

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Shielder Evondra Pressley,

Debtor(s).

C/A No. 20-01397-HB

Chapter 13

ORDER

THIS MATTER came before the court for hearing on January 26, 2021, for consideration of Chapter 13 Trustee Gretchen D. Holland's request to dismiss this case with prejudice and Debtor Shielder Evondra Pressley's Motion to Modify Confirmed Plan.¹ Creditor Chondrite REO LLC, 2, supported the Trustee's request and opposed Pressley's Motion.²

FACTUAL AND PROCEDURAL HISTORY

1. In 2013, Pressley acquired 5 acres of undeveloped real property located at 1420 Vandale Place, Anderson, South Carolina, 29626.

2. On August 31, 2015, Pressley filed a petition for Chapter 7 relief, *pro se*, C/A No. 15-04581-hb. The case was dismissed on October 7, 2015 for failure to file schedules and statements.

3. On December 31, 2015, Pressley, individually and as sole member of Pressley Group Ltd Co. a South Carolina Limited Liability Company, executed a note and mortgage with Secured Investment Funding LLC, predecessor in interest to Chondrite, in the principal sum of \$140,000.00. The mortgage encumbered 1420 Vandale Place.

4. Pressley filed a petition for Chapter 13 relief, *pro se*, on March 11, 2016, C/A No. 16-01212-hb. For this and the prior Chapter 7 case, Pressley disclosed she lived at 100 Georgianna Lane, Greenville, SC 29605 and provided her mailing address separately as a post office box. On

¹ ECF Nos. 78, 79, 81, 82 & 86.

² ECF Nos. 80 & 87.

April 28, 2016, after due notice, this case was dismissed with prejudice prohibiting Pressley from filing another bankruptcy case under any chapter for a period of 180 days.

5. The note with Chondite matured on January 1, 2017, at which time the entire unpaid principal balance along with all accrued and unpaid interest became due. On May 24, 2018, Chondite initiated a foreclosure action in the Anderson County Court of Common Pleas and an initial hearing was set for August 6, 2018. Pressley filed, *pro se*, in the United States District Court for the District of South Carolina a “Notice of Removal and Stay of All State Courts Proceeding Pursuant to 28 USCA 1446(D).” On April 16, 2019, an order remanding the foreclosure action to Anderson County was filed and a second hearing was scheduled for May 6, 2019. Pressley requested a postponement and a third hearing in the foreclosure action was scheduled for October 2, 2019.

6. Pressley filed another Chapter 13 bankruptcy case, *pro se*, C/A No. 19-05157-hb, on October 1, 2019, staying any collection actions. In response to the request for “where you live” on the voluntary petition, Pressley wrote by hand “204 W. Hampton St. Anderson SC 29624.” Immediately thereafter, the relevant form requires the filer to include a mailing address if it is different from where the debtor lives. No additional information was provided by Pressley. A copy of Pressley’s South Carolina driver’s license issued July 17, 2017 was provided to the Court and indicates the same address. Pressley checked “no” in response to question 2 of the Statement of Financial Affairs asking, “During the last 3 years, have you lived anywhere other than where you live now?” This case was dismissed on February 3, 2020, for failure to file a confirmable plan and failure to make plan payments. Although the case was pending for four months, the Chapter 13 Trustee did not receive any payments from Pressley and, therefore, no distributions were made to Chondite. There is no evidence that Pressley was making payments directly to Chondite.

7. Pressley's testimony, as well as a letter dated January 28, 2020, indicate that shortly before dismissal of the 2019 bankruptcy case, she was offered a new consulting job with significant income, to begin in early March 2020. However, the logistics of the engagement made it impossible for the work to be performed during the COVID-19 pandemic that struck around that time.

8. A hearing was again scheduled in the foreclosure action for March 18, 2020. Pressley's current Chapter 13 petition was filed, *pro se*, on March 17, 2020. Pressley again answered the petition request for "where you live" by writing in the 204 W. Hampton St. address. No mailing address, alternative address, nor past addresses were listed in her filings. A copy of Pressley's South Carolina driver's license issued October 3, 2019 was provided to the Court and indicates the same address.

9. On June 9, 2020, F. Lee O'Steen filed a notice of appearance in the case on Pressley's behalf.

10. On July 23, 2020, at the request of Chrondite, an Order was entered pursuant to 11 U.S.C. § 362(c)(3)(A) confirming no automatic stay was in effect related to Chrondite's collateral.

11. With the universal lack of understanding as to how long the pandemic would/will last and the scope of its effects, Pressley, with the assistance of counsel, moved forward with her case assuming her employment could begin soon.

12. Amended schedules were filed and counsel pursued confirmation of a Chapter 13 plan including payments to address Chrondite's claim, secured a pre-confirmation moratorium in plan payments, and took other actions necessary to keep the case alive. The pre-confirmation moratorium order delayed payments and stated if Pressley failed to resume payments on October 16, 2020, the case could be dismissed without further notice or hearing.

