

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

IN RE:

Rodney Wicker,

Debtor(s).

C/A No. 15-06684-JW

Chapter 13

**ORDER**

This matter comes before the Court upon the Notice and Motion for Loss Mitigation/Mediation (“Second LM/MM Motion”) filed by Rodney Wicker (“Debtor”) on September 20, 2017. HomeBridge Financial Services, Inc. (“HomeBridge”) filed an objection to the Motion on October 4, 2017, and the Court held a hearing on the matter. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Based on the record and arguments of the parties, the Court makes the following findings of fact and conclusions of law.<sup>1</sup>

**FINDINGS OF FACT**

1. On July 26, 2011, Debtor executed a note in the amount of \$146,197.00 to Real Estate Mortgage Network, Inc. (“Note”). To secure the Note, Debtor executed a mortgage on July 26, 2011 (“Mortgage”) on his residence, 703 Tower Lane in Columbia, South Carolina (“Residence”). HomeBridge is the current holder of the Note and Mortgage.

2. On December 17, 2015, Debtor filed a petition for relief under chapter 13 of the Bankruptcy Code.

3. On January 25, 2016, Debtor filed a Notice and Motion for Loss Mitigation/Mediation (“First LM/MM Motion”) seeking loss mitigation/mortgage modification (“LM/MM”) through the undersigned’s LM/MM portal program.

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<sup>1</sup> To the extent the following findings of fact constitute conclusions of law, they are adopted as such, and vice versa.

4. After no objections were filed, the Court granted the First LM/MM Motion and entered an Order Requiring Loss Mitigation/Mortgage Modification on February 17, 2016.

5. On March 22, 2016, the Court entered an Order Confirming Chapter 13 Plan. Debtor's confirmed chapter 13 plan provided the following regarding HomeBridge's secured claim:

The Debtor(s) shall seek loss mitigation or consensual mortgage modification of the mortgage loan secured by the following property via the Portal process set forth in Chamber's Guidelines:

DEBTORS RESIDENCE-703 TOWER LANE, COLUMBIA SC 29210

Beginning on April 2016, the Debtor(s) will pay . . . adequate protection payments in the amount of \$1,085.00 directly to CENLAR.<sup>2</sup> The Debtor(s) will also be responsible for payment of any arrearage directly to CENLAR if not cured through a loss mitigation or loan modification process. No payment will be made by the Trustee on this secured claim.

6. On May 4, 2016, Debtor's counsel filed a Mortgage Loan Modification Report, which indicated that the LM/MM portal review failed because "[d]espite numerous unsuccessful attempts to request the necessary documents and information from the Debtor within a timely manner, he has failed to comply with the terms of the Order Requiring Loss Mitigation/Mediation."

7. On January 18, 2017, HomeBridge filed a Motion for Relief from Stay, which alleged that Debtor failed to apply for LM/MM and failed to make any of the payments to HomeBridge under the terms of the confirmed chapter 13 plan.

8. On January 25, 2017, Debtor's counsel filed a response to the Motion for Relief from Stay ("Response"), which indicated that Debtor's counsel has "been unable to reach [Debtor] to confirm the details outlined [in the Motion for Relief from Stay]. If the Debtor is behind on

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<sup>2</sup> It appears that Cenlar, FSB is the servicer for HomeBridge on Debtor's loan as HomeBridge's proof of claim indicates that notices and payments should be sent to Cenlar, FSB.

payments due on this loan, [D]ebtor request[s] an agreement allowing time to catch up on payments.”

9. On April 3, 2017, Debtor withdrew his Response to the Motion for Relief from Stay, indicating that “Debtor will pursue loss mitigation options with [HomeBridge] outside of Bankruptcy.”

10. On April 5, 2017, the Court held a hearing on the Motion for Relief from Stay, at which time, Debtor’s counsel indicated that the Response had been withdrawn, and the Court granted the Motion for Relief from Stay.

11. On September 20, 2017, Debtor filed the Second LM/MM Motion. The Second LM/MM Motion does not indicate a change of circumstances which would make this LM/MM attempt more likely to succeed as compared to Debtor’s previous LM/MM reviews with HomeBridge as required by the undersigned’s Chamber’s Guidelines.

