IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 01-33011

PAUL HENRY CLIFTON, JR.

Debtor

MEMORANDUM ON
OBJECTION TO CLAIM

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

The Debtor's Chapter 13 Plan (Plan) was confirmed on November 15, 2001. Prior to confirmation, on November 7, 2001, the Debtor filed an Objection to Claim (Objection) challenging the $4,769.50 arrearage claim of Chase Manhattan Mortgage Corporation (Chase Manhattan). The parties have submitted this matter for resolution upon stipulations and briefs.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A), (O) (West 1993).

I

Chase Manhattan, as successor in interest to Advanta Mortgage Corporation,[1] holds a deed of trust on the Debtor's real property located at 8671 Richards Lane in Knoxville, Tennessee. The parties stipulate that the Debtor's primary residence is a manufactured home sitting on the Richards Lane property. The manufactured home does not have wheels or axles beneath it, sits on blocks, and has a deck built onto it.

The Plan treats the Chase Manhattan debt as secured, but only at a **?**cram down" value of $14,000.00.[2] The remaining unsecured component of Chase Manhattan's claim is treated as unsecured, with dividend payment in the five to twenty percent range.[3] Chase Manhattan did not file an objection to the Debtor's Plan.

II

[1] In this Memorandum, Chase Manhattan and Advanta will be collectively referred to as Chase Manhattan.

[2] In addition to its claim for arrearage, Chase Manhattan filed a $38,841.45 secured claim, $24,841.40 of which is treated as unsecured under the Plan.

[3] Under the confirmed Plan, Chase Manhattan will actually receive $1,242.07 for the portion of its secured claim that is treated as unsecured. *See supra* n.2. In addition, Chase Manhattan will be paid $238.47 on its $4,769.50 arrearage claim.

Chase Manhattan argues that its rights were impermissibly modified in violation of 11 U.S.C.A. § 1322(b)(2) (West 1993) and that it should therefore not be bound by the Plan's terms. Section 1322(b)(2) provides that a plan may not modify (or cram down) **?**a claim secured only by a security interest in real property that is the debtor's principal residence . . . ." 11 U.S.C.A. § 1322(b)(2) (West 1993). Section 1325(a)(1) in turn provides that a plan may not be confirmed if it fails to comply with another provision of Chapter 13. *See* 11 U.S.C.A. § 1325(a)(1) (West 1993).

The parties stipulate that the Debtor's principal residence is the manufactured home located on the Richards Lane property. The parties further stipulate that Chase Manhattan's deed of trust covers that same realty. Nonetheless, assuming, *arguendo*, that the Plan violated § 1322(b)(2) by modifying Chase Manhattan's rights, the court cannot permit the creditor to now escape the confirmed Plan's treatment of its claim.

Section 1327(a) of the Bankruptcy Code directs that the terms of a confirmed plan bind each creditor, **?**whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C.A. § 1327(a) (West 1993). After confirmation a creditor may not object to a plan's violation of sections 1322 or 1325. *See* 8 KING, COLLIER ON BANKRUPTCY ¶ 1327.02[1][c], at 1327-6 (15th ed. rev. 2001). **?**[T]he better view is that the issue of compliance with section 1322(a), like other issues pertaining to whether a plan is confirmable, must be raised at the confirmation hearing or else they are barred." 8 COLLIER ¶ 1327.02[1][c], at 1327-7 (Noting **?**the policies of finality that

plan confirmation is intended to serve."). ?[I]f notice is adequate, the creditor that fails to object to confirmation and then to appeal an adverse decision is bound by the confirmed plan even if it contains provisions that are inconsistent with the Code that could have been defeated by a timely objection . . . ." 3 LUNDIN, CHAPTER 13 BANKRUPTCY § 229.1, at 229-2 (3d ed. rev. 2000); *accord In re Rodgers*, 180 B.R. 504, 505 (Bankr. E.D. Tenn. 1995). A mortgage holder that fails to object to confirmation may not later dispute the plan's treatment of an arrearage. *See* 3 LUNDIN § 229.1, at 229-29.

