



Opinion 526

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Opinion Title: 01/06/2009 PUBLISHED In re Garner, 08-24899, Judge Thurman.

Body: In this chapter 13 case, the issue before the Court was whether a plan that proposed to bifurcate a secured claim under 11 U.S.C. § 506(a)(1) for a vehicle purchased within 910 days, and that was not objected to by the creditor, may be confirmed under 11 U.S.C. § 1325(a). The Debtors argued that Citizens Auto Finance's failure to object to the bifurcation of its claim in their chapter 13 plan constituted acceptance of the plan. The Bankruptcy Abuse Prevention and Consumer Protection Act, however, amended § 1325 to give special protection to creditors who finance automobile transactions that occur within 910 days prior to the debtor's filing for chapter 13 relief. The Court concluded that the requirements of § 1325(a) are "clearly mandatory," and where a plan violates the hanging paragraph of § 1325(a), it cannot be confirmed even if the creditor does not object to the plan. Accordingly, the Court concluded that the hanging paragraph of § 1325(a) applied in this case, and the Debtors could not bifurcate Citizens Auto Finance's claim pursuant to § 506. Therefore, confirmation of the Debtors' plan was denied.

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Judge: [Judge William T. Thurman](#) [2]

Date: Tuesday, January 6, 2009

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