

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

IN RE:

Lisa Campbell Powell,

Debtor(s).

C/A No. 21-03069-HB

Chapter 13

**ORDER OVERRULING OBJECTION
TO CONFIRMATION**

THIS MATTER came before the Court for hearing on May 12, 2022, to consider confirmation of the Modified Chapter 13 Plan filed by Debtor Lisa Campbell Powell,¹ to which Creditor World Omni Financial Corp. objected.² After careful consideration of the evidence and record, as well as the parties' arguments and applicable law, the Court overrules the Objection and finds the Modified Plan should be confirmed.

On August 23, 2019, Powell purchased a 2019 Toyota Camry. The vehicle was financed by Creditor with 0.0% monthly interest. On November 30, 2021, Powell filed a voluntary petition for Chapter 13 relief. That same day, the Court issued a Notice of Chapter 13 Bankruptcy Case, which scheduled a confirmation hearing for March 10, 2022. The Notice provides "[a]ny objection to confirmation of the chapter 13 plan must be filed and served at least seven days prior to the confirmation hearing . . . If no objection is timely filed, the plan may be confirmed on recommendation of the trustee." There is no evidence that Creditor failed to receive adequate notice or service.

Powell's initial plan was filed on December 14, 2021, and proposed to pay Creditor's claim as fully secured for \$22,214.00 with no interest, as the contract rate was 0.0%. The initial plan served on Creditor warns "[f]ailure to object may constitute an implied acceptance of and consent

¹ ECF No. 18, filed Mar. 14, 2022.

² ECF No. 21, filed Mar. 21, 2022.

to the relief requested in this document.” On January 7, 2022, Creditor timely filed a proof of claim indicating it had a secured claim in the amount of \$22,214.29, secured by the vehicle.³ Creditor did not file an objection to Powell’s initial plan. Upon the request of the Chapter 13 Trustee, the Court entered an order on March 7, 2022, denying confirmation of the initial plan and providing Powell ten days to file a modified Chapter 13 plan.

Powell filed the Modified Plan on March 14, 2022, to address the claim of another creditor. The Modified Plan did not modify the treatment of Creditor’s claim and was properly served. On March 21, 2022, Creditor filed the Objection arguing it is entitled to receive interest on its claim at 1% point above the prime rate of 3.5% pursuant to the formula established in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).⁴ Powell filed a Reply, asserting the contract rate was appropriate and Creditor is deemed to have accepted the plan under § 1325(a)(5)(A) by not filing a timely objection to the initial plan that provided the same treatment.⁵ The Trustee recommended confirmation of the Modified Plan if the Objection is overruled or resolved.

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.

A Chapter 13 plan may be confirmed if one of the following occurs with regard to secured claims provided for by the plan: (1) the holder of the secured claim accepts the plan, 11 U.S.C. § 1325(a)(5)(A); (2) a non-accepting holder of the secured claim retains its lien until the earlier of payment of the underlying debt or the debtor’s discharge, *id.* § 1325(a)(5)(B); or (3) the debtor surrenders the property securing the claim to the holder, *id.* § 1325(a)(5)(C). This Court’s Local

³ POC No. 3-1.

⁴ The Court notes the Objection does not comply with the requirements of SC LBR 3015-6(c) in that the Objection is not in substantial conformance with the Court’s local form provided therein.

⁵ ECF No. 22, filed Mar. 31, 2022.

Rules require “[a] party in interest objecting to the interest rate proposed in a chapter 13 plan or modified plan must do so before expiration of the deadline for objecting to the plan or modified plan in which the interest rate is *first proposed*.” SC LBR 3015-6 (emphasis added).

This Court and others have held that a secured creditor’s failure to object to its treatment in a Chapter 13 plan constitutes acceptance of the plan under § 1325(a)(5)(A). *In re Stephens, C/A* No. 18-01736-JW, slip op. at 5 (Bankr. D.S.C. Oct. 16, 2018) (collecting cases). “[U]nlike in chapter 11 where creditors accept or reject a plan by ballots, in chapter 13 cases, there is no mechanism for creditors to accept or reject a plan. Therefore, § 1325(a)(5)’s reference to ‘accepting’ a plan must mean that a creditor’s silence (by not timely filing a timely objection to a plan after notice) constitutes acceptance of the plan.” *Id.* at 6. Under § 1323(c), any secured creditor that has accepted the plan is deemed to have accepted the plan as modified, unless the modification changed that creditor’s rights from its treatment in the previous plan. *See id.* (“Once a holder of a secured claim has accepted a plan, the plain language of § 1323(c) appears to reasonably lock in the secured creditor’s decision for subsequent modified plans as long as that creditor’s treatment is not changed.”).

Creditor did not allege that it did not receive adequate notice of this bankruptcy case or Powell’s initial plan filed on December 14, 2021, nor did it present any evidence or justification for its failure to object by the applicable deadline. By not objecting to the initial plan, Creditor accepted its treatment thereunder pursuant to § 1325(b)(5)(A). *In re Crawford*, 532 B.R. 645, 650 (Bankr. D.S.C. 2015) (finding that because the creditor “was properly served with notice of the plan, its failure to object to its treatment under that plan constitutes acceptance of the plan pursuant to § 1325(a)(5)(A)” (citing *In re Flynn*, 402 B.R. 437 (1st Cir. BAP 2009))). Creditor’s treatment – payment of its claim with 0.0% interest – remained unchanged in the Modified Plan. Pursuant

to § 1323(c), Creditor is also deemed to have accepted the Modified Plan. Because Creditor accepted the Modified Plan under §§ 1325(a)(5)(A) and 1323(c), § 1325(a)(5)(B) is inapplicable. *Id.* at 651 (stating that § 1325(a)(5)(B)(i) would only apply if modifications to the claim had been forced upon the creditor over its objection and because no objection was raised, its treatment was accepted by and not forced upon the creditor to otherwise meet the requirements of § 1325(a)). Based on the foregoing,

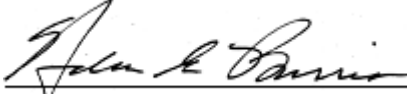
IT IS, THEREFORE, ORDERED that Creditor World Omni Financial Corp.'s Objection is overruled and based upon the recommendation of the Trustee, a separate order will be entered confirming the Modified Plan filed on March 14, 2022.

AND IT IS SO ORDERED.

**FILED BY THE COURT
05/16/2022**



Entered: 05/16/2022


Chief US Bankruptcy Judge
District of South Carolina