

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 98-14601
Chapter 13

MARY GREEN HARTMAN

Debtor(s)

MEMORANDUM

On September 3, 1999, the court entered an order sustaining objections to the debtor's proposed Chapter 13 plan and dismissing the Chapter 13 case. The debtor has filed a motion to alter or amend the order.

The proposed plan provided for no payment on the unsecured claim (claim # 11) of the Federal National Mortgage Association (Fannie Mae). The claim is for foreclosure expenses and for rent based on the debtor's occupancy after foreclosure. The proposed plan attempted to set out grounds for not paying the claim. The Chapter 13 trustee objected to confirmation on several grounds, including this provision. The trustee contended that it would have the effect of objecting to and disallowing the claim.¹ *Fed. R. Bankr. P.* 3007. The trustee also argued that the plan separately classified Fannie Mae's claim and unfairly discriminated against it. 11 U.S.C. § 1322(b)(1). The court agrees with both arguments.

In a previous case, the court dealt with a plan that was essentially the same. The creditor raised no question until after confirmation. Then it was too late. Confirmation and the principles of *res judicata* made the plan binding on the creditor. The court pointed out,

¹ The debtor has objected to the claim (doc. 63); however, the objection is that the debtor is the owner of the property and owes no rent. The court has held otherwise (doc. 95/95). An appeal is pending.

however, that it would not have confirmed the plan if the creditor had filed a timely objection. The court recognized that a plan should not include a provision that has the effect of objecting to an unsecured claim and disallowing it. *In re Rodgers*, 180 B.R. 504 (Bankr. E. D. Tenn. 1995). Such a provision amounts to an improper classification of the claim. Likewise, the debtor can not prove the classification does not unfairly discriminate against the claim. *In re Riggel*, 142 B.R. 199, 205 (Bankr. S. D. Ohio 1992); *see also Cash In A Flash v. Brown*, 229 B.R. 739 (W. D. Tenn. 1999).

The provision also prevented the debtor's plan from meeting the best interests of creditors test. 11 U.S.C. §§ 1325(a)(4). The debtor owned real property with non-exempt equity; it appeared to be sufficient to produce a dividend in a Chapter 7 case on non-priority unsecured claims. The plan could exclude Fannie Mae's claim from payment only if the claim had already been disallowed after the filing of an objection. Thus, the plan did not meet the best interests test.

The proposed plan also suggested lack of good faith and resistance to filing a confirmable plan. 11 U.S.C. § 1325(a)(3) & § 1307(c). The Chapter 13 case is essentially the continuation of a dispute between the debtor and Fannie Mae in other courts. She has used the bankruptcy case to prolong her contention that, despite the pre-bankruptcy foreclosure, she still has an interest in the property. If the debtor still had any interest in the property when she filed this Chapter 13 case, then her interest would have come into the bankruptcy estate. 11 U.S.C. § 541(a). This court ruled, however, that the debtor had no interest that came into the bankruptcy estate (doc. 94/95). Nevertheless, the proposed Chapter 13 plan asserted that the debtor owed no rent because she was the successful bidder at the foreclosure. Of course, this argument is inconsistent with the court's earlier ruling that the debtor had no interest in the property that came into the bankruptcy estate.

The debtor now asserts that state court has agreed with her. After dismissal of this Chapter 13 case, state court decided not to go ahead with Fannie Mae's unlawful detainer action. The state court apparently decided that title to the property is still in dispute between the debtor and Fannie Mae. The basis of this decision is not clear from the portion of the transcript offered to support the debtor's motion. The court sees no reason to reconsider its earlier decision that the debtor had no interest in the property that could have come into the bankruptcy estate. That ruling should stand as the law of the case unless reversed or modified on appeal. See *Hanover Ins. Co. v. American Engineering Co.*, 105 F.3d 306 (6th Cir. 1997); *Gillig v. Advanced Cardiovascular Systems, Inc.*, 67 F.3d 586 (6th Cir. 1995).

The debtor apparently intends to continue using the bankruptcy case primarily to frustrate Fannie Mae's attempts to collect and obtain possession. That dispute belongs in the state court. The debtor should not be allowed to use the bankruptcy case merely as a litigation tactic. See *In re Ramji*, 166 B.R. 288 (Bankr. S. D. Tex. 1993); *Mock v. Hannett, Inc. (In re Mock)*, 197 B.R. 468 (Bankr. E. D. Pa. 1996); *In re Stober*, 193 B.R. 5 (Bankr. D. Ariz. 1995); *Wisconsin v. Weller (In re Weller)*, 189 B.R. 467 (Bankr. E. D. Wis. 1995); *In re Venech*, 67 B.R. 56 (Bankr. M. D. Fla. 1986).

The motion to alter or amend raises other points that reveal failure to understand the effect of dismissal, particularly with regard to the automatic stay. 11 U.S.C. § 349. Dismissal immediately ended the stay of actions against the debtor and her property. 11 U.S.C. § 362(c) & § 349(b)(3); *Martir Lugo v. De Jesus Saez (In re De Jesus Saez)*, 721 F.2d 848 (1st Cir. 1983); *In re Franklin Mortgage & Investment Co.*, 144 B.R. 194 (Bankr. D. D. C. 1992); *In re Barnes*, 119 B.R. 552 (S. D. Ohio 1989); see also *Fed. R. Bankr. P.* 9014, 7062(b), (c) & 8005.

The court will enter an order denying the motion to alter or amend.

This memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P. 7052*.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

entered Sept. 21, 1999

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 98-14601
Chapter 13

MARY GREEN HARTMAN

Debtor(s)

ORDER

In accordance with the court's Memorandum entered this date,

It is ORDERED that the Motion to Alter or Amend filed by Mary Green Hartman
is DENIED.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

entered Sept. 21, 1999