

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA (Pittsburgh)

IN RE:)	
)	
C SWANK ENTERPRISES, LLC)	Bankruptcy No. 16-23451-JAD
)	
<u>Debtor</u>)	Chapter 11
)	
ALLY BANK)	Related to Document No. 273 & 275
)	
Movant)	
)	
vs.)	
)	
C SWANK ENTERPRISES, LLC)	
)	
<u>Respondent / Debtor</u>)	

OBJECTION OF ALLY FINANCIAL TO THE DEBTOR’S AMENDED PLAN OF REORGANIZATION AND AMENDED DISCLOSURE STATEMENT

Ally Bank (“Ally”), by its undersigned counsel, files this Objection to the Debtor’s Plan of Reorganization, and in support thereof avers as follows:

BACKGROUND

1. C Swank Enterprises, LLC (the "Debtor") commenced this case by filing a voluntary Chapter 11 Petition on September 15, 2016 (the “Petition Date”).
2. Since the Petition Date, the Debtor has remained in possession of its assets and has acted as debtor-in-possession with all the rights and powers of a trustee pursuant to 11 U.S.C. § 1107.
3. On October 10, 2017, the Debtor filed an Amended Chapter 11 Plan (the “Plan”).
4. On October 16, 2017, this Honorable Court entered an Order Scheduling Hearing on the Disclosure Statement to Accompany Plan and setting a hearing for November 14, 2017 at 10:00 a.m.

2013 Dodge Ram, VIN No. 3C6JR7AT0DG500972

5. The Debtor has continued possession of a 2013 Dodge Ram, VIN No. 3C6JR7AT0DG500972 (the "Vehicle-1").

6. On or about April 19, 2013, the Debtor executed and delivered Retail Installment Sale Contract ("Contract-1") to Ally whereby the Debtor agreed to pay Ally the principal amount of \$24,243.73, together with interest thereon in the manner provided therein.

7. Ally is the holder of a security interest in the Vehicle, which interest has been perfected through notation on the Pennsylvania Certificate of Title.

8. Ally filed a secured Proof of Claim on October 13, 2016 at Claim Number 13-1 (the "Proof of Claim-1") in the amount of \$11,499.84 plus accruing interest, plus costs, fees and expenses, including attorney fees and costs accruing and incurred both before and after the Petition Date. As of May 1, 2017, Ally is owed \$11,914.17.

2012 Dodge Ram, VIN No. 3C6TD5HT5CG303618

9. The Debtor has continued possession of a 2012 Dodge Ram, VIN No. 3C6TD5HT5CG303618 (the "Vehicle-2").

10. On or about October 31, 2012, the Debtor executed and delivered Retail Installment Sale Contract ("Contract-2") to Ally whereby the Debtor agreed to pay Ally the principal amount of \$33,100.00, together with interest thereon in the manner provided therein.

11. Ally is the holder of a security interest in the Vehicle, which interest has been perfected through notation on the Pennsylvania Certificate of Title.

12. Ally filed a secured Proof of Claim on October 13, 2016 at Claim Number 11-1 (the "Proof of Claim-2") in the amount of \$3,981.45 plus accruing interest, plus costs, fees and

expenses, including attorney fees and costs accruing and incurred both before and after the Petition Date. As of May 1, 2017, Ally is owed \$4,150.35.

2012 Dodge Ram, VIN No. 3C7WDKEL1CG246197

13. The Debtor has continued possession of a 2012 Dodge Ram, VIN No. 3C7WDKEL1CG246197 (the "Vehicle-3").

14. On or about August 31, 2012, the Debtor executed and delivered Retail Installment Sale Contract ("Contract-3") to Ally whereby the Debtor agreed to pay Ally the principal amount of \$41,635.00, together with interest thereon in the manner provided therein.

15. Ally is the holder of a security interest in the Vehicle, which interest has been perfected through notation on the Pennsylvania Certificate of Title.

16. Ally filed a secured Proof of Claim on October 13, 2016 at Claim Number 12-1 (the "Proof of Claim-3") in the amount of \$2,961.76 plus accruing interest, plus costs, fees and expenses, including attorney fees and costs accruing and incurred both before and after the Petition Date. As of May 1, 2017, Ally is owed \$3,075.69.

