

ENTERED

AUG 25 2008

UNITED STATES BANKRUPTCY COURT

FILED
at ___ O'clock & ___ min ___ M

AUG 25 2008

K.R.W.

FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (25)

IN RE:

C/A No. 08-00908-JW

Sarah Donette Jenkins,

Chapter 13

ORDER

Debtor(s).

This matter comes before the Court upon proposed order of Green Tree Servicing LLC f/k/a Conseco Finance Servicing Corporation ("Green Tree") to reconsider the Court's Order on Trustee's Objection to Claim, entered April 29, 2008, which disallowed Green Tree's secured claim and allowed it as a general unsecured claim because the claim did not include proper documentation to substantiate the validity and perfection of its lien. Debtor and the Chapter 13 Trustee ("Trustee") had consented to the vacating of the Order and the allowance of Green Tree's claim as a secured claim in the amount of \$26,652.30, with an arrearage of \$1,324.22 to be paid pursuant to Debtor's confirmed Chapter 13 Plan.

The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334(a) and (b). The Court makes the following Findings of Fact and Conclusions of Law pursuant to Fed. R. Civ. P. 52, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 7052 and 9014(c).¹

FINDINGS OF FACT

1. Debtor filed a petition for relief under chapter 13 of the Bankruptcy Code on February 14, 2008.

¹ To the extent any Findings of Fact constitute Conclusions of Law, they are adopted as such. To the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

2. On February 19, 2008, Green Tree filed a proof of claim, asserting a secured claim in the amount of \$26,652.30, with an arrearage of \$1,324.22. The proof of claim indicated that Green Tree's lien is secured by an interest in Debtor's manufactured home. Attached to the proof of claim were copies of an arrearage statement, manufactured home retail installment contract, and application for certificate of title/registration. Green Tree did not attach to its proof of claim a copy of the certificate of title showing Green Tree's lien. The proof of claim provides that notices should be sent to:

Green Tree Servicing LLC
P.O. Box 6154
Rapid City, SD 57709-6154

3. On March 20, 2008, the Trustee filed an objection to Green Tree's claim ("Objection"), requesting that the claim be disallowed as a secured claim and allowed as a general unsecured claim in the amount of \$26,652.30 because "[t]he claim does not include proper documentation to substantiate the validity and/or perfection of its lien." According to the Trustee's Certificate of Service, notice of the Objection was sent to Green Tree at the following addresses:

Green Tree Servicing LLC
P.O. Box 0049
Palatine, IL 60055-0049

Green Tree Servicing LLC
Bankruptcy Department
P.O. Box 6154
San Diego, CA 92177-7909

Green Tree Servicing
Attn: Bankruptcy Department
P.O. Box 6172
Rapid City, SD 57709-6172

4. Notice of the Objection does not appear to have been sent to the address provided for notices on Green Tree's proof of claim. Green Tree did not respond to the Objection, and the Court entered an order disallowing Green Tree's secured claim and allowing its claim as a general unsecured claim in the amount of \$26,652.30 on April 28, 2008 ("Claim Order").

5. On July 15, 2008, 79 days after the Claim Order was entered, Green Tree presented a proposed consent order vacating the Claim Order and allowing Green Tree's Claim as a secured claim in the amount of \$26,652.30, with an arrearage of \$1,324.22 to be paid pursuant to Debtor's confirmed chapter 13 plan. As justification for its entry, the proposed consent order stated that Green Tree had since provided documentation as to its secured lien. The proposed consent order was signed by counsel for Green Tree, counsel for Debtor, and the Trustee.

6. On August 6, 2008, the Court held a hearing, upon notice to the signing parties, regarding the proposed consent order.

CONCLUSIONS OF LAW

Section 502(j) provides that a claim that has been allowed or disallowed may be reconsidered for cause, and Fed. R. Bankr. P. 3008 allows a party in interest to move for reconsideration of the order allowing or disallowing the claim. It is within the Court's discretion to reconsider a claim. "A reconsidered claim may be allowed or disallowed according to the equities of the case." 11 U.S.C. § 502(j). Some factors that appear relevant in considering the equities of the case include the movant's delay, if any, in filing the motion to reconsider, whether the reconsideration of the claim would upset the proper distributions already made to holders of other allowed claims, prejudice to the

debtor and other creditors that would result from the reconsideration of the claim, the effect of the reconsideration of the claim on the efficient administration of the estate, and the movant's good faith.

Although not asserted by Green Tree in either the proposed order or at the hearing in this matter, it appears that the Trustee's Objection was not served on Green Tree at the address provided for notices in its proof of claim.² The failure of notice would appear to constitute cause to reconsider the Claim Order. Furthermore, the request to reconsider was raised by Green Tree 79 days after the Claim Order was entered, which does not appear to be unreasonable delay in light of the failure of notice. It further appears that reconsideration of the Claim Order would be in the best interest of the estate. The case has not progressed such that reconsideration of Green Tree's claim at this point would upset the Trustee's distributions. Further, reconsideration of the claim at this point would appear to benefit, not prejudice, the debtor and other creditors. Therefore, the Court will reconsider and vacate the Claim Order.

Nevertheless, the Court will address its concerns regarding the claims reconsideration process and provide the following guidance to the bar. The Court has noticed an increase in the numbers of requests for orders vacating its previous orders regarding objections to claims after creditors have failed to timely respond to the Trustee's objections to their claims, even after receiving proper notice. A creditor's failure to respond to an objection to its claim and the resulting disallowance of its claim has many negative consequences: the trustee cannot pay the creditor's lien as expected through the plan, the debtor is exposed to the loss of property encumbered by the

² The Court recently discovered the failure of notice based upon its review of the documents filed in this case and this has been subsequently confirmed by the Trustee.

creditor's lien because no payments are made under the plan, the trustee must incur unnecessary expenses in responding to the motion to reconsider, and the Court must take time and resources to deal with the motion to reconsider the order disallowing the claim. Initially, it is up to the objecting party to ensure that a claim objection is properly served.³ Notice to parties in interest must also be provided and a hearing must be held before the Court can grant a motion to reconsider a claim. Fed. R. Bankr. P. 3008. It is incumbent upon a creditor to timely file responses to objections to its claims. Further, both creditors and debtors should be aware of the trustee's requirements in reviewing claims and counsel for debtors should assist in curing the trustee's objections when those requirements are not met.

For the reasons set forth herein, it is hereby

ORDERED that Green Tree's request for reconsideration of the Court's Order on Trustee's Objection to Claim is granted. Green Tree's claim shall be allowed as a secured claim in the amount of \$26,652.30, with an arrearage of \$1,324.22 to be paid pursuant to Debtor's Chapter 13 Plan, which was confirmed on April 2, 2008.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
August 25, 2008

³ Of course, creditors need to timely file claims in a chapter 13 case to be paid through the chapter 13 plan. In re Waters, C/A No. 99-05666-W, slip op. (Bankr. D.S.C. Feb. 2, 2000). If the creditor fails to file proper claims or provide sufficient supporting documentation, the debtor's attorney should monitor the bar date and file claims or supporting documentation on behalf of creditors who the debtor wishes to pay through the plan. Fed. R. Bankr. P. 3004.