IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

IN RE: MARVIN E. WILLIAMS, Debtor **CASE NO.: 4:05-BK-27158**
CHAPTER 13

ORDER OVERRULING *U.S. BANK'S OBJECTION TO CONFIRMATION OF PLAN* (DOCKET ENTRY #14)

Now before the Court is Creditor's *Objection to Confirmation of Plan* (Docket Entry #14) filed by Sondra Boone, on behalf of U.S. Bank, N.A. The Court heard this matter on March 2, 2006. Sondra Boone appeared on behalf of U.S. Bank, N.A. (the "**Creditor**"). Boyd A. Tackett, Jr., appeared on behalf of Marvin Earnest Williams (the "**Debtor**"), who also appeared. At the hearing, the parties made opening statements and a joint stipulation of facts was admitted into evidence. The only testimony provided to the Court was from the Debtor. At the conclusion of the Debtor's testimony, the parties agreed to submit briefs on the legal issue presented, and the Court took the matter under advisement. A *Scheduling Order* (Docket Entry # 35) was entered on March 3, 2006. Ms. Boone was given until March 20, 2006, to file a brief on behalf of the Creditor, and Mr. Tackett was given until March 30, 2006, to file a response. Both parties submitted timely briefs to the Court. The Court has reviewed the briefs, the joint stipulation of facts, and the applicable law, and issues the following Order.

The legal issue now before the Court is whether, pursuant to 11 U.S.C. § 1322(c)(2), a Chapter 13 debtor can bifurcate (into secured and unsecured components) an undersecured claim secured by a mortgage on the debtor's principal residence, which matured prior to the filing of the debtor's bankruptcy petition. The Court finds that § 1322(c)(2) permits the bifurcation of an undersecured mortgage on a Chapter 13 debtor's principal residence when the mortgage matured before the filing of the bankruptcy petition, as explained below.

The facts of this case are undisputed. On February 3, 1997, the Debtor executed a mortgage and note in favor of the Creditor's predecessor, Mercantile Bank, in the amount of $25,312.82. The loan was for commercial purposes, to mature one year from the date of execution. On February 17, 1998, the Debtor executed a modification and extension of the mortgage and note in the amount of $23,168.66; the modification and extension to mature on February 17, 2000. On February 25, 2000, the Debtor executed a second modification and extension of the mortgage and note in the amount of $24,000, which was due and payable three years from the execution date on February 25, 2003. The maturity date for the second modification and extension was later extended to July 2003.

The Debtor defaulted on the mortgage, and on September 9, 2005, a judgment was entered against the Debtor. The Debtor filed a Chapter 13 bankruptcy petition on

October 14, 2005[1]. U.S. Bank filed a Proof of Claim in the bankruptcy case in the amount of $31,640.49.[2] In the Debtor's Amended Chapter 13 Plan, U.S. Bank was listed as a secured debt that would not extend beyond the length of the plan. The Plan proposed to pay U.S. Bank $18,723 at an interest rate of 10%, with a monthly payment of $604.15. The Plan valued the Debtor's residence at $25,000. The Creditor filed an *Objection to Confirmation of the Plan*, stating that the Debtor's plan did not adequately provide for the debt owed to the Creditor and that it created an impermissible cramdown pursuant to 11 U.S.C. § 1322(b)(2).

At the hearing on the Creditor's Objection, the Debtor testified that the home in which he lived was formerly his parents' home, and he had lived in the residence since 1959. He testified that the value of the home was $25,000, based on the fact that there were many problems with the home, including general damage to the rear of the house, and specifically, damage to the floor of the house which occurred during the repair of a frozen pipe located beneath the floor.

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[1]Because the petition was filed on October 14, 2005, this case is not subject to the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, effective on October 17, 2005.

[2]The amount of the claim ($31,640.49) includes the following: unpaid principal balance of $18,723.15, interest on arrears of $5,284.73 (July 25, 2003 through October 13, 2005), late charges prior to default (accumulated) of $382.93, foreclosure fees and costs of $5,884.68, bankruptcy fees and costs of $275, property inspections of $720, BPO of $220, and title work of $150.

Because the facts of this case were not in dispute, the Court took the case under advisement so the parties could submit briefs on the legal issue of whether 11 U.S.C. § 1322(c)(2) allowed a Chapter 13 debtor to bifurcate (into secured and unsecured components) an undersecured claim secured by a mortgage on the debtor's principal residence, which matured prior to the filing of the debtor's bankruptcy petition.

