

interest rate. This third loan was a refinancing of the debtor's previous balance of \$2,956.83 plus an additional advance of \$3,674.65 and was secured not only by household goods but a second mortgage on the debtors' residence. As of the date of filing of the Chapter 13 petition, the Browns were indebted to Dial in the principal sum of \$5,924.76.

The debtors' attempt in their amended plan to sever the security interest in household goods and avoid that interest to the extent the lien impairs an exemption to which they are entitled [522(f)] from the portion of the third note represented by a real estate second mortgage is premised upon the language of §1322(b)(2) of the Code. That section provides that a Chapter 13 plan may modify the rights of holders of secured claims other than a claim secured only by a security interest in real property that is the debtors' principal residence. The third note, being secured by both household goods and the debtors' primary residence, is, the debtors contend, modifiable.

While I agree that such a claim may be modified by a Chapter 13 plan [see Collier on Bankruptcy par. 1322.01 (15th ed.) 1322-8; 3 Norton Bankruptcy Law and Practice, §76.06 (1981)], confirmation of the plan will depend upon the application of §1325(a)(5) in each particular case. Collier, Ibid. The parties have stipulated that as of the time of filing of the debtors' petition, the debtors owed a principal sum to Dial Finance in the amount of \$5,924.76. A proof of claim was filed pursuant to the provisions of §501 of the Bankruptcy Code. In accordance with 11 U.S.C. §502(a), because a party in interest has not objected to the 501 proof of claim, the claim is allowed as filed. Accordingly, I find the amount of the allowed secured claim represented by the debt due and owing Dial Finance to be \$5,924.76. The debtors' proposed severance of an amount represented by the mortgage and an amount represented by a security interest in household goods is inconsistent not only with the statutory language of §1325(a)(5) but with the documents related to that loan agreement as well. Although a portion of the debtors' third note is indeed a refinancing of prior debt, the note, security agreement, and real estate mortgage, all executed concurrently, indicate that the loan is secured by either household goods or a second mortgage on the debtors' real estate or both. There can be no severance such as the debtor has attempted here. The present value of the entire amount of the allowed secured claim must be provided for under the plan.

Because the debtors' amended plan filed January 4, 1982, provides for the value to be distributed under the plan of an amount less than the allowed secured claim and for the further reasons that the holder, Dial Finance Company, has not accepted the plan nor has the debtor surrendered property securing such claim to the creditor as required by §1325, the plan as amended cannot be confirmed.

DATED: August 10, 1982.

BY THE COURT:

