

SO ORDERED.

SIGNED this 3rd day of March, 2021.



*Lena Mansori James*  
LENA MANSORI JAMES  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION

IN RE:	)	
	)	
Renee Marie St. Fleur,	)	Case No. 20-50764
Debtor.	)	Chapter 13
_____	)	

**ORDER OVERRULING OBJECTION TO CONFIRMATION**

This matter came before the Court for hearing on February 17, 2021 on the objection by Triad Financial Services, Inc. in its capacity as servicer for GTSC, LLC (“Triad”) to confirmation of chapter 13 plan (Docket No. 22, the “Objection”) of Renee Marie St. Fleur (the “Debtor”). Appearing at the hearing were Jennifer K. Brown for Triad, Benjamin Busch for the Debtor, and Kathryn L. Bringle, Chapter 13 Trustee. For the reasons enumerated at the hearing and as stated below, the Objection is overruled.

**Background**

The Debtor filed a petition for relief under chapter 13 of the Bankruptcy Code on October 19, 2020. On her schedule A/B, the Debtor listed a sole interest in a 2012 Clayton mobile home with a value of \$33,134.00 (the “Mobile Home”). GTSC, LLC filed a proof of claim on December 8, 2020 asserting a claim in the amount of

\$59,306.12 secured by a promissory note and security agreement, with the title lien evidenced by an electronic title printout.<sup>1</sup> Triad was listed as servicer.

The Debtor's amended chapter 13 plan, filed on December 7, 2020 (Docket No. 17, the "Plan"), proposes to value the Mobile Home under 11 U.S.C. § 506 and treat the claim as secured in an amount equal to such value, which it sets at \$33,134.00. The treatment of the claim in the Plan provides for a monthly payment of \$672.00, an interest rate of 5.25%, and adequate protection payments of \$500.00 for 10 months. The Plan was noticed out to all parties on December 9, 2020, and on December 31, 2020, Triad filed the Objection. Triad asserts that the purchase of the Mobile Home "on or about May 31, 2019" was within 910 days preceding the bankruptcy filing,<sup>2</sup> and as the Mobile Home is a motor vehicle as set forth in the hanging paragraph of 11 U.S.C. § 1325(a), Triad's claim is not subject to valuation and cramdown. The Court continued the confirmation hearing twice at the request of the parties; Triad, the Trustee, and the Debtor submitted briefs prior to the hearing on February 17, 2021.

### Discussion

Through a chapter 13 plan, a debtor may modify the rights of holders of secured claims in certain circumstances. *See* 11 U.S.C. § 1322(b)(2). Under 11 U.S.C. § 506(a)(1) "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property..." Section 506(a)(1) "provides that a claim is secured only to the extent of the value of the property on which the lien is fixed," and "the remainder of that claim is considered unsecured." *Hurlburt v. Black*, 925 F.3d 154, 159 (4th Cir. 2019) (citing *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 239 (1989)).

The modification provisions of § 1322(b)(2) are subject to certain exceptions. One of the exceptions that would prohibit a chapter 13 debtor from modifying a

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<sup>1</sup> In the Objection, Triad states it is in the process of amending its claim to include a copy of the North Carolina Certificate of Title, but as of the date of this order, has not done so.

<sup>2</sup> The 2012 Clayton mobile home was purchased 507 days prior to Debtor filing the petition.

secured claim was added in 2005 by way of the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”). BAPCPA added a “hanging paragraph” to § 1325(a), which carves out an exception to § 506(a) by limiting the bifurcation of certain claims into secured and unsecured amounts under § 1325(a)(5) based upon the dates of purchase of motor vehicles or “any other thing of value” as follows:

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.

11 U.S.C. § 1325(a) (emphasis added). Section 30102(a)(7) of Title 49 of the U.S. Code defines motor vehicle as “a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.” Thus generally, by operation of the hanging paragraph, a creditor with a security interest in a debtor’s personal vehicle is protected from having its claim valued under § 506, also known as a cramdown, if that vehicle was purchased within 910 days of the bankruptcy filing, whereas a creditor with a security interest in any other thing of value is only protected for a 1-year period from purchase. As the Mobile Home was purchased outside of the 1-year period, yet within 910 days of the filing, Triad asks the Court to find that the Mobile Home is a motor vehicle, as contemplated by the hanging paragraph.

