfair discrimination is premature. Section 1322(b)(1) deals only with unsecured claims. The secured and unsecured portions of the Santander claim will require separate treatment. Even if the Debtor is ultimately allowed to treat the unsecured portion of the Santander debt different from other unsecured creditors pursuant to § 1322(b)(1), the terms of the Santander debt might change. *See Till v. SCS Credit Corp.*, 541 U.S. 465, 477, 124 S. Ct. 1951, 1960, 158 L. Ed. 2d 787 (2004) (present value at cramdown does not require use of pre-bankruptcy terms); *see also In re Dingley*, 189 B.R. 264, 272-73 (Bankr. N.D. N.Y. 1995) (denying confirmation of a debtors' plan pursuant to § 1325(a)(3) based on the debtors' proposal to pay one of their secured creditors more than the present value of its secured claim at the expense of general unsecured creditors).

Therefore, it is first necessary to bifurcate the claim between its secured and unsecured portions. This question also must consider whether the value of the car to the Debtors' estate is affected by the joint ownership obligation of the parties. Once that issue is decided, the Court may then move to address the question of the reasonableness of disparate treatment of the unsecured portion of the claim from other unsecured creditors.

Therefore, the Trustee's objection to confirmation of the Plan based on the Debtors' failure to comply with the provisions of § 506 is SUSTAINED. It is further ORDERED:

1. The Debtor has 21 days to file an amended plan to address the secured and unsecured portions of the claim or the case shall be dismissed.
2. The Debtor shall contemporaneously file a brief in support of confirmation that at least addresses the impact of *Renteria* and *Russell, supra*, on the amended plan.
3. Interested parties shall have 14 days after the filing to object to the amended plan.
4. The Debtor shall have 7 days thereafter to reply.
5. The Court will deem the matter submitted for decision or, if there is a dispute regarding the value of the Jeep, the value of the Debtor's interest in the Jeep or the debt, issues regarding unfair discrimination or other matters, set an evidentiary hearing or take other appropriate action.

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The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.



Signed By:  
Gregory R. Schaaf  
Bankruptcy Judge  
Dated: Friday, April 04, 2014  
(grs)