The court is unpersuaded by Chase Manhattan's citation to *Cen-Pen Corp. v. Hanson*, 58 F.3d 89 (4th Cir. 1995). The *Cen-Pen* court held that a debtor cannot modify or extinguish a lien except through the initiation of an adversary proceeding to determine the ?validity, priority, or extent" of the lien. *See id* at 92-93. According to that court, such action is expressly required by FED. R. BANKR. P. 7001(2).[4] Without the filing of an adversary proceeding, under *Cen-Pen*, a lienholder's rights cannot be modified. *See Cen-Pen*, 58 F.3d at 93; *but see, e.g., In re Hudson*, 260 B.R. 421, 440 (Bankr. W.D. Mich. 2001) (*Cen-Pen* ?ignore[s] . . . the plan confirmation process . . . .").

[4] This court cannot agree with the Fourth Circuit's reading of Rule 7001(2). Rule 7001 establishes that Part VII of the Federal Rules of Bankruptcy Procedure governs adversary proceedings. The Rule then lists ten categories of adversary proceedings, including:

> (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d)[.]

FED. R. BANKR. P. 7001(2). Rule 7001 merely identifies ?a proceeding to determine the validity, priority, or extent of a lien" as an adversary proceeding. The rule does not establish the circumstances under which such proceedings must be filed nor does it in any way address the treatment of lien holders under Chapter 13. *Cf. Hudson*, 260 B.R. at 433 (Concepts of ?validity, priority, [and] extent" do not encompass valuation of collateral.).

The better view is that a secured claim can in fact be modified through the plan confirmation process. *See Hudson*, 260 B.R. at 435; 11 U.S.C.A. § 1325(a)(5)(B)(ii) (West 1993) (secured claim is valued as of ?the effective date of the plan"). As noted, each creditor is then bound by the confirmed plan provisions. *See* 11 U.S.C.A. § 1327(a) (West 1993). Unless otherwise provided, plan confirmation then ?vests all of the property of the estate in the debtor," *see* 11 U.S.C.A. § 1327(b), ?free and clear of any claim or interest of any creditor provided for by the plan." 11 U.S.C.A. § 1327(c); *see also* 8 COLLIER ¶ 1327.04[1], at 1327-12 (?Claims or interests" under § 1327(c) include liens); 11 U.S.C.A. § 506(d) (West 1993) (?To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void . . . . ?).

The Objection to Claim must therefore be sustained. The Debtor's Plan was confirmed on November 15, 2001, without objection from Chase Manhattan. The creditor's rights are now fixed by the Plan's provisions, which provide for payment of $14,000.00 on the secured component of Chase Manhattan's claim and a total of $1,480.54 on the unsecured component. Chase Manhattan's lien on the Debtor's real property does not survive the Debtor's discharge. *See* 11 U.S.C.A. § 1327(c) (West 1993).

Lastly, while making no particular findings as to the Debtor's motivation in the present case, the court's holding should not be interpreted as condoning what Chase Manhattan alleges to be ?[d]ebtors . . . slip[ping] provisions in their plans which are contradictory to the Code in the hopes that the creditor will not see it." Rule 9011 subjects debtors' counsel to sanctions for such ?traps for the unwary." *See, e.g., El Khabbaz v. Sallie Mae Servicing Corp. (In re El Khabbaz)*,

264 B.R. 204, 207-08 (Bankr. N.D. Iowa 2001); *In re Evans*, 242 B.R. 407, 411 (Bankr. S.D. Ohio 1999).

An order consistent with this Memorandum will be entered.

FILED: February 13, 2002

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 01-33011

PAUL HENRY CLIFTON, JR.

Debtor

O R D E R

For the reasons stated in the Memorandum on Objection to Claim filed this date, the court directs that the Objection to Claim filed by the Debtor on November 7, 2001, objecting to the claim of Chase Manhattan Mortgage Corporation dated September 24, 2001, filed as secured in the amount of $4,769.50, is SUSTAINED. The claim is DISALLOWED. The treatment of Chase Manhattan Mortgage Corporation's claim is fixed by the Debtor's Chapter 13 Plan confirmed on November 15, 2001.

SO ORDERED.

ENTER: February 13, 2002

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE