

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
O'clock & min
OCT 9 2002
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (5)

IN RE:

Julia S. Williams,

ENTERED
OCT 11 0 2002
K.R.W. Debtor.

C/A No. 02-07183-W

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order, the Court will grant Wells Fargo Financial Acceptance South Carolina, Inc.'s ("Wells Fargo") Motion for Relief from the Co-Debtor Stay (the "Motion") effective fifteen days after the entry of this Order unless Debtor amends her Plan to separately classify and provide for payment of the net balance of the loan plus the contractual interest rate to Wells Fargo.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
October 9, 2002.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

Dalton Watkins

OCT 10 2002

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KW **KAREN R. WEATHERS**
Deputy Clerk

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ORDER

Chapter 13

THIS MATTER comes before the Court upon the Motion for Relief from the Co-Debtor Stay (the "Motion") filed by Wells Fargo Financial Acceptance South Carolina, Inc. ("Wells Fargo"). In its Motion, Wells Fargo contends that, in January 2001, it refinanced Julia S. Williams ("Debtor") and Carl Jordan's ("Codebtor") purchase of a 2000 Chevrolet Silverado. Pursuant to the terms of the refinancing agreement, Debtor and Codebtor agreed to pay Wells Fargo the payoff of the truck (\$23,730.90) with interest accruing thereon at 21%. In June 2002, Debtor filed bankruptcy, and, in her Chapter 13 Plan, she agrees to pay Wells Fargo the net payoff due and owing under the contract, \$21,257.42, as well as 8.5% interest. To the extent that Wells Fargo is not receiving the contract interest rate, it seeks relief from the codebtor stay pursuant to 11 U.S.C. §1301(c) or, alternatively, adequate protection.¹ In response, Debtor objects to the Motion for two reasons. First, she asserts that her Plan pays Wells Fargo's claim in full because she did not value the truck; instead, she pays the net balance of the loan. Second, Debtor argues that Wells Fargo is bound by the terms of her confirmed Plan because of res judicata as Wells Fargo filed no objection to the interest rate proposed in the Plan during the objection period. After considering the pleadings and the parties' arguments presented at the

¹ Further references to the Bankruptcy Code shall be by section number only.

hearing on the Motion, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7052.²

FINDINGS OF FACT

1. On January 31, 2001, Debtor and Codebtor executed a refinancing agreement with Wells Fargo. In this note and security agreement, Debtor and Codebtor agreed to finance \$23,730.90 and to repay this amount plus 21% interest to Wells Fargo.
2. On June 17, 2002, Debtor filed her Voluntary Petition seeking Chapter 13 bankruptcy relief.
3. Also on June 17, 2002, Debtor filed her Notice, Chapter 13 Plan, and Related Motions. In the Plan, Debtor proposes to pay Wells Fargo \$450.00 per month until the net balance of the loan plus 8.5% interest has been paid in full. Debtor does not value the truck securing her debt to Wells Fargo and therefore treats Wells Fargo as a fully secured creditor.
4. Wells Fargo filed no objections to the confirmation of Debtor's Plan.
5. On August 9, 2002, the Court confirmed Debtor's Plan.

CONCLUSIONS OF LAW

Section 1301 provides that a court shall grant relief from the codebtor stay to the extent that the plan filed by the debtor "proposes not to pay such claim." §1301(c)(2). The issue before the Court is whether Wells Fargo is entitled to relief from the codebtor stay because Debtor is not paying Wells Fargo's claim in full by not including the contractual interest rate in her Chapter 13

² The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

Plan.

This issue has created a jurisdictional split, and, to summarize the legal authorities, one line of cases holds that relief from the codebtor stay is appropriate if the amount owed to the creditor, including postpetition interest at the contract rate, is not paid fully under the Chapter 13 plan. See Friendly Fin. Discount Corp. v. Bradley (In the Matter of Bradley), 705 F.2d 1409 (5th Cir. 1983); Household Fin. Corp. v. Jacobsen (In re Jacobsen), 20 B.R. 648 (BAP 9th Cir. 1982); Southeastern Bank v. Brown, 266 B.R. 900 (S.D. Ga. 2001); In the Matter of Butler, 242 B.R. 553 (Bankr. S.D. Ga. 1999); In re Pardue, 143 B.R. 434 (Bankr. E.D. Tex. 1992); Household Fin. Corp. v. Hansberry (In the Matter of Hansberry), 20 B.R. 870 (Bankr. S.D. Oh. 1982); Int'l Harvester Employee Credit Union v. Grigsby (In re Grigsby), 13 B.R. 409 (Bankr. S.D. Oh. 1981); Mid Maine Mut. Sav. Bank v. Johnson (In re Johnson), 12 B.R. 894 (Bankr. D. Me. 1981); In re Haselden, C/A No. 90-00053, slip op. (Bankr. D. S.C. Apr. 9, 1990). Generally, these courts have based their conclusion on two factors. The first is by reasoning that “claim” as used in §1301(c)(2) is aligned with the definition of claim as provided in §101(5), which includes unmatured interest as part of the claim, and not an “allowed claim” as defined in §502(b)(2). In addition, this line of cases relies upon the legislative history of §1301, which provides that, if a portion of the debt owed is not provided for in the Chapter 13 plan, the stay is lifted to that extent and that creditors are “protected to the full amount of [their] claim[s], including postpetition interest, costs, and attorney’s fees, if the contract so provides.” H.R. Rep. No. 95-595, at 122 (1977). In contrast, another line of cases holds that relief from the codebtor stay is not merited merely if a plan does not propose to pay postpetition interest at the contract rate. See In re Deen, 260 B.R. 577 (Bankr. S.D. Ga. 2000); First Franklin Fin. Corp. v. Alls (In re Alls), 238 B.R. 914

