UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 06-69516
Tadarrio Latrell Marshall,	CHAPTER 13
Debtor.	JUDGE MASSEY
Tadarrio Latrell Marshall Sr.,	
Movant,	
v.	CONTESTED MATTER
Nissan Motor Acceptance Corp.,	
Respondent.	

ORDER ON OBJECTION TO CLAIM OF NISSAN MOTOR ACCEPTANCE CORP.

On September 9, 2006, Debtor filed an objection to the secured claim of Nissan Motor Acceptance Corp. on the ground that Debtor proposes in the plan to surrender the vehicle securing the creditor's claim in full satisfaction of the debt.

The objection is defective in two respects. First, the objection assumes an event that has yet to occur and might never occur – confirmation of Debtor's plan. Section 1325(b)(5) of the Bankruptcy Code provides in part the Court may not confirm a plan that does not provide for the treatment of a secured claim as set forth in that subparagraph. The so-called hanging paragraph at the end of section 1325(b) provides that "[f]or purposes of paragraph (5)," section 506 does not apply to a claim secured by a vehicle purchased within 910 days of the petition date, which Debtor says is the case with respect to the vehicle securing Debtor's claim. Debtor's plan provides that he will surrender the vehicle in satisfaction of the claim, presumably reasoning that if Debtor

would have to pay the full amount of the claim if he kept the vehicle (because section 506 does not apply), this must mean that the vehicle is conclusively deemed to have a value in the amount of the claim. Whether or not this reasoning is sound, section 1325(b) applies only to the terms on which a plan can be confirmed. It does not state that for all purposes, a so-called 910-day vehicle is deemed to have a value in the amount of the claim. The hanging paragraph itself begins: "[f]or purposes of paragraph (5)." If the plan is not confirmed, the hanging paragraph in section 1325(b) would not come into play. Therefore, because Debtor's plan has not been confirmed, the objection, which is based on surrender under the plan, is premature.

Second, there is a notice problem here. The certificate of service of the motion shows service on the creditor at the address stated in the proof of claim and on a registered agent. Debtor failed, however, to serve the attorney for the creditor who made an appearance in the case on September 14, 2006 by filing a motion for stay relief that the Court subsequently granted.

Bankruptcy Rule 3007 provides:

> An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

Debtor complied with this Rule.

An objection to a claim is almost always labeled as an "objection" rather than as a "motion" for an order disallowing a claim. Nonetheless, an objection to a claim is arguably a contested matter, governed by Bankruptcy Rule 9014, except for service of the objection itself, which is governed by Bankruptcy Rule 3007. The difference with respect to service of motions generally and an objection to a proof of claim in particular is that the creditor filing a proof of claim thereby submits to the jurisdiction of the bankruptcy court with respect to an objection to

that claim and specifies where notice concerning the claim is to be served, thereby eliminating any need for the due process safeguard that would otherwise apply. Bankruptcy Rule 9014(b) states in part that "[a]ny paper filed after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ.P." Civil Rule 5(b)(1) states that "[s]ervice under Rule 5(a) and 77(b) on a party represented by an attorney is made on the attorney unless the court orders service on the party." Here, Debtor combined in one document the objection to Nissan's claim, which is the equivalent of a motion, and a notice requiring a response and setting a hearing, which is not a motion. A notice of a hearing or of a deadline to respond is instead a separate document. Therefore, the notice arguably had to have been served in accordance with Civil Rule 5(a)(1) made applicable by Bankruptcy Rule 9014.

Even if an objection to a claim is not a contested matter, Debtor was still obligated to serve Nissan's attorney under this Court's Local Rule 3007-1(b), which provides in part: " If an attorney for the creditor has appeared in the case, the objection and notice shall also be served on the attorney." Because Debtor did not serve the notice on Nissan's attorney, the objection must be denied.

If Debtor's plan is confirmed, Debtor may re-file the objection.

For these reasons, it is

ORDERED that Debtor's objection to the claim of Nissan Motor Acceptance Corp. is DENIED. The Clerk is directed to serve a copy of this Order on Debtor, Debtor's counsel, the Chapter 13 Trustee and counsel for Nissan Motor Acceptance Corp.

Dated: November 8, 2006.

James E. Massey

JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE