United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Will This Opinion be Published Yes

Bankruptcy Caption: In re Roosevelt McCoy

Bankruptcy No. 23 B 09640

Adversary Caption:

Adversary No.

Date of Issuance: February 28, 2024

Judge: Donald R. Cassling

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	Bankruptcy No. 23 B 09640
	)	
ROOSEVELT MCCOY,	)	Chapter 13
	)	
Debtor.	)	Judge Donald R. Cassling

ORDER SUSTAINING OBJECTION TO PLAN CONFIRMATION (DOCKET NO. 14)

Exeter Finance LLC ("Exeter"), a creditor of Roosevelt McCoy, debtor herein ("McCoy"), objects to the Chapter 13 plan proposed by McCoy. The primary ground for the objection is that the interest rate provided in the plan for Exeter's car loan to McCoy does not satisfy the requirements of *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). For the reasons stated herein, the Court agrees and sustains Exeter's objection.

Background

On April 27, 2022, McCoy and Selena N. Crawford ("Crawford"), jointly purchased a 2019 Dodge Journey (the "Vehicle") from CarMax Auto Superstores, Inc. for $23,998. They put $3,000 down and financed the remainder, including fees and taxes, through Exeter. The $26,219.32 loan Exeter made to McCoy and Crawford obligated them to make 72 monthly payments of $734.13, at an interest rate of 26.23%.

McCoy filed his bankruptcy petition under Chapter 13 of the Bankruptcy Code on July 25, 2023. Crawford is not in bankruptcy. McCoy filed a Chapter 13 plan on August 7, 2023. Exeter objected to that plan on four grounds: (1) that its secured claim had been undervalued, (2) that the proposed interest rate was inadequate, (3) that McCoy had failed to provide Exeter with proof of insurance covering the Vehicle in full and identifying Exeter as the lienholder and loss-payee, and (4) that the plan did not include language protecting Exeter's right to retain its lien on the Vehicle until paid in full under non-bankruptcy law in Section 8 of the plan.[1]

In response to Exeter's objection, McCoy filed an amended plan (the "Amended Plan") on August 15, 2023, wherein he proposed to pay Exeter $29,841.93 at a 7% interest rate, for a total of $35,454.60. *See* Docket No. 16. In his brief in response to Exeter's objection, McCoy attached a declarations page stating that Crawford had insured the Vehicle through Oxford Insurance Agency Inc., which lists Crawford and McCoy as operators of the Vehicle. Resp., Ex. A. However, Exeter is still not listed on that policy as a lienholder and a loss-payee. Despite this

[1] Section 1325(a)(5) affords secured creditors the right to inclusion in a debtor's plan wherein they retain the liens securing their claims until the earlier of payoff in full per non-bankruptcy law or a court-ordered discharge of the debtor's debts. *See* 11 U.S.C. § 1325(a)(5)(A) & (B).

omission, McCoy stated that he believed that the Amended Plan "resolved [all issues] except the interest rate." *Id.* at 2. He now asks the Court to confirm his Amended Plan, thereby approving the stated interest rate, which is equal to the 5-year treasury bond rate, plus a risk factor of 2.5%.

In its reply to McCoy's response, Exeter acknowledged that McCoy had now remedied all but two of the issues raised in its objection: (1) he has still failed to provide proof of full coverage insurance and (2) he has failed to employ an appropriate rate of interest to be paid on Exeter's claim. With respect to the latter issue, Exeter initially argued that it is entitled to be paid the contract rate of interest of 26.23% on the amount of its claim. However, Exeter has since retreated from that position and now argues that it must be paid an interest rate of at least 11% in order to comport with the requirements set forth in *Till*. 541 U.S. at 479-80. According to its analysis, that interest rate would be equal to the prime rate,[2] plus an appropriate risk factor of 2.5%.

Discussion

A. McCoy's Failure to List Exeter as an Additional Insured and Loss-Payee

In its objection, Exeter argues that "[McCoy] has not provided Exeter or its counsel with proof of a valid full coverage insurance policy for the Vehicle identifying Exeter as the lienholder/loss payee to protect Exeter's interest in the Vehicle from loss or destruction." Obj., at 2. Most car financers typically require their borrowers to maintain insurance that lists the financer as a loss-payee. The loan agreement in this case is no exception. It unambiguously requires the borrowers to provide proof of insurance that names Exeter as an "additional insured and loss-payee." *Id*., Ex. A at 2.

Because McCoy has not provided an insurance policy naming Exeter as an additional insured and loss-payee, the Court sustains this part of Exeter's objection.

B. What is the Appropriate Base Interest Rate for Exeter's Auto Loan Claim?

The parties agree that Exeter is entitled to interest on its secured claim. They also agree that the base rate of interest should be adjusted upward to reflect the increased risk of lending money to a debtor in bankruptcy. However, they disagree as to the proper base rate of interest to be applied, with McCoy arguing that the base rate should be the 5-year treasury bond rate and Exeter arguing that the base rate should be the higher prime rate.

The Supreme Court held in *Till* that bankruptcy courts should determine an interest rate for secured debts treated under the plan that will "ensure that the property to be distributed to a particular secured creditor over the life of the bankruptcy plan has a total 'value, as of the effective date of the plan,' that equals or exceeds the value of the creditor's allowed secured claim. . . ."

[2] The prime rate is "the interest rate that commercial banks charge their most creditworthy customers," Reply, at 3 (quoting *Prime Rate Definition*, available at https://www.investopedia.com/terms/p/primerate.asp (last visited Feb. 21, 2024)).

