IN RE PEASLEE
913 N.E.2d 387 (N.Y. 2009)

PIGOTT, J.

The United States Court of Appeals for the Second Circuit, by certified question, asks us to decide whether "the portion of an automobile retail installment sale attributable to a trade-in vehicle's 'negative equity' [is] a part of the 'purchase money obligation' arising from the purchase of a new car, as defined under New York's U.C.C.?" We find that it is.

I.

On August 28, 2004, Faith Ann Peaslee entered into a retail instalment contract for the purchase of a 2004 Pontiac Grand Am. As part of the transaction, Peaslee traded in her vehicle, which had a negative trade-in value, or negative equity, of $5,980. That amount was rolled into the financing of her new car along with other charges, resulting in financing totaling $23,180. The lien against the trade-in was paid off by the dealer, and the dealer's security interest in the new vehicle was assigned to GMAC, LLC.

Nearly two years after purchasing her new vehicle, Peaslee filed for Chapter 13 bankruptcy and a trustee was appointed to handle the estate. As part of her bankruptcy plan, Peaslee proposed that she retain possession of the vehicle and that … GMAC's secured claim would be reduced to $10,950, representing the alleged retail value of the vehicle. Under Peaslee's proposal, the remaining amount owed to GMAC, $6,954.95, would be treated as an unsecured claim.

GMAC objected to this characterization of its claim and argued that … it was entitled to have the entire $17,904.95 treated as a secured claim….

.... The Bankruptcy Court ... held that the term "purchase money security interest" ("PMSI"), as set forth in New York's Uniform Commercial Code, did not include negative equity. The United States District Court for the Western District of New York reached the opposite conclusion. The Second Circuit … certified to us the question of whether the New York Uniform Commercial Code considers that portion of a retail instalment sale attributable to the negative equity of a trade-in vehicle to be part of the purchase-money obligation arising from the sale of a new car.

For the reasons that follow, we answer the question in the affirmative.

II.

"A security interest in goods is a purchase money security interest ... to the extent that the goods are purchase-money collateral with respect to that security interest." N.Y.U.C.C. § 9-103(b)(1). Purchase-money collateral is defined as "goods or software that secures a purchase-money obligation incurred with respect to that collateral." *Id.* § 9-103(a)(1). A purchase-money

obligation is "an obligation of an obligor incurred as all or part of the *price* of the collateral *or* for *value given* to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." *Id.* § 9-103(a)(2) (emphasis supplied). The UCC therefore establishes two ways that a purchase-money obligation may arise: (1) where the obligor-the debtor-incurs an obligation as all or part of the "price" of the collateral, or (2) where "value" is given to enable the debtor to acquire the collateral. We conclude that the "negative equity" here fits within either definition.

III.

Addressing "price" first, although that term is not defined by New York's UCC, the expansive examples given in an Official Comment concerning what items constitute the "price of the collateral," indicate that the term "price" should be afforded a broad interpretation. Specifically, with respect to a purchase-money obligation, "'*price*' of the collateral or the 'value given to enable' includes obligations for the expenses incurred in connection with acquiring rights in the collateral, sales taxes, duties, finance charges, interest, freight charges, costs of storage in transit, demurrage, administrative charges, expenses of collection and enforcement, attorney's fees, and *other similar obligations*." *Id.* § 9-103 cmt. 3 (emphasis supplied).

The list of examples in Comment 3 that clarify "price" is representative, not exhaustive, and cannot be read to limit those "other similar obligations" to the 10 items preceding that term, all of which are clearly either transaction costs and/or components of price. Indeed, the phrase "and other similar obligations" intimates that "price" under New York's UCC is broad enough to encompass negative equity financing. For instance, just as "finance charges" and "interest" constitute obligations that are paid over and above the vehicle's actual cost (such charges being incurred as part of the overall financing of the vehicle), negative equity is likewise part of the overall price of a new vehicle. Moreover, negative equity constitutes an obligation that fits comfortably within the "other similar obligations" language in Comment 3, particularly in regard to automobile sales because the negative equity from the trade-in is often "rolled in" as part of the overall price of the newer vehicle to facilitate the transaction. It follows, then, that under New York's UCC negative equity constitutes "an obligation ... incurred as all or part of the price of the collateral."

This broad interpretation of the term "price" to include negative equity furthers New York's policy that the UCC "be liberally construed and applied to promote its underlying purposes and policies," including "the continued expansion of commercial practices through custom, usage and agreement of the parties." N.Y.U.C.C. § 1-102(1); (2)(b). After all, the parties to the instant transaction agreed that the negative equity from the older vehicle would be "rolled-in" as part of the purchase price of the newer vehicle, not an uncommon practice in the realm of automobile sales, *see Graupner v. Nuvell Credit Corp.*, 537 F.3d 1295, 1303 (11th Cir. 2008), thereby furthering the policy of facilitating commercial transactions. Indeed, to exclude negative equity as part of the "price" would serve to hinder commercial practices rather than facilitate them.

Additionally, and not inconsequentially, New York has defined "price" in its Motor Vehicle Retail Instalment Sales Act ("MVRISA") to include negative equity. *See* N.Y. PERS.

PROP. LAW § 301(6). Under the MVRISA, "cash sale price" can "include the unpaid balance of any amount financed under an outstanding motor vehicle loan agreement or motor vehicle instalment contract or the unpaid portion of the early termination obligation under an outstanding motor vehicle retail lease agreement." *Id.*

IV.

Turning to "value given," we likewise disagree with the Trustee's contention that negative equity is not related to the acquisition of collateral because it is merely a payoff of an antecedent debt such that it cannot be deemed "value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." N.Y.U.C.C. § 9-103(a)(2).

By paying off the outstanding debt on the trade-in, a lender is giving "value" to the debtor in order to allow, or "enable," the debtor to purchase, or "acquire rights in," the vehicle. *See In re Price*, 562 F.3d 618, 625 (4th Cir. 2009). When a lender finances the purchase of a new vehicle and a portion of that financing pays off the negative equity owed on the trade-in (*i.e.*, "the value is in fact so used"), N.Y.U.C.C. § 9-103(a)(2), that loan constitutes a purchase-money obligation of the buyer, the purchased vehicle constitutes purchase money collateral, and the security interest obtained by the lender is a PMSI.

V.

Finally, Comment 3 instructs that the existence of a PMSI also "requires a close nexus between the acquisition of collateral and the secured obligation," *id.* § 9-103 cmt. 3; and that requirement has plainly been met here. Without a payoff of the trade-in debt, the buyer will generally not be able to consummate the purchase of the newer car, and the financing of the negative equity is thus integral to the completion of the sale. *See generally Graupner*, 537 F.3d at 1302.

Here, Peaslee's debt to GMAC was incurred at the time of the trade-in, under the same retail instalment contract and for the same purpose of purchasing the Grand Am. Simply put, the financing of the negative equity was "inextricably linked to the financing of the new car." *In re Petrocci*, 370 B.R. 489, 499 (N.D.N.Y. 2007), thereby satisfying the "close nexus" requirement under the [New York] UCC.

Accordingly, the certified question should be answered in the affirmative.

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Judges GRAFFEO, READ, and JONES concur. Judge SMITH dissents and votes to answer the certified question in the negative in an opinion in which Chief Judge LIPPMAN and Judge CIPARICK concur.