

IT IS SO ORDERED.

Dated: July 31, 2014
09:38:35 AM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

RICHARD H. VOLLNOGLE and
MARY E. VOLLNOGLE,

Debtors.

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CASE NUMBER 14-40552
CHAPTER 13
HONORABLE KAY WOODS

MEMORANDUM OPINION REGARDING OBJECTION TO
CONFIRMATION FILED BY WELLS FARGO BANK, N.A.

This cause is before the Court on Objection to Confirmation of Plan with Memorandum ("Objection to Confirmation") (Doc. 15) filed by Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services and Wells Fargo Auto Finance ("Wells Fargo") on April 18, 2014. Wells Fargo asserts two bases in the Objection to Confirmation for denial of the Chapter 13 Plan ("Plan") (Doc. 5) filed by Debtors Richard H. Vollnogle and Mary E. Vollnogle ("Debtors"), as follows: (i) the Plan fails to provide for the present value of Wells

Fargo's secured claim because it does not provide for payment of the contract rate of interest at 11.49 percent; and (ii) the Plan is not proposed in good faith.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 2012-7 entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

For the reasons set forth below, the Court will overrule the Objection to Confirmation.

I. PROCEDURAL AND FACTUAL BACKGROUND

The Debtors filed a voluntary petition pursuant to chapter 13 of Title 11 on March 24, 2014 ("Petition Date"). The Debtors scheduled Wells Fargo as a secured creditor with a purchase money security interest in a 2006 Cadillac SRX, valued at \$10,000.00 ("Cadillac Loan"). (Doc. 1, Sch. D.) On the Petition Date, the Debtors filed their Plan, wherein they list Wells Fargo with a secured claim for which valuation pursuant to 11 U.S.C. § 506 is not permitted. The Debtors propose to pay the Wells Fargo claim of \$10,000.00 with 5.5 percent interest. (Doc. 5, Art. 2D.)

On April 14, 2014, Wells Fargo filed a proof of claim, denominated as Claim No. 1-1, which asserted a secured claim in

the amount of \$10,508.10 with interest at the rate of 11.49 percent.¹ Claim No. 1-1 is secured by the 2006 Cadillac SRX ("Cadillac"). On the same date, the Debtors filed Objection to Proof of Claim Number 1 Filed by Wells Fargo Bank ("Claim Objection") (Doc. 13), which, consistent with the interest rate provided in the Plan, sought to reduce the interest rate on the claim amount to 5.5 percent.² Wells Fargo filed a Response (Doc. 19) to the Claim Objection on May 13, 2014, indicating that it had addressed the issue of the interest rate in its Objection to Confirmation and requesting that the Claim Objection be overruled.

The Court set the Debtors' Claim Objection and Wells Fargo's Objection to Confirmation for hearing on May 29, 2014. The hearing on both matters was continued until June 12, 2013 ("First Hearing") at the request of counsel for Wells Fargo, Charles C. Butler, Esq.

The day before the First Hearing, Wells Fargo filed Time Line and Exhibit List in Support of its Objection to Confirmation of Plan (Doc. 33), despite the fact that the First Hearing was not designated as an evidentiary hearing. At the First Hearing, the Court sustained the Debtors' Claim Objection and reduced the interest rate to 5.5 percent. On June 13, 2014, the Court issued Order Sustaining Objection to Proof of Claim Number 1 by Wells

¹ The confirmation order utilized by this Court provides for claims to be paid, as filed (subject to objection), rather than as provided for in the plan.

² The Debtors did not object to the amount of Wells Fargo's claim, *i.e.*, \$10,508.10.

Fargo Bank ("Order") (Doc. 35), specifically finding "that the interest rate on a claim based on a '910 day vehicle' may be reduced." (Order at 1.)

The Objection to Confirmation was not dealt with at the First Hearing, however, because Mr. Butler did not attend the hearing, but sent substitute counsel. At this First Hearing, the Court scheduled an evidentiary hearing on the Objection to Confirmation for July 22, 2014 ("Evidentiary Hearing").