Before delving into the complexities of § 1322(c)(2), an overview of related Code sections is necessary. 11 U.S.C. § 1325 sets out the standards for confirmation of a Chapter 13 plan. Subsection (a) lists six standards which always apply to confirmation, and subsection (a)(5) addresses the treatment of allowed secured claims. While there are several options for the treatment of secured claims, if a secured creditor does not agree to the treatment offered it by a Chapter 13 debtor (§ 1325(a)(5)(A)) and the proposed plan does not provide for the collateral to be surrendered (§ 1325(a)(5)(C)), the debtor's treatment of the secured creditor's claim must meet the requirements of § 1325(a)(5)(B) in order for the plan to be confirmed. *In re Young*, 199 B.R. 643 (Bankr. E.D. Tenn. 1996). Section 1325(a)(5)(B) states that:

> (a) Except as provided in subsection (b), the court shall confirm a plan if–
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> > (5) with respect to each allowed secured claim provided for by the plan–

> (B)(i) the plan provides that–
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> . . .
>
> (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim . .

Section 1325(a)(5)(B)(ii) does not define the term "allowed amount of such claim." However, reference to § 506(a) of the Code in determining an allowed secured claim for purposes of § 1325(a)(5)(B) has been universally accepted. *Young*, 199 B.R. at 648 (citing *Nobleman v. American Savings Bank*, 502 U.S. 324 (1993)). Section 506(a) governs the allowance process for secured status of a claim by supplying the method for valuation, the result of which is bifurcation or separation of the secured claim into its secured and unsecured components. *Young*, 199 B.R. at 649. This bifurcation would have no effect on payment or treatment of the secured claim but for the authority given to a debtor under § 1325(a)(5) to "cramdown" the claim to its allowed secured amount. *Id*. Section 1322(b)(2), however, creates an exception to § 1325(a)(5) (the debtor's ability to cramdown a claim to its secured amount) and prohibits bifurcation of an undersecured home mortgage holder's claim into secured and unsecured components. *See Nobleman v. American Savings Bank*, 502 U.S. 324, 328-30 (1993) (demonstrating that a Chapter 13 debtor looks to § 506(a) for a determination of the secured creditor's claim (home mortgage) based on the value of

its collateral, but found that the secured creditor's treatment could not be limited pursuant to § 1325(a)(5) by this valuation due to the protection of home mortgages provided by § 1322(b)(2)).

Section 1322(c)(2) of the Code addresses treatment of a home mortgage claim in cases, such as the present case, where the last payment under the terms of the original contract falls due before the end of the plan. Specifically, § 1322(c)(2), which was included in the 1994 amendments to the Bankruptcy Code, states:

> (c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law–
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> (2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

Section 1322(c)(2) creates an exception to the exception in § 1322(b)(2). The issues surrounding the interpretation and application of § 1322(c)(2) have been set forth in a leading bankruptcy treatise:

> Section 1322(c)(2) is controversial with respect to what a Chapter 13 debtor can do with a home mortgage that falls within its reach. Section 1322(c)(2) begins, "Notwithstanding subsection (b)(2) and applicable nonbankruptcy law . . ." The subsection (b)(2) cross-reference is 11 U.S.C. § 1322(b)(2)–the section of the Code that prohibits modification of claims secured only by real property that is the debtor's principal residence. On its face, § 1322(c)(2) is an exception to the antimodification provision of § 1322(b)(2). Any home mortgage within

> its reach can be modified by a Chapter 13 plan in the usual ways permitted by the Bankruptcy Code–including bifurcation and cramdown, consistent with § 1325(a)(5). This interpretation of § 1322(c)(2) renders 1322 (b)(2) and *Nobelman* inapplicable to home mortgages on which the "last payment on the original payment schedule" is due before the final payment under the plan. This outcome was convincingly defended in *In re Young* [199 B.R. 643 (Bankr. E.D. Tenn. 1996)] and has been embraced by a majority of courts, including the U.S. Court of Appeals for the Eleventh Circuit [in *American Gen. Fin., Inc. V. Paschen (In re Paschen),* 296 F.3d 1203 (11th Cir. 2002)].

Lundin, Keith M., CHAPTER 13 BANKRUPTCY, vol. 2, § 143.1 at 143-8.

The analysis and application of § 1322(c)(2) in *In re Young* has been described as the "definitive opinion" on § 1322(c)(2). *See In re Mattson*, 210 B.R. 157, 159 (Bankr. D. Minn. 1997). In its rationale, the court in *In re Young* stated:

> Literal application of § 1322(c)(2) in the manner proposed by the debtors does not produce a result that is "demonstrably at odds with the intention of the drafters." Instead, it only produces a result for which there is no expressed intent in the statute's legislative history. Because § 1322(c)(2)'s plain meaning does not conflict with any stated intention of Congress or run counter to any other section of the Bankruptcy Code, the statute must be applied as written.
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> . . .
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> This court realizes that the literal application of § 1322(c)(2) will permit the "cramdown" of not only short-term mortgages (less than five years) and balloon payments, but also the traditional long-term mortgages (15,20, 25, or 30 years) which have less than five years remaining under the terms of the loan. However, if Congress had intended to limit § 1322(c)(2) to short-term mortgages or to short-term mortgages that balloon or mature prepetition as [the creditor] contends, it could have simply stated so. Congress did not.