OBJECTION TO PLAN

17. Bankruptcy Code section 1129(a) provides that the court shall confirm a plan of reorganization only if the requirements of all of the subsections of section 1129(a) are met.

18. Section 1129(b) further provides that, where an impaired class of claims has voted to reject a plan and all other applicable requirements of section 1129(a) are met, the plan may be confirmed only if it "does not discriminate unfairly, and is fair and equitable, with respect to each class of claims . . . that is impaired under, and has not accepted, the plan."

19. Section 1129(a)(8) requires that the Court shall confirm a plan only if "with respect to each class of claims or interest - (A) such class has accepted the plan; or (B) such class is not impaired under the plan."

20. The Plan provides that Ally has a Class 6 Claim that is impaired.

21. The Debtor's Plan further provides that:

Class 6 - Ally Bank - "The total secured claim of this Creditor is \$18,443.05."

22. The Plan proposes that "Each of Ally Bank's loans will be modified into "Modified Secured Claims" for the unpaid principal, interest and other amounts due as of the Plan Effective Date. This amount shall be the "Modified Secured Claim."

23. The Plan calls for the "Modified Secured Claims" will be reamortized by the Debtor over (5) years and will accrue post-confirmation interest at 5% simple interest per annum for the life of the modified obligation, and it also calls for all pre-confirmation defaults and post-bankruptcy late fees to be waived upon confirmation of the Plan.

24. The Plan also states that "Ally Bank will forbear enforcing any guaranty against any guarantors during the repayment of the 'Modified Secured Claims' under the Plan. The individual guarantors will execute any agreement that stipulates that no defense, including statute of limitations or waiver, will occur as a result of the lender accepting this treatment under this plan of reorganization. Provided the reorganized Debtor makes all payments under this plan, Ally Bank will waive any claims against the guarantors for any amount in excess of the plan payments."

25. The Plan also states that the "Debtor and the Lender will document this modification by executing a loan modification agreement. The agreement will retain all the loan terms which are not amended by this plan. The agreement will revise the terms of the loans, the

interest rate and the monthly payments. The Modifications will include an Agreement by Carol Swank to the entry of a judgment in favor of the lender in the event of a Default under the Plan which is not timely cured. The judgment shall be in the amount of the Lender's Secured Claim, less plan payments actually made."

26. Additionally, the Plan states "Ally Bank may not enforce any remedies under its contract, note or encumbrance unless the Debtor has materially defaulted under the Plan. A material default has not occurred until the Debtor has failed to make payments for more than 30 days AND the Creditor has given notice by e-mail to the Debtor and the Disbursing Agent of the default. The Debtor shall have 10 days to cure any default after receipt of Notice of Default. If the Debtor fails to cure the default, then the creditor may enforce the rights under its contracts under Pennsylvania State Law as modified under this Plan."

27. Ally objects to the inclusion of all 3 Claims into one Modified Secured Claim. Each of the claims can and should be paid by the Debtor to Ally separately.

28. Ally objects to extending the terms of these loans an additional 60 months, as the contracts were executed in 2012 and 2013, thus turning these into 10+ year loans.

29. Additionally, Ally objects to executing loan modification agreements altering the terms of the original contracts.

30. Ally objects to payment of 5% on its secured claims. Ally's claims are fully secured and thus interest should continue to accrue at the contract rate.

31. Additionally, Ally objects to the requirement of sending emails to the Disbursing Agent and the Debtor with a 10 day right to cure following a default of 30 days. The Debtor is essentially asking that Ally give the Debtor 40 days to make a payment when due and only after sending an email to the Debtor and its counsel.

32. Additionally, Ally objects to any waiver of the guarantors' obligations to Ally to the extent the loans are not paid in full with interest, late fees, and other fees and costs according to the original contract terms.

33. Finally, Ally objects to the 30-day default with the 10-day cure. The terms of each contract should govern as to the date of payment, when a loan payment is late, when the loan is in default, and when late fees and other charges accrue based on the default.

CONCLUSION

34. For the reasons set forth above and other reasons that may be shown at the hearing on confirmation, the Plan should not be confirmed.

WHEREFORE, Ally Bank respectfully requests that the Court deny confirmation of the Amended Plan of Reorganization and that the Court grant Ally such other relief as the court deems just and proper.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

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DATE: 10/30/17