

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

IN RE:

James Eugene Turner, Sr.,

Debtor(s).

C/A No. 24-00811-HB

Chapter 13

**ORDER DENYING CONFIRMATION
OF CHAPTER 13 PLAN**

THIS MATTER came before the Court for a confirmation hearing on December 5, 2024, to consider the pre-confirmation modified Chapter 13 plan filed by Debtor James Eugene Turner, Sr. (“Turner”) on October 21, 2024 (the “Plan”)¹ and the objection thereto filed by NewRez, LLC d/b/a Shellpoint Mortgage Servicing as servicer for Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as Trustee on behalf of the Green Tree Mortgage Loan Trust 2005-HE1 (“Shellpoint”).² At the hearing, appearances were made by Chapter 13 Trustee Annemarie B. Mathews (the “Trustee”), Vaughan R. Perry and Glenn Walters, Sr. for Turner, and Jason M. Hunter for Shellpoint, Turner testified, and exhibits were submitted into evidence.

Pre-petition, Shellpoint, or its predecessor in interest, obtained a foreclosure judgment in South Carolina state court involving two properties in which Turner has or had an interest: (1) 528 Koon Store Road, Columbia, SC 29203, which is Turner’s primary residence (the “Residence”); and (2) 532 Koon Store Road, Columbia, SC 29203, which Turner uses for commercial purposes (the “Commercial Property”) (collectively, the “Properties”).³ Turner appealed the foreclosure order to the Court of Appeals of South Carolina.

¹ ECF No. 78.

² ECF No. 80, filed Nov. 14, 2024.

³ Turner and Shellpoint agree this is the same property as 526 Koon Store Road, Columbia, SC 29203.

On March 4, 2024, Turner filed a petition for relief under Chapter 13 of the Bankruptcy Code with the assistance of Walters as counsel to initiate the above-captioned case.⁴ On April 1, 2024, Turner filed a Chapter 13 plan proposing a monthly payment to the Trustee of \$300.00 and listing Shellpoint’s claims against the Properties in the section for conduit payments.⁵ However, that section was not completed and did not include a proposed payment or other relevant information for the Trustee to pay the claims, and likely \$300.00 was not sufficient to make any substantial payment on the claims. Objections to that plan were filed by Shellpoint⁶ and the Trustee.⁷

Two months after the case was filed, on May 9, 2024, Turner filed a pre-confirmation modified Chapter 13 plan that proposed the following treatment of Shellpoint’s claims: “The mortgage loan of Shellpoint trustee for Green Tree has fully matured and gone to judgment. The Debtor intends to bring an Adversary Proceeding to seek a de novo review of the foreclosure judgment. No plan payments will go to the mortgage creditor.”⁸

On May 13, 2024, Shellpoint timely filed Claim Nos. 4-1 and 5-1. Claim No. 4-1 is for \$177,059.63 secured by the Commercial Property.⁹ Claim No. 5-1 is for \$356,899.77 secured by the Residence. In the most recently filed Schedule A/B, the value of the Commercial Property is listed as \$152,300.00 and the value of the Residence is listed as \$169,000.00.¹⁰

⁴ While the first docket entry in this case is a restricted image of a Statement About Your Social Security Numbers (Official Form 121) filed under the CM/ECF event “Chapter 13 Voluntary Petition, Schedules and Statements – Individual”, and the petition was filed on March 5, 2024, at ECF No. 2, the Court later determined the petition date to be March 4, 2024. *See* Order at ECF No. 32.

⁵ ECF No. 28. *See* SC LBR 3015-1.

⁶ ECF Nos. 34-35.

⁷ ECF No. 36.

⁸ ECF No. 37.

⁹ The claim was filed as secured by 526 Koon Store Road, Columbia, SC 29203. However, as noted above, this appears to be the same property.

¹⁰ ECF No. 86, filed Dec. 3, 2024.

On May 14, 2024, Turner filed an Adversary Complaint against Shellpoint seeking a determination that the proofs of claim filed by Shellpoint are invalid, initiating Adv. Pro. No. 24-80030-hb.

On June 12, 2024, Perry filed a Notice of Appearance as co-counsel for Turner.¹¹

On June 13, 2024, the Court held a confirmation hearing, which was continued.

On July 8, 2024, Turner filed another pre-confirmation modified Chapter 13 plan that proposed the following treatment of Shellpoint's claims: "The mortgage loan of NewRez LLC d/b/a Shellpoint Mortgage Servicing as servicer for Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as Trustee on behalf of the Green Tree Mort has fully matured and gone to judgment. The Debtor intends to bring an Adversary Proceeding to seek a de novo review of the foreclosure judgment. No plan payments will go to the mortgage creditor until there is resolution of the Adversary Proceeding."¹² Turner's subsequent plans filed on July 23, 2024,¹³ and on August 27, 2024,¹⁴ contained the same language.