Appearing at the Evidentiary Hearing were: (i) the Debtors; (ii) the Debtors' counsel, Eric Ashman, Esq.; and (iii) Mr. Butler on behalf of Wells Fargo. Mr. Butler moved for the admission of Wells Fargo's Exhibits A, B, C, D and F even though there was no foundation provided for any of the documents. The Debtors did not object to the admission of these Exhibits, which the Court received as evidence. Despite his submission of a witness list (Doc. 40), Mr. Butler did not call any witnesses to testify.

Mr. Ashman called Debtor Richard H. Vollnogle as a witness, who testified on direct examination that: (i) he is unemployed, but he receives Social Security Disability payments;³ (ii) the Debtors sought bankruptcy relief due to unmanageable medical debt;⁴

³ Mr. Vollnogle made reference to employment with Turning Point Residential, but stated that this position was temporary due to medical and economic reasons.

⁴ The Debtors scheduled total liabilities of \$50,318.00, consisting of \$37,818.00 in unsecured nonpriority debt, of which \$26,610.00 is identified as "medical debt." (Doc. 23, Am. Sum. of Sch.; Doc. 23, Am. Sch. F.)

(iii) the Debtors purchased the Cadillac shortly before the Petition Date and it remains the Debtors' only vehicle; and (iv) in addition to their \$300.00 down payment, the Debtors traded in two vehicles that were in need of major repairs when they purchased the Cadillac.

On cross examination by Mr. Butler, Mr. Vollnogle stated: (i) the Debtors first considered filing their Petition prior to May 2013; (ii) the Debtors had one prior bankruptcy case, filed in 2008;⁵ (iii) in October 2013, the Debtors sold a vehicle, which is still in running condition, to their adult son; (iv) to obtain the Cadillac, the Debtors traded in their two remaining vehicles – a 2003 Ford Focus and a 1994 Chrysler Town & Country – both of which had major mechanical problems despite being driven to the car lot; (v) the Debtors made one payment – on March 6, 2014 – on the Cadillac Loan prior to filing their Petition; (vi) the Debtors took the pre-petition Credit Counseling on March 7, 2014; (vii) the Debtors' only payment to any of their creditors in the six-month period prior to the Petition Date was the payment to Wells Fargo; (viii) in the six-month period prior to the Petition Date, Mr. Vollnogle knew that bankruptcy was inevitable; and (ix) the Debtors wanted to exclude the Cadillac Loan from their bankruptcy

⁵ The Debtors disclosed on their Petition that they had one prior bankruptcy, a chapter 7 case denominated Case No. 07-43191. (Pet. at 2.) This "no asset" case was filed by the Debtors, *pro se*, on December 17, 2007. The Debtors received a discharge on May 5, 2008.

case and pay the loan directly, but were advised by their counsel that they could not. Additionally, when specifically asked if it would be "fair" to Wells Fargo for the Debtors to pay the "whole loan" for the Cadillac, Mr. Vollnogle responded affirmatively.

II. ARGUMENTS AND ANALYSIS

As set forth above, Wells Fargo offers two reasons why the Debtors' Plan should not be confirmed. The Court will address each argument in turn.

A. Interest Rate

First, Wells Fargo argues that the proposed interest rate of 5.5 percent "fails to provide for the present value of [Wells Fargo's] secured claim by failing to provide for the proper 'formula' discount rate in conformance with 11 U.S.C. § 1325(a)(5)(B)(ii) and *Till v. SCS Credit Corp.*, [541 U.S. 465] (2004)." (Obj. to Conf. at 2-3.)

In *Till*, the Supreme Court rejected the "coerced loan, presumptive contract rate, and the cost of funds approaches" to determine the present value of a secured claim. 541 U.S. at 477. Instead, the Supreme Court opted for a "formula approach," which adjusts the national prime rate upward to reflect the risk inherent in loaning money to a specific debtor, holding that the "appropriate size of that risk adjustment depends, of course, on such factors as the circumstances of the estate, the nature of the

security, and the duration and feasibility of the reorganization plan.” *Id.* at 478-79.

The objecting party has the initial burden to produce evidence in support of an objection to plan confirmation. *In re Henry*, 328 B.R. 529, 538 (Bankr. S.D. Ohio 2004). Here, Wells Fargo has not met this burden regarding its objection to the reduction of the contract interest rate to 5.5 percent. Despite citing *Till*, Wells Fargo insists that it is entitled to be paid the contract rate of interest of 11.49 percent. Wells Fargo sets forth no indication that the circumstances of the estate, the nature of the security or the duration and feasibility of the reorganization plan justify imposition of the contract rate of interest.⁶

This Court, in *In re Riley*, 428 B.R. 757 (Bankr. N.D. Ohio 2010), found a 5.25 percent interest rate to be appropriate when, as now, the prime rate of interest is 3.25 percent. In the present case, the Court considers (i) the current low prime rate of interest; (ii) the stability of the Debtors’ Social Security and Social Security Disability income; (iii) the likelihood that the value of the Cadillac and the outstanding balance of the Cadillac Loan are nearly equivalent; and (iv) the 60-month term of the Debtors’ Plan. Based on these factors and in light of no other

⁶ Wells Fargo states that it is entitled to the contract rate of interest for the additional reason that the Plan was filed in bad faith. (Obj. to Conf. at 3.) The Court will address this argument in the next section.

countervailing factors offered by Wells Fargo, this Court determines that the appropriate rate of interest on Wells Fargo's Claim No. 1-1 is 5.5 percent.⁷

B. Bad Faith in Filing the Chapter 13 Plan

The second argument postulated by Wells Fargo is that the Debtors' Plan was not proposed in good faith.⁸ Wells Fargo argues that the Debtors' lack of good faith is shown by the fact that the Debtors entered into the Cadillac Loan less than 90 days prior to the Petition Date. (Obj. to Conf. at 3.)

"The Debtors have the ultimate burden of proof to show the requirements of 11 U.S.C. § 1325 have been met." *In re McDonald*, 437 B.R. 278, 283 (Bankr. S.D. Ohio 2010). In determining whether a chapter 13 plan has been filed in good faith, the Court must look to the totality of the circumstances.

Good faith is an amorphous notion, largely defined by factual inquiry. In a good faith analysis, the infinite variety of factors facing any particular debtor must be weighed carefully. We cannot here promulgate any precise formulae or measurements to be deployed in a mechanical good faith equation. The bankruptcy court must ultimately determine whether the debtor's plan, given his or her individual circumstances, satisfies the purposes undergirding Chapter 13: a sincerely-intended repayment of pre-petition debt consistent with the debtor's available resources. The decision should be

⁷ The Court has already sustained the Debtors' Claim Objection and reduced the interest rate to 5.5 percent. Mr. Butler did not appear at the First Hearing.

⁸ Wells Fargo uses lack of good faith and affirmative bad faith interchangeably. This Court finds, for purposes of this Memorandum Opinion, that Wells Fargo has failed to make any distinction between the two phrases. Section 1325 provides that the court shall confirm a plan if "the plan has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1325(a)(3) (West 2014).

left simply to the bankruptcy court's common sense and judgment.

Metro Emp. Credit Union v. Okoreeh-Baah (In re Okoreeh-Baah), 836 F.2d 1030, 1033 (6th Cir. 1988).

Although not promulgating a precise formula, the Sixth Circuit has applied a 12-part test to determine whether a debtor's chapter 13 plan is proposed in good faith. See *id.*; *Hardin v. Caldwell (In re Caldwell)*, 895 F.2d 1123 (6th Cir. 1990) ("In re Caldwell II"). These criteria are:

- (1) the amount of the proposed payments and the amount of the debtor's surplus;
- (2) the debtor's employment history, ability to earn and likelihood of future increase in income;
- (3) the probable or expected duration of the plan;
- (4) the accuracy of the plan's statements of the debts, expenses and percentage repayment of unsecured debt and whether any inaccuracies are an attempt to mislead the court;
- (5) the extent of preferential treatment between classes of creditors;
- (6) the extent to which secured claims are modified;
- (7) the type of debt sought to be discharged and whether any such debt is nondischargeable in Chapter 7;
- (8) the existence of special circumstances such as inordinate medical expenses;
- (9) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
- (10) the motivation and sincerity of the debtor in seeking Chapter 13 relief;
- (11) the burden which the plan's administration would place upon the trustee; and, [sic]
- (12) whether the debtor is attempting to abuse the spirit of the Bankruptcy Code.

Caldwell II, 895 F.2d at 1126-27.

In the present case, the sole factor that Wells Fargo relies upon to show the Debtors' lack of good faith is the proximity in time between the Debtors' purchase of the Cadillac and the Petition Date. Mr. Vollnogle testified that the Debtors had two vehicles that were in need of major mechanical repairs, which prompted the purchase of the Cadillac. There was no evidence that the purchase was unnecessary or was simply motivated by a desire to have a newer vehicle. While there was no testimony about the number of miles on either of the two vehicles that were traded for the Cadillac, the Court notes that the trade-in vehicles were 20 and 11 years old. They were replaced by the Cadillac which, at the time of the transaction, was an eight-year-old vehicle.

Although Mr. Vollnogle testified that, six months prior to the Petition Date, he considered it "inevitable" that the Debtors would file for bankruptcy protection, he credibly testified that he thought he could pay the Cadillac Loan outside of bankruptcy. There is no indication that the Debtors tried to "game the system" by purchasing the Cadillac shortly before filing their Petition.

In his closing argument, Mr. Butler mischaracterized Mr. Vollnogle's testimony as stating that it was "not fair" to Wells Fargo to let the Debtors unilaterally rewrite the Cadillac Loan and reduce the interest rate. Instead, Mr. Vollnogle agreed with Mr. Butler's question that it would be "fair" to Wells Fargo for the Debtors to pay the whole Cadillac Loan. Mr. Butler elicited

no testimony regarding Mr. Vollnogle's thoughts about the fairness to the Debtors' other creditors if their claims were to be paid in full. Based on the entirety of Mr. Vollnogle's testimony, the Court believes this statement more likely reflects his belief in the Debtors' moral obligation to repay their debts, rather than an admission that Wells Fargo was singled out for unfair treatment.

Wells Fargo essentially asserts that there should be a per se rule that the proximity of obtaining a car loan and filing a bankruptcy petition requires a finding of a lack of good faith. Wells Fargo argues that it is aware of the following three cases where a debtor's lack of good faith was based on the purchase of a vehicle a few months pre-petition: (i) *In re Henry*, 328 B.R. 529 (Bankr. S.D. Ohio 2004); (ii) *In re McDonald*, 437 B.R. 278 (Bankr. S.D. Ohio 2010); and (iii) *In re Blackmon*, 459 B.R. 144 (Bankr. S.D. Fla. 2011). The Court will examine each of the cases upon which Wells Fargo relies.

1. In re Henry

In re Henry is a pre-BAPCPA case,⁹ in which the debtor purchased a used vehicle 34 days prior to filing his bankruptcy

⁹ In 2005, Congress amended the Bankruptcy Code through the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), which included a new substantive provision, known as the "hanging" paragraph in § 1325. The hanging paragraph prohibits the cram down of a claim, resulting from a purchase money security interest secured by a motor vehicle acquired for personal use, when the debt was incurred within the 910-day period prior to the filing of a bankruptcy petition. In those cases, the creditor is entitled to payment of the secured claim in full, without bifurcation into secured and unsecured portions.

petition. He owed \$20,311.93 on the car loan (which included approximately \$6,000.00 for the payoff of a prior car loan), and sought to bifurcate the claim into a secured claim of \$13,303.00 (the debtor's assessment of replacement value), with the remainder being treated as an unsecured claim. The bankruptcy court looked at the totality of the circumstances in finding that the chapter 13 plan had not been proposed in good faith. "The Debtor's questionable pre-petition conduct is but one element in the Court's good faith calculus, which must include an analysis of the totality of the circumstances." *In re Henry*, 328 B.R. at 542 (citing *Ed Schory & Sons, Inc. v. Francis (In re Francis)*, 272 B.R. 87, 91-92 (6th Cir. B.A.P. 2002); *In re Okoreeh-Baah*, 836 F.2d 1030; *Hardin v. Caldwell (In re Caldwell)*, 851 F.2d 852 (6th Cir. 1988); *In re Caldwell II*, 895 F.2d 1123 (6th Cir. 1990)). The close proximity of the car purchase to the bankruptcy filing was only one of the many factors the bankruptcy court found that established the debtor's lack of good faith.¹⁰

Henry obtained a Chapter 7 discharge less than three years before filing this case. That factor, standing alone, is not indicative of bad faith. Yet it is troubling that, despite no discernible change in his financial circumstances, Henry is again seeking bankruptcy relief following what appears to have been an eve-of-filing spending spree — which included the purchase of a new home and a big-screen TV only three

¹⁰ "As *Okoreeh-Baah* and its progeny make clear, a per se rule requiring full repayment of obligations arising from a debtor's questionable pre-petition conduct has not been adopted in the Sixth Circuit." *In re Henry*, 328 B.R. at 539 (citing *In re Caldwell I*, 851 F.2d at 858; *In re Okoreeh-Baah*, 836 F.2d 1030.)

months before the Petition Date and a late-model car just 34 days before the Petition Date.

Id. at 544-45.

The current case is distinguishable from *Henry*. Here, the Debtors' only prior bankruptcy case was filed more than six years earlier. Other than the purchase of the Cadillac (which is not a late-model vehicle), the Debtors did not engage in an eve-of-filing spending spree. The Debtors' financial situation has changed significantly since their prior bankruptcy filing, in that Mr. Vollnogle is no longer employed and the Debtors are facing unmanageable medical debt. Unlike *Henry*, the Debtors have not sought to bifurcate the Cadillac Loan. The Debtors' Plan provides for the full amount of Wells Fargo's secured claim, on top of which Wells Fargo will receive interest, recognizing that the claim falls within the hanging paragraph of § 1325 and is not subject to bifurcation. In addition, the Debtors propose a 10 percent dividend to unsecured creditors.

2. In re McDonald

Likewise, *In re McDonald*, 437 B.R. 278 (Bankr. S.D. Ohio 2010), is distinguishable from the facts before this Court. Three separate parties objected to confirmation of the debtors' plan in *McDonald* – the Chapter 13 Trustee, the Ohio Department of Taxation and the Kettering Health Network. The Trustee argued that the plan had not been proposed in good faith on the basis that the

debtors' residence and vehicles were too expensive and the debtors' failure to replace them with less expensive ones established their lack of good faith. In *McDonald*, the debtors purchased a late-model luxury vehicle a few months before filing for bankruptcy protection, which increased their secured debt by \$12,000.00. The bankruptcy court found that "the 'close proximity in time between a debtor's purchase of collateral and the filing of a chapter 13 petition may evidence lack of good faith' in a good faith analysis under § 1325(a)(3)." *Id.* at 292 (emphasis added) (quoting *In re Henry*, 328 B.R. at 539). Noting that the primary dispute over confirmation concerned the debtors' objective – rather than subjective – good faith in filing the plan, the court stated: "An analysis of the economic impact of the Plan – payment of the secured debt on the home and cars and the priority taxes, while discharging the nonpriority unsecured debt – reveals that the Debtors' Plan is truly a 'veiled' Chapter 7 plan." *In re McDonald*, 437 B.R. at 290-91. "Courts should not approve Chapter 13 plans which are nothing more than 'veiled' Chapter 7 plans." *Id.* at 290 (citing *In re Caldwell II*, 895 F.2d at 1126).

Particularly, the zero or minimal dividend to nonpriority unsecured creditors (percentage of repayment consideration under the fourth *Caldwell II* factor), the retention of the high-end home and vehicles with their attendant secured claims being paid in full while the nonpriority creditors receive little or nothing (*Caldwell II* factors 5, 6, and 7), and the lack of evidence of any special circumstances such as major medical expenses that could have caused the Debtors'

financial misfortune (contrasted with business error leading to the failure to pay taxes in this case) (*Caldwell II* factor 8) convince the court that the Plan is fundamentally unfair and not objectively filed in good faith. Whether or not it is intentionally designed to be, the Plan, proposing to pay in full the Debtors' secured claims and Mr. McDonald's tax liabilities at the expense of the unsecured creditors, resembles a 'veiled' Chapter 7 and raises questions as to the Debtors' sincerity and motivation in seeking Chapter 13 relief and as to whether the Debtors are attempting to abuse the spirit of the Bankruptcy Code (*Caldwell II* factors 10 and 12).

In re McDonald, 437 B.R. at 293.

In contrast to *McDonald*, the Debtors' Plan does not propose to retain high-end items, while leaving the Debtors' unsecured creditors with nothing. In fact, if this Court were to adopt Wells Fargo's argument, the Debtors' Plan would, in fact, resemble a veiled chapter 7 because the Debtors' sole secured creditor, Wells Fargo, would be paid in full (the same as if the Debtors signed a reaffirmation agreement) with the payment at the increased interest rate being paid at the expense of their unsecured creditors. Indeed, the Debtors – but not their unsecured creditors – would be better off in a hypothetical chapter 7 than in a chapter 13 plan providing for Wells Fargo to receive the contract rate of interest.¹¹

¹¹ Because the Debtors received a discharge in their prior case, which was filed on December 17, 2007, they are not eligible for a second chapter 7 discharge until December 17, 2015. See 11 U.S.C. § 727(a)(8) (ineligible for discharge if "the debtor has been granted a discharge . . . in a case commenced within 8 years before the date of the filing of the petition.").

3. In re Blackmon

Last, Wells Fargo relies on *In re Blackmon*, 459 B.R. 144 (Bankr. S.D. Fla. 2011), which found a lack of good faith based on a debtor's contemplated bankruptcy at the time they purchased their vehicles. The court stated:

[W]hile a chapter 13 plan can certainly 'fully repay' a 910-day car claim at a reduced interest rate, when a debtor finances a vehicle at 19.95% or 11.65% shortly before a bankruptcy filing in contemplation of bankruptcy, the debtor cannot in good faith propose a plan which would repay the secured creditor at less than the contract interest rate. This is because, at base, the good faith inquiry under both § 1307 (dismissal of a bad faith petition) and § 1325 (confirmation of a good faith plan) focuses on whether the filing is fundamentally fair to creditors. These debtors negotiated contract interest rates in contemplation of bankruptcies in which they proposed to repay at substantially lower rates.

Id. at 147 (citations omitted). Standing alone, the *Blackmon* analysis gives credence to Wells Fargo's argument for a per se rule of fundamental unfairness when a vehicle is purchased "shortly before a bankruptcy filing in contemplation of bankruptcy." Although the Debtors in the instant case were contemplating bankruptcy when they purchased the Cadillac and, indeed, filed for bankruptcy protection shortly thereafter, there is no indication that they purchased the Cadillac with the intent to "rewrite" the loan agreement to pay less than the contract amount. In fact, Mr. Vollnogle testified that he thought he could pay the Cadillac Loan

in full outside of bankruptcy.¹² Hence, the scienter element of “trying to game the system” is lacking in the Debtors’ case. Moreover, although the *Blackmon* opinion is from 2011, it does not appear to have been cited or relied upon by any other court.

The Debtors admit that they contemplated bankruptcy at the time they purchased the Cadillac and that they filed for bankruptcy protection shortly thereafter. Both of these factors weigh against a finding of good faith. However, after a close examination of the other *Caldwell II* factors, this Court finds that the Debtors’ Plan was proposed in good faith.

The Debtors’ Plan requires monthly payments of \$375.00 for 60 months, providing for: (i) a 10 percent dividend to unsecured creditors; (ii) full payment of the Debtors’ priority tax debt of \$2,500.00; and (iii) full payment, with 5.5 percent interest, to Wells Fargo on its \$10,508.10 claim secured by the Cadillac. The Debtors’ Social Security and Social Security Disability income provides stable and reliable revenue with which to fund the Plan. The Debtors do not own real property and their Plan provides for only one secured claim, which is held by Wells Fargo. Regarding *Caldwell II*’s eighth factor, “the existence of special circumstances such as inordinate medical expenses,” 895 F.2d at 1126, the Court notes that the Debtors’ scheduled unsecured

¹² There was no testimony about whether Mr. Vollnogle knew how the Cadillac Loan would be treated in a chapter 13 plan. The Debtors’ prior case was a chapter 7 and was filed *pro se*.

nonpriority debt consists of more than 70 percent medical debt. While the Debtors have sought bankruptcy relief in the past, their prior case was filed more than six years ago and their financial circumstances have changed in the interim. Mr. Vollnogle provided credible explanations regarding the timing of the Debtors' bankruptcy filing and their purchase of the Cadillac. The Debtors appear to have appropriate "motivation and sincerity in seeking Chapter 13 relief" because this alternative to chapter 7 provides the better outcome for their creditors. *Id.*

Based on the Court's review of all documents filed in this case, Mr. Vollnogle's testimony, the evidence admitted and the arguments presented at the Evidentiary Hearing, it does not appear that the Debtors are "attempting to abuse the spirit of the Bankruptcy Code." *Id.* at 1127. As a consequence, in viewing the totality of the circumstances, this Court finds that the Debtors have sustained their burden of proof that their Plan was filed in good faith.

III. CONCLUSION

Wells Fargo failed to satisfy its burden of proof with regard to its interest rate argument and, based on the totality of the circumstances and the *Caldwell II* factors, the Court finds that the Debtors' Plan was filed in good faith. Therefore, based on

the reasons set forth above, the Court will overrule Wells Fargo's
Objection to Confirmation. An appropriate order will follow.

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IT IS SO ORDERED.

Dated: July 31, 2014
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United States Bankruptcy Judge

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NORTHERN DISTRICT OF OHIO

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CASE NUMBER 14-40552

CHAPTER 13

HONORABLE KAY WOODS

ORDER OVERRULING OBJECTION TO CONFIRMATION
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the contract rate of interest at 11.49 percent; and (ii) the Plan is not proposed in good faith.

On July 22, 2014, the Court held an evidentiary hearing on the Objection to Confirmation, at which appeared: (i) the Debtors; (ii) the Debtors' counsel, Eric Ashman, Esq.; and (iii) Charles C. Butler, Esq., on behalf of Wells Fargo. At the conclusion of the hearing, the Court took the matter under advisement.

For the reasons set forth in the Court's Memorandum Opinion Regarding Objection to Confirmation Filed By Wells Fargo Bank, N.A. entered on this date, the Court finds that (i) Wells Fargo failed to satisfy its burden of proof with regard to its interest rate argument; and (ii) the Debtors established that their Plan was filed in good faith. As a consequence, the Objection to Confirmation is hereby overruled.

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