13. Pressley's schedules indicate she owns several properties in Anderson County, including 1420 Vandale Place and 204 W. Hampton, as well as 619 Owens Drive, 110 Myrtle Avenue, and 214 L Street. 1420 Vandale Place is the only encumbered scheduled property and the scheduled value is \$150,000.00. Pressley's amended schedules claim a homestead exemption of \$20,000.00 in 204 W. Hampton St. pursuant to S.C. Code Ann. § 15-41-30(A)(1)(a).³ The Statement of Financial Affairs indicates Pressley operated her businesses, Pressley Group Ltd. and Evondra Design Rehab Inc., from 204 W. Hampton St. Pressley receives rent for 619 Owens Drive.

14. Pressley was able to confirm a plan without objection on September 2, 2020, which provides for payment to creditors, including payment in full of Chondite's entire claim, by paying \$5,600.00 per month to the Trustee. The plan was confirmed with the assumption or hope that the pandemic would end and Pressley's consulting job would begin soon. The plan primarily addresses Chondite's debt, with monthly distributions of \$3,950.00 or more to that creditor.

15. Pressley and the Chapter 13 Trustee submitted to the Court a Consent Order providing that, as a result of Pressley's prior unproductive bankruptcy filings, should this case be dismissed for any reason within twelve months of its filing (March 17, 2020), dismissal would be with prejudice for a period of one year as to Chapters 11, 12 or 13. The Consent Order was approved and entered by the Court on September 3, 2020.

³ This provision allows the debtor to claim an exemption in "[t]he debtor's aggregate interest, not to exceed [\$63,250.00] in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence . . ." S.C. Code Ann. § 15-41-30(A)(1)(a). No conclusive explanation was offered regarding the appropriateness of this exemption should this property not qualify as Pressley's residence; however, the Court notes Pressley's Schedule J lists her brother as a dependent who lives at this property.

16. Pressley failed to make all plan payments, even considering the moratorium. The Chapter 13 Trustee did not act on the prior moratorium order that allowed for automatic dismissal. Instead, she filed a Petition to Dismiss with Prejudice on November 3, 2020.

17. Pressley filed a Motion to Modify Confirmed Plan to lower her plan payments significantly and retroactively to \$150.00 for 8 months, \$200.00 for 8 months, and \$7,800.00 for 44 months. The purpose of the modified plan is to cure the deficiency in plan payments. The modified plan still proposes monthly distributions of \$3,950.00 to Chondite, but the reduction in monthly payments to the Chapter 13 Trustee naturally results in a corresponding drastic reduction in funds available to pay Chondite.

18. Chondite's amended proof of claim represents it is owed \$238,213.91 as of the petition date. The attached payoff request dated July 15, 2020, states \$67,430.14 of that amount is for accrued interest and daily interest accrues at a rate of \$57.53. A payoff request dated June 8, 2020, indicates the total payoff as of June 30, 2020, is \$240,177.23, of which \$79,880.55 is for accrued interest, and daily interest accrues at a rate of \$69.04. It was not made clear to the Court the exact amount owed to Chondite; regardless, it exceeds the purported value of the property securing its loan.

19. Pressley testified that she acquired 1420 Vandale Place, built a house there, and it has been her residence since 2017. She does not have a certificate of occupancy because construction is not yet complete, but Pressley testified she is allowed to occupy it as the owner of the property. She did not elaborate on the costs to finish the construction or identify any source of funding.

20. Pressley testified that as soon as travel and other restrictions associated with the pandemic dissipate, she believes the employment set forth in the January 2020 letter will begin.

APPLICABLE LAW

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L), and this Court may enter a final order.

The post-confirmation modification of a Chapter 13 plan is governed by § 1329.⁴ Under § 1329, a confirmed plan may be modified at “any time after confirmation of the plan but before the completion of payments” at the request of the debtor to, *inter alia*, “increase or reduce the amount of payments on claims of a particular class provided for by the plan” or “alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan[.]” 11 U.S.C. § 1329(a)(1), (3). Section 1329(b)(1) provides that any post-confirmation modification must comply with §§ 1322(a) and (b), 1323(c), and 1325(a). Section 1322(a) sets forth the requirements that must be met by a Chapter 13 plan in order to be approved by the Court, whereas § 1322(b) sets forth all permissible provisions that can be included in a Chapter 13 plan. Section 1323(c) states that:

Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder’s previous acceptance or rejection.

11 U.S.C. § 1323(c). Section 1325(a) provides, in the pertinent part, that the Court shall confirm a plan if: (1) it complies with all applicable provisions of the Bankruptcy Code; (2) it has been proposed in good faith and not by any means forbidden by law; (3) the secured creditor has accepted the plan, it complies with the Chapter 13 cramdown provisions, or it surrenders the

⁴ Section 1329(d) was added by the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) Pub. L. 116-136 (Mar. 27, 2020) and allows Chapter 13 debtors with plans confirmed prior to the date of its enactment to seek modifications of their plans due to COVID-19-related hardships. However, the CARES Act is inapplicable here because Pressley’s plan was confirmed in September 2020.

collateral to the secured creditor; and (4) the debtor is able to comply with the terms of the modified plan. 11 U.S.C. § 1325(a)(1), (3), (5), and (6). “The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.” 11 U.S.C. § 1329(b)(2). “A moving party seeking modification under § 1329 bears the burden of proof.” *In re Helmeid*, C/A No. 16-01576-5-DMW, 2018 WL 2324203, at *2 (Bankr. E.D.N.C. May 22, 2018) (citations omitted); *In re Krapf*, 355 B.R. 545, 548 (Bankr. D.S.C. 2006).

Section 1307(c) states that, upon the request of a party in interest or the United States trustee and after notice and a hearing, a Chapter 13 case may be dismissed or converted to Chapter 7 “for cause,” and provides a nonexclusive list of eleven causes justifying conversion or dismissal. 11 U.S.C. § 1307(c). Among those reasons are “unreasonable delay by the debtor that is prejudicial to creditors” and a “material default by the debtor with respect to a term of a confirmed plan[.]” 11 U.S.C. § 1307(c)(1), (6). A debtor whose case is dismissed during the one-year period preceding the filing of her current case must demonstrate the latter was filed in good faith in order to avoid the termination of the automatic stay on the 30th day after the filing. 11 U.S.C. § 362(c)(3)(A).

Section 105(a) grants bankruptcy courts the power to “issue any order . . . necessary or appropriate to carry out the provisions of this title.” It states that “[n]o provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.” 11 U.S.C. § 105(a). Bankruptcy courts have “broad authority” under § 105(a). *See Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 375, 127 S. Ct. 1105, 166 L. Ed.2d 956 (2007). However, they may not use § 105(a) or their inherent authority to contradict or override explicit mandates of other sections of

the Bankruptcy Code. *Law v. Siegel*, 571 U.S. 415, 421, 428, 134 S. Ct. 1188, 1194-95, 1198, 188 L. Ed. 2d 146 (2014).

DISCUSSION AND CONCLUSIONS

Considering the evidence, the Motion to Modify the Confirmed Plan must be denied. Chondite did not accept its treatment in the modified plan, the plan does not propose to surrender 1420 Vandale Place, and the plan does not adequately provide for payment of Chondite's claim. Chondite continues to be harmed as interest accrues on its debt without remedy and this case lingers without sufficient payment. There is no evidence of equity in 1420 Vandale Place, which is the primary focus of the plan. Pressley either lives at least part time at 204 W. Hampton St. or has the ability to do so should Chondite recover its collateral. Payment in full was due per the contract with Chondite on January 1, 2017, and Pressley's ability to repay remains speculative. Pressley has failed to meet her burden of proof under § 1329(b)(1) because she did not demonstrate the modified plan meets the requirements of § 1323(c) and § 1325(a)(5) and (6).

It is undisputed that Pressley is delinquent on her current plan payments. Even considering the pandemic, Chondite and the Trustee have provided Pressley with significant time to reorganize without success. Dismissal is appropriate under § 1307(c)(1) and (6) for Pressley's material default in the plan and unreasonable delay that has prejudiced the rights of creditors, including Chondite.

The Chapter 13 Trustee agrees that Pressley may be relieved from the prejudice terms of the Consent Order, but Chondite objects. If this case survived to mid-March 2021, the twelve-month term of the Consent Order would have expired. Further, if Pressley files a subsequent bankruptcy case within one year, the Code provides protection for creditors in general by requiring her to demonstrate good faith in order for the automatic stay to continue after 30 days from filing.

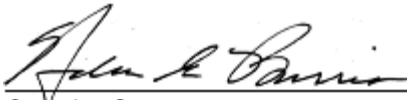
See 11 U.S.C. § 362(c)(3). Considering the facts as a whole, the Court will strike a balance between Pressley's potential to reorganize and the effects of a subsequent filing and unreasonable delay to Chondite's efforts to recover its collateral. After consideration of the facts and authorities discussed above, the Court finds it is appropriate and warranted pursuant to its authority under § 105(a) to relieve Pressley from the Consent Order that bars her from a subsequent filing for a period of one year. Instead, the Court orders that any bankruptcy case filed within 180 days from entry of this Order shall not stay any foreclosure or collection action by Chondite related to 1420 Vandale Place.

IT IS, THEREFORE, ORDERED THAT:

1. Pressley's Motion to Modify Confirmed Plan is denied;
2. the above-captioned case is hereby dismissed without prejudice unless otherwise stated herein or provided by the Bankruptcy Code; and
3. any bankruptcy case filed by Pressley, any entity in which she has an ownership interest, or any of their heirs or assigns, within 180 days from entry of this Order shall not operate as a stay under 11 U.S.C. § 362 of any foreclosure, collection, or similar proceeding initiated or pursued by or on behalf of Chondite, its successors or assigns, related to 1420 Vandale Place.

FILED BY THE COURT
02/02/2021




Chief US Bankruptcy Judge
District of South Carolina

Entered: 02/02/2021