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DEC 28 2011

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (37)

IN RE:

Dana James Grissom and Kim Elaine
Grissom,

Debtor(s).

C/A No. 11-04553-JW

Chapter 13

ORDER

ENTERED

JAN -3 2012

D.L.L.

THIS MATTER comes before the Court on the Objection to Confirmation of Plan filed by Bank of America, NA. Pursuant to Fed. R. Civ. P. 52, which is made applicable to these proceedings by Fed. R. Bankr. P. 7052 and 9014(e), the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Dana J. Grissom and Kim E. Grissom ("Debtors") filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on July 20, 2011.

3. Debtors' Schedule D filed on July 25, 2011 listed Bank of America as a secured creditor by virtue of a mortgage on 146 Jessie Lane, Round O, South Carolina 29474 (the "Residence"). The Residence was listed in the Schedules as having a value of \$130,000.00, with a mortgage in the amount of \$129,195.00.

4. On October 14, 2011, Bank of America filed a proof of claim with supporting documentation attached indicating that it held a secured claim in the amount of \$146,425.00. Bank of America's supporting documentation showed a mortgage perfected only on a vacant three acre lot (the "Lot") adjacent to the Residence. The documentation further evidenced that Bank of America did not have a perfected mortgage on the Residence.

5. On October 14, 2011, Debtors filed an Amended Schedule D that listed Bank of America as a secured creditor by virtue of its mortgage on the Lot. The Amended Schedule D also indicated that only \$12,000.00 of Bank of America's \$146,425.00 claim is secured by the mortgage with the remainder representing unsecured debt. The Lot is listed in the Schedules as having a value of \$12,000.00.

6. On October 14, 2011, Debtors filed a chapter 13 plan (the "Plan"). The Plan contained a motion to value Bank of America's claim at \$12,000.00 since the supporting documentation attached to Bank of America's Proof of Claim showed a mortgage perfected only on the Lot and not on the Residence.

7. The Plan was served on Bank of America, and the validity of such service is not in dispute.

9. On October 28, 2011, Debtors filed an amended chapter 13 plan (the "Amended Plan"). The Amended Plan did not alter the treatment of Bank of America's claim.

10. Bank of America filed its Objection to Confirmation (the "Objection") on November 28, 2011. The only stated basis for the Objection was that Bank of America "requires additional time to conduct a valuation analysis of the subject property securing its loan."

11. A confirmation hearing was held on December 15, 2011. At the hearing, counsel for Bank of America contended that the Objection should be deemed timely since the last day to file objections to the Amended Plan was November 25, 2011, which was the day after Thanksgiving. Also at the hearing, the chapter 13 trustee contended that Bank of America only held a valid lien on the Lot and not on the Residence. Bank of America did not dispute this assertion.

CONCLUSIONS OF LAW

The form chapter 13 plan in this district provides that any objections to a plan must be served and filed within twenty-eight days from the date the plan is filed¹. SC LBR 3015-1 Ex. A. The form plan additionally states that “[f]ailure to object may constitute an implied acceptance of and consent to the relief requested in the document.” Id. Ex. A. Absent a violation of creditor’s right to due process, late objections are generally overruled. In re Turner, C/A No. 10-03358-JW, slip op. at 2-3 (Bankr. D.S.C. Sept. 21, 2010) (citing In re Washington, C/A No. 05-14835-JW, slip op. at 3 (Bankr. D.S.C. Apr. 27, 2006); In re Dangerfield, C/A No. 04-13686-W, slip op. at 3 (Bankr. D.S.C. Aug. 23, 2005)).

If Bank of America had twenty-eight days to object to the Amended Plan filed on October 28, 2011, then the Objection may have been timely pursuant to the Federal Rules of Bankruptcy Procedure. See Fed. R. Bankr. P. 9006(a)(1) (providing that when a time period is computed in days and the last day is a “Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday”). However, the Amended Plan filed on October 28, 2011 did not propose to treat Bank of America differently than the Plan filed on October 14, 2011. This Court has previously stated that “[t]he fact that a creditor objects to its treatment under an amended plan does not excuse the creditor from failing to object to the initial plan if the treatment of the creditor is not changed by the amended plan.” In re Turner, C/A No. 10-03358-JW, slip op. at 3 (quoting In re Washington, C/A No. 05-14835-JW, slip op. at 3). Under this principle and because Friday, November 11, 2011 was Veteran’s Day, Bank of America had until November 14, 2011 to file an objection to the Plan. However, Bank of America’s Objection was not filed until November 28, 2011, and as a result this Court finds that the Objection was untimely.

¹ The Debtors used the form plan in this case.

Additionally, 11 U.S.C. § 1322(b)(2) does not prevent Debtors from modifying Bank of America's lien, since Bank of America does not hold a claim secured by Debtors' Residence. In the event that Bank of America held a perfected lien on Debtors' Residence, neither the Plan nor the Amended Plan would have been confirmable because § 1322(b)(2) prevents a debtor from modifying "a claim secured only by a security interest in real property that is the debtor's principal residence." See In re Washington, C/A No. 05-14835-JW, slip op. at 4-5 (permitting a late objection to confirmation because the debtor's plan, which altered the rights of an apparent first lien mortgagee, was "unconfirmable under chapter 13 without additional evidence to refute [the creditor's] apparent first lien on Debtor's residence").

Based on its failure to timely object, Bank of America is deemed to have impliedly accepted its treatment under the terms of the Plan. See Turner, C/A No. 10-03358-JW, slip op. at 3 (citing In re Dangerfield, C/A No. 04-13868-W, slip op. at 3); SC LBR 3015-1 Ex. A. Further, because the Amended Plan does not alter that treatment, Bank of America is precluded from objecting to it. See 11 U.S.C. § 1323(c) ("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."). Therefore, this Court finds it proper to overrule Bank of America's Objection to Confirmation.

CONCLUSION

ORDERED that Bank of America's Objection is overruled. Upon entry of this Order, the Chapter 13 Trustee shall submit an appropriate order regarding confirmation of the Amended Plan.

AND IT IS SO ORDERED.

Columbia, South Carolina
December 28, 2011


UNITED STATES BANKRUPTCY JUDGE