Young, 199 B.R. at 653.

The facts of this case are somewhat different from the facts in *Young*, in that the mortgage in this case not only matured before the date on which the final payment under the plan was due, but it matured *before* the Debtor ever filed his bankruptcy petition (i.e. the mortgage was due on July 2003 and the Debtor did not file bankruptcy until October 14, 2005). Section 1322(c)(2), and its application to the specific situation before the Court has also been addressed by Lundin's treatise on bankruptcy, which states:

> New section 1322(c)(2) is not a model of clarity with respect to mortgages that matured, ballooned, or were subject to demand *before* the petition. The last payment "on the original payment schedule" for such a mortgage would certainly be due before the final payment under the plan–the last payment was due before the borrower became a Chapter 13 debtor. The curing default language in § 1322(b)(3) and (b)(5) has always been interpreted to permit Chapter 13 debtors to fix other *prepetition* monetary defaults. The failure to pay a *prepetition* matured, ballooned or demanded amount would comfortably fit in the same logic. If § 1322(c)(2) does not apply when the mortgage reached maturity, was subject to demand or ballooned before the petition, then its usefulness is severely restricted in ways not discussed in the legislative history. Most, but not all, decisions interpreting § 1322(c)(2) have concluded that a mortgage matured or ballooned before the petition can be paid in full through the plan.

Lundin, Keith M., CHAPTER 13 BANKRUPTCY, vol. 2, § 143.1 at 143-4.

In re Reeves, 221 B.R. 756 (Bankr. C.D. Ill. 1998), and *In re Mattson*, 210 B.R. 157 (Bankr. D. Minn. 1997), are two instances where courts addressed the specific factual scenarios of mortgages that matured, ballooned, or were subject to demand

before the petitions were filed. In both the *Reeves* and *Mattson* cases, the courts, relying on the analysis in the *Young* opinion, found that § 1322(c)(2) permits the bifurcation of an undersecured mortgage on a Chapter 13 debtor's principal residence when the last payment on the original payment schedule is due before the final payment under the plan is due. *Reeves*, 221 B.R. at 760; *Mattson*, 210 B.R. at 161. The following reasoning was provided by the court in *Mattson*:

> Section 1322(c) addresses mortgages that have nothing to do with the home mortgage market. The section will typically apply to second mortgages such as this one, which are based very little on the value of the home and more on the leverage provided by having a mortgage on a debtor's homestead. A true first mortgage, payable over a longer term (typically 30 years), will rarely, if ever, be undersecured, especially when the last payment is coming due during the terms of a plan. While I will concede that occasionally this provision could catch such a home mortgage, it will be so rare as to have no effect on the home mortgage market. Thus, it is not at all unlikely that Congress saw a distinction between the type of mortgage that exists here and the type of mortgage that it sought to protect in § 1322(b)(2). To again quote Professor Culhane:
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> > The plain language of the amendment seems to allow lien stripping in this limited context. It would tend to target only those riskier mortgages which were probably undersecured from the outset. If the debtor is near the end of the payments on a long-term purchase money mortgage before she defaults, . . . the remaining unpaid balance will almost certainly be fully secured. If the mortgage was originally short-term, however, and is undersecured at the time of bankruptcy, . . . it may well have been undersecured from the time it was made. Such loans were, after all, expressly targeted for stripping in an earlier reform bill. Culhane, *supra*, at 491.

Mattson, at 161. The courts' conclusions in both the *Reeves* and the *Mattson* cases, as well as the opinion in the *Young* case, clearly support the Debtor's position in this case.

After a review of the case law regarding § 1322(c)(2), this Court adopts the legal analysis of § 1322(c)(2) in the *Young* case and finds that § 1322(c)(2) permits the bifurcation of an undersecured mortgage on a Chapter 13 debtor's principal residence when the mortgage matured before the filing of the bankruptcy petition.

Therefore, it is hereby

ORDERED that the Creditor's *Objection to Confirmation of Plan* is **OVERRULED**.

IT IS SO ORDERED.

Audrey R Evans

HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

EOD on 5/10/06 by BG

DATE: May 10, 2006

cc: Boyd Tackett, Jr., attorney for the debtor
Sondra Boone, attorney for the creditor
Joyce B. Babin, Chapter 13 Trustee
U.S. Trustee