(Bankr. S.D. Ga. 1999); In re Janssen, 220 B.R. 639 (Bankr. N.D. Ia. 1998); In re Saunders, 130 B.R. 208 (Bankr. W.D. Va. 1991). These cases generally stand for the proposition that unmatured postpetition interest is not part of an allowed claim pursuant to §502(b)(2); consequently, debtors cannot provide for this portion of a debt owed to a creditor in a Chapter 13 plan. Accordingly, as long as a debtor's plan proposes to pay the creditor's allowed claim in full, courts should not grant relief from the codebtor stay. See, e.g. Alls, 238 B.R. at 920.

After reviewing these authorities, the Court concludes that the better approach is the one found in Southeastern Bank v. Brown, 266 B.R. 900 (S.D. Ga. 2001). In Brown, the court decided that a creditor's claim including postpetition interest under the contract must be paid in full through a Chapter 13 plan otherwise relief from the codebtor stay is warranted. See id. at 908. The court based its conclusion on the definition of "claim" found in §101(5). The court found that §1301(c)(2) references "claims," not "allowed claims"; thus, to the extent all or any part of the claim is not paid, the codebtor stay should be lifted. The court noted that, if Congress intended to use "allowed claims," it would have inserted this language in §1301(c)(2) as it did in other sections of the Bankruptcy Code. In addition, the court also based its conclusion on the legislative history of §1301.³ Finally, the court also ruled that a Chapter 13 plan may provide for payment of postpetition interest at the contract rate because §1322 allows debtors to treat codebtor claims based upon a consumer debt differently from other unsecured claims and

³ The Court also finds a prior opinion authored by Judge Bishop instructive, In re Haselden, C/A No. 90-00053, slip op. at 4 (Bankr. D. S.C. Apr. 9, 1990). In Haselden, the Court concluded that the codebtor stay did not apply because the debt at issue was not a consumer debt; however, the Court further noted that, if the codebtor stay were in effect, it would grant relief from it because the debtor's plan did not propose to pay the full amount of the creditor's claim including contractual interest, costs, and attorney's fees. To support this position, the Court relied upon the legislative history of §1301.

separately classify them.

Applying these principles to the case at bar, the Court concludes that, to the extent Debtor's Chapter 13 Plan does not pay Wells Fargo's claim including the postpetition interest at the contract rate, Wells Fargo should receive relief from the codebtor stay. Clearly, Debtor is not paying Wells Fargo in full under the Plan as, instead of receiving the payoff amount of the note plus 21% interest, Wells Fargo receives the payoff amount plus 8.5% interest. Moreover, Debtor could separately classify Wells Fargo pursuant to §1322(b)(1) and provide it the treatment (in this case, the postpetition interest) it was originally entitled to under the parties' refinancing agreement.⁴

Finally, the Court concludes by addressing Debtor's argument regarding the res judicata effect of her confirmed Chapter 13 Plan. This Court believes that, for the confirmed Plan to have a binding effect as suggested by Debtor, the Plan must clearly and accurately characterize a creditor's claim throughout the plan. See Deutchman v. Internal Revenue (In re Deutchman), 192 F.3d 457, 461 (4th Cir. 1999); In re Dozier, C/A No. 02-02000-W, slip op. 4-6 (Bankr. D. S.C. Aug. 26, 2002). In this case, the Court finds that Debtor's Plan did not clearly and accurately characterize Wells Fargo's claim so as to preclude it from asserting rights against Codebtor. To do so, the Plan would have to specifically treat or address Wells Fargo's rights against Codebtor. Because this conspicuous absence is not a clear and accurate characterization of Wells Fargo's rights so as to preclude its rights against Codebtor, the Court finds that the confirmed Plan does not prevent Wells Fargo from obtaining relief from the codebtor stay.

⁴ The Court notes that a review of any separate classification for unfair discrimination compared to other classes of unsecured creditors is required by §1322.

CONCLUSION

From the arguments discussed above, it is therefore

ORDERED that Wells Fargo's Motion will be granted effective fifteen days after the entry of this Order unless Debtor amends her Plan to separately classify and provide for payment of the net balance of the loan plus the contractual interest rate to Wells Fargo.

IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
October 9, 2002.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

Oct 10 2008

Dalton Watkins

✓
✓
✓
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KW
KAREN R. WEATHERS
Deputy Clerk