Till, 541 U.S. at 474 (quoting 11 U.S.C. § 1325(a)(5)(B)(ii)). While the Court did not explicitly state what the appropriate base rate should be in all future bankruptcy cases, it did opine that whatever base rate is chosen should be one that will "treat similarly situated creditors similarly…." *Id.* at 477.

In *Till*, the bankruptcy court had started with the national prime rate and then adjusted that rate upward to account for the increased risk of lending to a debtor in bankruptcy. *See Farm Credit Servs. of Am. v. Topp (In re Topp)*, 75 F.4th 959, 962 (8th Cir. 2023). While the Supreme Court accepted the bankruptcy court's use of the prime rate in that case, it did not opine that the prime rate should be used in all future bankruptcy plans, leading some lower courts to take the view that *Till*'s employment of the prime rate in that case lacked precedential effect. *See, e.g., In re Cook*, 322 B.R. 336, 343-44 (Bankr. N.D. Ohio 2005).

McCoy cites those cases in arguing that the base rate for the Exeter loan should be the 5-year treasury bond rate and not the prime rate. *See Topp*, 75 F.4th at 962-63 (holding that bankruptcy court did not err in confirming plan using 20-year treasury bond rate as base rate for cramdown of 20-year loan in Chapter 12 plan); *In re Vasquez*, No. 12-30834, 2012 WL 3762981, *2-3 (Bankr. S.D. Tex. Aug. 29, 2012) (finding debtor's use of 5-year treasury rate with risk factor for real estate creditor's claim sufficient under *Till*); *In re Bastankhah*, Nos. 10-40058 & 10-40060, 2012 WL 170901, *3-4 (Bankr. S.D. Tex. Jan. 18, 2012) (similar, in context of confirming Chapter 11 plan); *but see In re Walkabout Creek Ltd. Dividend Hous. Ass'n Ltd. P'ship*, 460 B.R. 567, 574-75 (Bankr. D.D.C. 2011) (denying confirmation of Chapter 11 plan aiming to reorganize loans for residential apartment complexes over a 35-year term upon finding, among other reasons, use of 30-year treasury rate inappropriate).

But McCoy offers no evidence that this low rate is appropriate for a car loan. Indeed, he offers no evidence that that rate has ever been used in a typical car loan. That omission is not surprising, since treasury bills are backed by the Full Faith and Credit of the United States and the 5-year T-bill rate is therefore more appropriate for loans carrying very little risk of non-payment. The average car loan in bankruptcy obviously does not fit into that category.

By contrast, courts frequently reference the prime rate in setting an appropriate interest rate for secured debts under a Chapter 13 plan. *See In re Drake*, 638 B.R. 96, 99 (Bankr. N.D. Ill. 2022) ("for most secured claims, the appropriate interest rate is the prime rate, adjusted to account for the risk of nonpayment"); *In re Santiago*, 541 B.R. 8, 13-14 (Bankr. D.P.R. 2015) (finding 4.75% interest rate for a 2012 Kia Sportage 4D, comprised of prime rate, plus 1.5% risk factor, appropriate under 11 U.S.C. § 1325(a)(5)(B)(ii)); *In re Marks*, 394 B.R. 198, 206 (Bankr. N.D. Ill. 2008) ("The proper method for determining the interest rate for a motor vehicle loan under a chapter 13 plan . . . begins with the prime rate. . . .") (citing *Till*, 541 U.S. at 479-80). Accordingly, as between the two base rates proposed by the parties, the Court concludes that the more appropriate base rate for a car-loan debt in bankruptcy is the prime rate.

Turning now to the appropriate size of the risk adjustment, the *Till* court found that that determination depends on "such factors as the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." *Till*, 541 U.S. at 479. Courts have generally approved risk adjustments in bankruptcy cases of between 1% and 3% to balance a debtor's ability to make plan payments while compensating a creditor for its risk borne. *See id.* at 480-81 (noting that 11 U.S.C. § 1325(a)(6) obligates courts to select "a rate high enough to compensate the creditor for its risk but not so high as to doom the plan").

Exeter notes that it had deemed McCoy "to be [a] relatively high risk" borrower even before he filed for bankruptcy. Reply, at 10. Exeter's initial position was that an appropriate risk adjustment would take that factor into account in addition to "the added risk of [McCoy] having commenced bankruptcy proceedings," *id.* at 2:

> The circumstances of [McCoy's] bankruptcy estate, wherein [McCoy's] financial condition has presumptively deteriorated since the purchase of the Vehicle and resulting in the commencement of these proceedings, clearly show that [McCoy] could not obtain financing at a rate lower than the interest rate provided in the [contract between the parties].

Obj., at 2-3.

Notwithstanding this initial position, Exeter indicated in its Reply a willingness to accept a cramdown rate of 11% on its claim, less than half of the interest rate it charged on the original loan. Exeter points out that an 11% interest rate is "equivalent to the risk-free 5-year treasury rate plus a risk factor of approximately 6.2% or the current prime rate plus a risk factor of 2.5%." Reply, at 10.

For his part, McCoy presented no arguments regarding the size of the risk adjustment, merely stating that it offers Exeter an adjustment of 2.5% on its claim through the Amended Plan, if based on the 5-year treasury bond rate. Resp., at 4.

The Court believes that Exeter's concession is reasonable and satisfies the requirements of *Till*. Accordingly, the Court holds that the appropriate base rate in this case is the prime rate, as adjusted upward by a risk factor of 2.5%.

Conclusion

For the foregoing reasons, Exeter's objection is sustained. In order to be confirmed, McCoy's plan must both provide proof of insurance listing Exeter as an additional insured and loss-payee and provide Exeter with an interest rate of at least 11% on its secured claim.

ENTERED:

DATE: February 28, 2024

Donald R. Cassling
United States Bankruptcy Judge