On July 22, 2024, Shellpoint filed a motion seeking dismissal of the adversary proceeding or in the alternative abstention pursuant to 28 U.S.C. § 1334(c). On August 28, 2024, the Court entered an Order abstaining from the matters raised in the adversary proceeding pursuant to 28 U.S.C. § 1334(c)(1) and lifting the automatic stay of 11 U.S.C. § 362 to allow the state court litigation to resume, finding, among other things, that state law issues predominated; the proceeding appeared to have no place in this Court absent the underlying bankruptcy filing; the state court had already held an evidentiary hearing and rendered a decision, and an appeal was well

¹¹ ECF No. 49.

¹² ECF No. 57.

¹³ ECF No. 63.

¹⁴ ECF No. 69.

underway; and the Complaint attempted to retry the issues or appeal the decision rendered in state court in a different forum.

On October 10, 2024, the Court held a confirmation hearing and entered an order denying confirmation of the August 27, 2024, plan, as the plan terms were no longer relevant given the decision in the Adversary Proceeding.¹⁵

On October 21, 2024, Turner filed the Plan currently under consideration. The Plan proposes payments to the Trustee of \$320.00 for sixty months. The only secured creditor designated to receive a distribution from Plan payments is a creditor secured by a vehicle. Turner proposes to submit a loss mitigation application within 120 days of the entry of an order lifting the automatic stay to allow consensual loss mitigation between Turner and Shellpoint. It proposes that if Turner fails to timely submit a loss mitigation application, or if the application is denied, Shellpoint may file an affidavit of default requesting an order lifting the automatic stay with respect to the Properties. No provision is made for adequate protection prior to the submission of the application or while the application is under review. Shellpoint filed an objection asserting that this treatment is improper under 11 U.S.C. § 1325(a).

The Court held a confirmation hearing on December 5, 2024. As of the date of the hearing, no order lifting the automatic stay to allow consensual loss mitigation had been requested. At the hearing, Turner testified he had filled out a loan modification application, but his testimony did not reflect any other progress in pursuing a loan modification. Turner testified he could afford to pay \$700.00 - \$1,000.00 per month toward Shellpoint's claims. The Trustee noted that Turner is current on plan payments (which do not include any payment to Shellpoint) but has failed to provide bank statements.

¹⁵ ECF No. 76.

After the hearing, Turner filed requests for orders lifting the automatic stay to the extent necessary to conduct consensual loss mitigation with Shellpoint in connection with the Properties,¹⁶ and the Court granted those requests, which would begin the 120-day period proposed in the Plan (extending to April 2025).¹⁷

Shellpoint asserts that the Plan does not comply with § 1325(a). A party objecting to confirmation on the basis that the plan fails to meet the requirements of § 1325(a) must first establish a *prima facie* objection. If the objecting party makes such a *prima facie* showing, the debtor bears the ultimate burden of proving that the plan meets the requirements for confirmation. *See In re Moore*, 635 B.R. 451, 453 (Bankr. D.S.C. 2021); *see also Trantham v. Tate*, 112 F.4th 223, 236 (4th Cir. 2024) (citing § 1322(b) for the proposition that the Code does not require that a debtor justify his plan’s permissive provisions included pursuant to that Code section, in contrast to when a party objects on the basis that the plan does not comply with § 1325(a)).

Section 1325(a)(5) requires that, with respect to each allowed secured claim provided for by the plan, if the secured creditor has not accepted the plan and the plan does not propose to surrender the collateral to the secured creditor, the plan must comply with § 1325(a)(5)(B). *See* 11 U.S.C. § 1325(a)(5). Section 1325(a)(5)(B) requires, among other things, that “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”. 11 U.S.C. § 1325(a)(5)(B)(ii).

Subject to § 1322(a) and (c), a Chapter 13 plan may “modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of

¹⁶ ECF Nos. 90-91, filed Dec. 5, 2024.

¹⁷ ECF Nos. 92-93, entered Dec. 9, 2024. These orders merely modify the automatic stay to allow consensual negotiations.

any class of claims”. 11 U.S.C. § 1322(b)(2). A plan may also “provide for the curing or waiving of any default” and, notwithstanding § 1322(b)(2), “provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due”. 11 U.S.C. § 1322(b)(3), (5).

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) a default with respect to, or that gave rise to, a lien on the debtor’s principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(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.

11 U.S.C. § 1322(c).

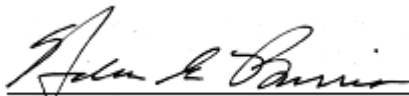
Nine months have passed since this case was filed, yet the Plan does not offer Shellpoint any adequate protection of its interests and no payment toward its claims. Shellpoint has not accepted the Plan. The proposal to attempt loan modification at this point over the objection of Shellpoint does not comply with § 1325 nor § 1322(c)(2), if applicable.

IT IS, THEREFORE, ORDERED that confirmation of the Chapter 13 plan filed by Debtor James Eugene Turner, Sr. on October 21, 2024, is **denied**.

**FILED BY THE COURT
12/11/2024**



Entered: 12/11/2024


Chief US Bankruptcy Judge
District of South Carolina