12. On October 4, 2017, HomeBridge filed an objection to the Second LM/MM Motion (“Objection”). In the Objection, HomeBridge indicated that after the automatic stay was lifted on April 5, 2017, it commenced a foreclosure action in state court against Debtor on June 29, 2017. As part of the state court foreclosure action, HomeBridge issued a Notice of Foreclosure Intervention as part of the state court’s LM/MM procedures, to which Debtor failed to respond. HomeBridge alleges that LM/MM is not appropriate in these circumstances as Debtor has had several opportunities to pursue LM/MM but has repeatedly failed to complete these opportunities, which has caused delay to HomeBridge.

13. At the hearing on the Second LM/MM Motion, Debtor’s counsel indicated that Debtor has had a change of circumstances as he is now employed. No explanation was provided for Debtor’s prior failure to submit an application for LM/MM. Debtor was not present at the

hearing and no testimony was presented regarding his change of circumstances or his prior LM/MM reviews.

14. Counsel for HomeBridge indicated at the hearing that the foreclosure action in state court has been referred to the Master-in-Equity, and he believes that a foreclosure hearing will be held in the near future.

### **CONCLUSIONS OF LAW**

Debtors seek LM/MM through the undersigned's Loss Mitigation/Mortgage Modification program, which assists debtors and mortgage creditors with communicating about LM/MM through the use of a secure portal and court-set deadlines. The program does not require a mortgage creditor to modify a loan, but provides a transparent mechanism for mortgage creditors to review an LM/MM request. The Court has previously held that it may consider a request for LM/MM through the undersigned's LM/MM program after the entry of an order granting relief if the collateral has not yet been sold at a foreclosure sale and remains property of the estate. See In re Cheeseboro, C/A No. 14-04248-jw, slip op. at 5 (Bankr. D.S.C. Oct. 18, 2017).

In the current matter, the issue before the Court is whether Debtor should be permitted a further opportunity to be reviewed through the undersigned's LM/MM portal process. The Court determines whether to grant a Notice and Motion for Loss Mitigation/Mediation on a case-by-case basis and reviews the following factors in making this determination:

1. the debtor's circumstances, and any changes thereto,
2. the mortgage creditor's LM/MM programs and guidelines,
3. the LM/MM history of the debtor's loan,
4. the requirements of the mortgage creditor to consider LM/MM,
5. the timeliness of debtor's request, and
6. any other relevant factor.

Id.

Debtor's counsel proffered that Debtor has had a change of circumstances since the First Motion for LM/MM as he had obtained employment, which should increase his chances of obtaining a loan modification. However, Debtor was not present at the hearing to testify about his change of circumstances or to provide an explanation for his failures regarding his prior LM/MM reviews.

Debtor has exhibited a pattern of failing to follow through with his requests for LM/MM. It appears he did not provide his attorney the information necessary to submit a LM/MM application during his first review in the undersigned's LM/MM program. He failed to submit a LM/MM request outside of his bankruptcy case after indicating he would when the automatic stay was lifted as to HomeBridge, and he did not respond to the Notice of Foreclosure Intervention as part of the state court's LM/MM process. In order for an LM/MM review to be successful, the debtor must avail himself to the LM/MM process and actively participate. There have been no allegations that HomeBridge has acted in bad faith or otherwise acted incorrectly during the LM/MM process. Debtor's prior LM/MM failures appear to be the result of his own actions. Debtor's LM/MM history, including his failure to actively participate in prior LM/MM reviews, does not support a finding that he should be entitled to a further LM/MM review under the undersigned's LM/MM program.

In addition, it appears that HomeBridge has not received payments from Debtor, including those monthly payments provided for under the confirmed chapter 13 plan in the amount of \$1,085.00, since the commencement of this case in 2015. Further, Debtor has not been timely in pursuing the present LM/MM request as more than eight months have passed since the Court granted HomeBridge relief from the automatic stay. HomeBridge, which has commenced a foreclosure action in state court after Debtor failed to commence LM/MM, would be further

delayed and prejudiced if Debtor were permitted to proceed with LM/MM at this late stage of his case.

Therefore, based on the circumstances of this case, and for the foregoing reasons, including Debtor's LM/MM history and his failure to make payments to HomeBridge in accordance with his confirmed chapter 13 plan, the Court denies Debtor's Second Motion for LM/MM with prejudice.

**AND IT IS SO ORDERED.**

Columbia, South Carolina  
October 25, 2017

**FILED BY THE COURT  
10/25/2017**



Entered: 10/25/2017

US Bankruptcy Judge  
District of South Carolina