In a 2011 decision, Judge Aron held that a chapter 13 debtor could utilize the cramdown provisions of § 506 and § 1322(b)(2) to bifurcate a creditor’s secured claim on the debtor’s manufactured home. *In re Nunnery*, No. 11-80267, 2011 WL 4712083, at \*5 (Bankr. M.D.N.C. Aug. 17, 2011). The key facts in *Nunnery* mirror those of this case, i.e. the debtor owned a manufactured or mobile home that sat on real property unowned by the debtor. While *Nunnery* held, without considerable elaboration, that the hanging paragraph exception of § 1325(a) does not apply to a

creditor's secured claim on a manufactured home, *Id.* at \*5 n. 4, the Court will address and discuss the question in more depth as it relates to the facts of this case.

The treatment of Triad's claim, and specifically whether its claim can be bifurcated under § 506, is dependent on a single question — whether the Mobile Home is a motor vehicle under 49 U.S.C. § 30102. There are two parts to the definition of motor vehicle in § 30102(a)(7): (1) the vehicle must be either “driven or drawn by mechanical power,” and (2) the vehicle must have been “manufactured primarily for use on public streets, roads, and highways....” Triad argues that § 30102(a)(7) implicitly includes mobile homes by clearly referencing vehicles drawn by mechanical power (Docket No. 26 at p. 3). The Court agrees with Triad that the first part of § 30102(a)(7)'s definition of motor vehicle is broad enough to include the Mobile Home.

As to the second part of the definition, Triad asks the Court to find the definition of “motor vehicle” in 49 U.S.C. § 30102 ambiguous with regard to mobile or manufactured homes such that the court should look to North Carolina state law for the resolution of the question of whether a mobile home is a motor vehicle for purposes of the hanging paragraph of § 1325(a). Triad relies on *In re Greene*, 360 B.R. 34 (Bankr. N.D.N.Y. 2007), the sole published bankruptcy decision that addresses the meaning of “motor vehicle” in the context of § 1325(a)'s hanging paragraph. While the court in *Greene* did find that an argument could be made that the word “primarily” has more than one accepted meaning, *Greene* does not otherwise support Triad's position in this case. First, *Greene* found that any ambiguity in the definition of the word “primarily” should be resolved in favor of the debtor. *Id.* at 41. Second, the court found that while there were bankruptcy cases interpreting state definitions of motor vehicle, these cases “provide little guidance in interpreting [49 U.S.C. § 30102(a)(7)].” *Id.* at 40.<sup>3</sup> Lastly, the court concluded by

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<sup>3</sup> While the nature of a party's legal interest is generally determined by state law, *see Butner v. United States*, 440 U.S. 48, 55 (1979), the question presented here is whether Triad's legal interest is subject to the bifurcation exceptions listed within § 1325(a). As stated by the Third Circuit, “while state law creates legal interests and defines their incidents, ‘the ultimate question whether an interest thus created and defined falls a category stated by a Federal statute *requires an*

holding that (1) it would apply the plain meaning rule to give the statute its proper effect, (2) the plain meaning of “primarily” in this context is “chief” or “foremost,” and (3) as the travel trailer at issue was manufactured primarily to provide temporary shelter and not for use on roads and highways, it was not a motor vehicle. *Id.* at 42.

Basic principles of statutory interpretation require this court to read the language of a statute according to the plain meaning and to give effect to every word. *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1010 (2017) (“We thus begin and end our inquiry with the text, giving each word its ordinary, contemporary, common meaning.”); *Ross v. R.A. North Dev., Inc. (In re Total Realty Mgmt., LLC)*, 706 F.3d 245, 254 (4th Cir. 2013). The two exceptions to the plain meaning rule, which are “exceptionally rare,” are (1) whether the plain meaning is at odds with the intentions of its drafters or (2) when the literal application of the statutory language at issue results in an outcome that can be characterized as absurd. *In re Philips*, 362 B.R. 284, 295-96 (Bankr. E.D. Va. 2007) (citing *RCI Tech. Corp. v. Sunterra Corp. (In re Sunterra)*, 361 F.3d 257 (4th Cir. 2004)). Triad has made no argument that either of those exceptions apply here. The Bankruptcy Code clearly provides that “motor vehicle” in § 1325(a)’s hanging paragraph is determined by reference to the definition in 49 U.S.C. § 30102(a). Section 30102(a) in turn plainly defines a motor vehicle as something manufactured primarily for use on some type of public road. *See Champion Auto Sales, LLC v. Polaris Sales Inc.*, 943 F. Supp. 2d 346, 354 (E.D.N.Y. 2013) (affording 49 U.S.C. § 30102(a)’s definition of motor vehicle its plain meaning and finding a motor vehicle is a vehicle “manufactured with the primary purpose of being used on public streets, roads, and highways. Thus, snowmobiles, ATVs, Rangers, and LSVs—which are not used primarily (if at all) on public streets—are not motor vehicles...”); *see also U.S. v. Four Units All Terrain Vehicles*, 778 F.Supp.2d 220 (D.P.R. 2011) (finding that

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*interpretation of that statute, which is a Federal question.*” *21 West Lancaster Corp. v. Main Line Restaurant, Inc.*, 790 F.2d 354, 356 (3d Cir. 1986) (citation omitted) (emphasis added).

ATVs manufactured primarily for off-road purposes do not fall under 49 U.S.C. § 30102(a)'s definition of motor vehicle).

In this case, the Mobile Home was manufactured primarily for use as a permanent shelter, not for use on public roads, highways, or streets. In fact, pursuant to paragraph 6 of the security agreement encumbering the Mobile Home, the Debtor cannot move her mobile home on public streets, roads, and highways without the written permission of Triad. To the extent there is an argument that the word “primarily” is subject to more than one meaning, rendering § 30102(a)(7) ambiguous, the Court agrees with the reasoning in *Greene* that any ambiguity should be resolved in favor of the debtor. *See also New Neighborhoods, Inc. v. West Virginia Workers' Comp. Fund*, 886 F.2d 714, 719 (4th Cir. 1989) (“Further, ambiguities in the [Bankruptcy] Code are generally resolved in favor of the debtor.”). Moreover, in this case, where the collateral at issue is the Mobile Home, the court cannot find any definition of the word “primarily” that would result in the Mobile Home being a “motor vehicle” for purposes of the hanging paragraph.

At the hearing, in speaking about the unfair plan treatment of its claim in this case—that the secured claim for the Mobile Home could be valued pursuant to § 506(a) when it was purchased within a year and a half of filing the petition—Triad's counsel commented, “It is hard for us to concede or even fathom the thought that Congress intended to create this hole in the law for mobile home creditors in the Bankruptcy Code...” However, § 1322(b)(2) of the Bankruptcy Code is clearly limited to “claims secured only by a security interest in real property that is the debtor's principal residence,” thus omitting manufactured and mobile homes not affixed to and part of the real property. Further, in drafting the language of the hanging paragraph, Congress specifically chose to protect certain other secured creditors for a period of 910 days, importing the definition of motor vehicle from a chapter in the United States Code designed to reduce traffic accidents by prescribing “safety standards for motor vehicles and motor vehicle equipment in interstate commerce.” 49 U.S.C. § 30101. This Court cannot find that Congress did not appreciate that a definition of motor vehicle taken from a statute enacted to

reduce traffic accidents would not include mobile homes. And to Triad's argument that there is a "hole in the law," the Court disagrees. BAPCPA did include some protection for secured creditors such as Triad—those not protected by either § 1322(b)(2) or the 910 provision in the hanging paragraph—by excepting the application of § 506 to a creditor with a security interest in any other thing of value purchased within the 1-year period before the petition date.

### **Conclusion**

After consideration of the legal issue raised by Triad, the Court concurs with the determination reached in *In re Nunnery*, No. 11-80267, 2011 WL 4712083, at \*5 (Bankr. M.D.N.C. Aug. 17, 2011) and finds that the Mobile Home is not a motor vehicle for the purposes of 11 U.S.C. § 1325(a) and may be valued as set forth in the Plan. The Objection of Triad to confirmation of the chapter 13 plan is overruled.

END OF DOCUMENT

PARTIES TO BE SERVED

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20-50764

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*via cm/ecf*

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