SO ORDERED.
SIGNED this 21st day of November, 2018

Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

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

In re

KIM L. JEROME

Debtor

Case No. 3:18-bk-30199-SHB
Chapter 13

MEMORANDUM AND ORDER ON CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN AMENDED ON MARCH 16, 2018

This contested matter is before the Court on confirmation of Debtor's Amended Chapter 13 Plan ("Amended Plan") filed March 16, 2018 [Doc. 28], and the Objection to Confirmation filed by JPMorgan Chase Bank, National Association ("JPMorgan Chase") on February 7, 2018 [Doc. 23].[1] This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

[1] Pursuant to an Order Granting *Ex Parte* Motion to Substitute Bayview Loan Servicing, LLC for JPMorgan Chase Bank, National Association entered on June 14, 2018 [Doc. 50], Bayview Loan Servicing, LLC ("Bayview") has been substituted for JPMorgan Chase in all aspects of this case, including as the objecting party to this contested matter, and all references to Bayview include JPMorgan Chase.

I. PROCEDURAL POSTURE AND FACTS

Debtor filed the Voluntary Petition commencing this Chapter 13 bankruptcy case on January 29, 2018, scheduling a mortgage obligation to Bayview secured by real property located at 228 Brock Road, Maynardville, Tennessee. [Doc. 1.] Bayview filed a secured Proof of Claim in the amount of $14,511.99 on April 9, 2018. [Claim No. 6.] In her original Chapter 13 Plan, Debtor provided for payment of Bayview's claim through monthly maintenance payments of $556.42. [Doc. 4.] Bayview objected to confirmation of Debtor's proposed Chapter 13 Plan, arguing that the mortgage was not a long-term debt obligation because it would mature before completion of the sixty-month plan term, that the plan should provide for payment of Bayview's claim in full over the life of the plan plus the 8.15% contract rate of interest, and that the plan should provide that Debtor would pay insurance and taxes directly. [Doc. 23.]

Following Bayview's objection, Debtor filed the Amended Plan to provide the following treatment for Bayview's claim:

> The debtor owns a home located at 228 Brock Road, Maynardville, Tennessee with a first mortgage held by [Bayview] which becomes due during the term of the Chapter 13 Bankruptcy Plan. The Trustee shall pay this debt in full at a sum of $14,511.99 in monthly payments of $289.99 at 6% interest. [Bayview] shall release their Deed of Trust within 30 days of the discharge date. The Debtor shall be responsible for payment her hazard insurance and real property taxes.

[Doc. 28 at ¶ 8.1.] Bayview maintained its objection to the extent that Debtor sought to pay 6% interest instead of the 8.15% contract rate of interest. The parties advised the Court that because the determination was solely a matter of law, their issues could be decided by the Court without an evidentiary hearing. Accordingly, the parties filed Joint Stipulations of Fact on May 17, 2018 [Doc. 43]; Debtor filed a brief on May 23, 2018 [Doc. 47]; and Bayview filed a brief on June 13, 2018 [Doc. 49].

Although expressed by the parties as two separate issues, the question to be resolved is whether 11 U.S.C. §§ 1322(b)(2) and 1322(c)(2) permit modification of the interest rate accruing on a claim secured by a lien on Debtor's principal residence that pays out during the life of the Amended Plan such that the Amended Plan satisfies the confirmation requirements of 11 U.S.C. §§ 1322(c)(2) and 1325. The Court finds that the proposed modification is permissible and that the Amended Plan should be confirmed.

II. ANALYSIS

A. 11 U.S.C. § 1322(b)(2) Does Not Prohibit Modification of the Interest Rate.

Through 11 U.S.C. § 1322(b)(2), the Bankruptcy Code prohibits debtors from modifying the rights of a mortgage holder. Known as "the anti-modification provision," § 1322(b)(2) provides, in material part, that a plan "may modify the rights of holders of secured claims, other than a claim secured by a security interest in real property that is the debtor's principal residence." Subsection (c), however, expressly limits application of subsection (b)(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." In such a case, "the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5)." 11 U.S.C. § 1322(c)(2). In other words, if a debt that is secured only by a debtor's residence will mature and become due before conclusion of the debtor's plan, the terms of the loan may be modified, and the debtor may pay the balance due over the life of the plan so long as any modification complies with 11 U.S.C. § 1325(a)(5). *See In re Henning*, 420 B.R. 773, 787 (Bankr. W.D. Tenn. 2009) (citing *In re Escue*, 184 B.R. 287, 292 (Bankr. M.D. Tenn. 1995); *In re Jones*, 188 B.R. 281, 284 (Bankr. D. Or. 1995)); *see also In re Olmo-Claudio*, No. 8-16-71740-ast, 2017 WL 3835798, at *5

(Bankr. E.D.N.Y. Aug. 30, 2017) (concluding that "while an oversecured claim secured only by the debtor's residence which matured pre-petition may be modified by paying the loan balance over the life of the plan, any proposed modification must comply with § 1325(a)(5)"); *In re Kulik*, No. 16-12176-BKC-AJC, 2017 WL 1032500, at *2 (Bankr. S.D. Fla. Mar. 2, 2017) ("Section 1322(c)(2) specifically provides that short-term mortgages secured by real property which is the debtor's primary residence may be modified in accordance with 11 U.S.C. § 1325(a)(5).").

This Court has previously summarized § 1325(a)(5):

> Section 1325(a)(5) provides three alternative methods by which a Chapter 13 debtor may deal with the holder of each allowed secured claim provided for by the plan – acceptance of the plan by the secured creditor (§ 1325(a)(5)(A)); compliance with the Chapter 13 cramdown provisions (§ 1325(a)(5)(B)); or surrender of the collateral to the secured creditor (§ 1325(a)(5)(C)).

In re Maddox, No. 13-31273, 2013 WL 3553395, at *1 (Bankr. E.D. Tenn. July 11, 2013). Here, only the "cramdown" provision of § 1325(a)(5) is at issue: "the court shall confirm a plan if – with respect to each allowed secured claim . . . – the plan provides 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). To comply with § 1325(a)(5)(B), the plan must propose to pay the secured creditor, who retains its lien, "no less than the present value of its allowed secured claim, that is, the present value of the [collateral]." *In re Rucker*, No. 17-04552-NPO, 2018 WL 3244458, at *2 (Bankr. S.D. Miss. July 3, 2018).

"Provided that § 1325(a)(5) is satisfied, courts have consistently permitted claims subject to modification under § 1322(c)(2) to be restructured 'at an interest rate more favorable to the debtor than the rate on the original note.'" *In re Hubbell*, 496 B.R. 784, 789 (Bankr. E.D.N.C.

2013) (quoting *In re Joyner*, No. 08-05647-8-JRL, 2008 WL 4346467, at *2 (Bankr. E.D.N.C. Sept. 17, 2008)) (collecting cases); *see also In re Davenport*, No. 15-00540, 2017 WL 4011012, at *6 n.2 (Bankr. D.C. Sept. 11, 2017) (expressly stating that "[i]nterest rates can be modified by § 1322(c)(2)" and allowing contractual 10.5% interest to be lowered to 6% under the plan).

Cramdown of the contract interest rate is precisely what Debtor proposes here. The Amended Plan proposes to pay Bayview's $14,511.99 claim in full over the life of the plan through monthly payments of $289.99 plus 6% interest, notwithstanding the contract interest rate of 8.15%. Thus, the crux of the matter is whether the treatment satisfies § 1325(a)(5)(B)(ii). Although Bayview argues that "a reduction in the interest rate is the kind of modification of [its] claim prohibited by the continued application of 11 U.S.C. § 1322(b)(2)" [Doc. 49 at p. 3], a majority of courts addressing the issue have found otherwise.

Bayview relies on only one case that is on point. In *In re Varner*, 530 B.R. 621 (Bankr. M.D.N.C. 2015), the court held that the anti-modification provision of § 1322(c)(2) prevents a debtor from cramdown of an interest rate on a claim secured by the debtor's residence. The *Varner* court rejected the majority approach and followed the reasoning of the Fourth Circuit Court of Appeals decision in *Witt v. United Cos. Lending Corp. (In re Witt)*, 113 F.3d 508 (4th Cir. 1997).

In *Witt*, the question was not whether a debtor could utilize § 1322(c)(2) in order to cramdown an interest rate but whether § 1322(c)(2) allowed a debtor to bifurcate an undersecured mortgage into secured and unsecured claims. *See Witt*, 113 F.3d at 509. Acknowledging that the proposed bifurcation contradicted the Supreme Court's long-standing rule established by *Nobelman v. American Savings Bank*, 508 U.S. 324 (1993), that claims secured only by an interest in a debtor's residence could not be bifurcated under 11 U.S.C. §

506(a),[2] the *Witt* court examined the legislative history of § 1322(c)(2) and determined that a debtor may modify the timing and structure of payments on a claim but may not modify the amount of the underlying claim itself because doing so would allow bifurcation under § 506(a). *Id*. at 511-12. Stating that such an outcome did not reflect the intent of the statute, the *Witt* court held that § 1322(c)(2) "does not trump § 1322(b)(2) (and *Nobelman*) to allow bifurcation of an undersecured home mortgage note." *Id*. at 514. The court also stated the following benefits provided by § 1322(c)(2):

> Even though we conclude that it does not permit bifurcation, § 1322(c)(2) still provides significant relief for homeowners in Chapter 13 who need more flexibility in paying off their mortgage loans. As many bankruptcy courts have already recognized, § 1322(c)(2) will serve primarily to "permit [ ] debtors to cure [maturing] obligations by paying the remaining part of the debt over the life of a Chapter 13 plan." *In re Nepil*, 206 B.R. 72, 76 (Bankr. D.N.J. 1997*); see also In re Watson*, 190 B.R. 32, 37 (Bankr. E.D. Pa. 1995) ("[T]he obvious purpose of § 1322(c)(2) was to serve as the antidote for the theory that § 1322(b)(2) barred the cure of a residential mortgage obligation which matured prepetition."); *In re Escue*, 184 B.R. 287, 292 (Bankr. M.D. Tenn. 1995) (concluding that under § 1322(c)(2) "Congress intended for debtors to be able to cure 'stub' or 'short-term' mortgages which mature or balloon prior to filing of the petition"). It is clear, therefore, that this repayment flexibility will be an important tool for debtors in restructuring the payment of home mortgage debt in Chapter 13 plans. *See In re Chang*, 185 B.R. 50, 53 (Bankr. N.D. Ill. 1995) (noting that § 1322(c)(2) "enables debtors to retain their homes for a few additional years and may enable them to sell their homes at a more favorable economic time, obtain replacement financing, or hope that their economic circumstances change for the better so that they may pay off the mortgage debt."). We are certain, however, that Congress did not intend to permit bifurcation as yet another tool of restructuring this category of debt.

Id.

As accurately summarized by Bayview, the *Witt* court, interpreting § 1322(c), distinguished "modification of a 'payment' on the one hand and modification of a 'claim" on the

[2] Section 506(a) states, in material part, that "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a).

other hand." [Doc. 49 at p. 5.] As noted by Judge Richard Stair, however, the Sixth Circuit Bankruptcy Appellate Panel rejected that reading of § 1322(c) in *First Union Mortgage Corp. v. Eubanks (In re Eubanks)*, 219 B.R. 468 (B.A.P. 6th Cir. 1998). *See In re Sexton*, 230 B.R. 346, 350 (Bankr. E.D. Tenn. 1999). "[T]he [BAP] decided that the word 'modified' does apply to the word 'claim.' It noted that § 1322(c)(2) provides for the 'payment of the claim as modified *pursuant to section 1325(a)(5)[.]*'" *Id.* (quoting *In re Eubanks*, 219 B.R. at 472).

Other courts also have disagreed with the Fourth Circuit's reading of § 1322(c)(2), including one bankruptcy court within the Fourth Circuit, which found that the creditor's reliance on *Witt* under circumstances similar to those here was misplaced:

> After recognizing § 1322(c)(2) was an exception to the anti-modification provision, the Fourth Circuit in *Witt* held that it "does not permit the bifurcation of an undersecured loan into secured and unsecured claims if the only security for the loan is a lien on the debtor's principal residence." *Id.* at 513–14 (refusing to recognize that § 1322(c)(2) overruled *Nobelman*). . . .
>
> *Witt* has been heavily criticized and courts have limited its application by interpreting it as merely prohibiting "a general expansion of Chapter 13 debtor rights by concluding that Section 1322(c)(2) did not overrule *Nobelman*[]. . . ." *Fed. Nat'l Mortg. Ass'n v. Griffin (In re Griffin)*, 489 B.R 638, 642-43 (Bankr. D. Md. 2013). . . . In the Fourth Circuit, *Nobelman* and *Witt* establish that § 1322(c)(2) may not be used to bifurcate an undersecured claim into secured and unsecured components where its sole security is a lien on the debtor's principal residence. *Witt does not, as [the creditor] suggests, prevent the debtor from restructuring the interest rate and other payment terms on certain mortgage claims under § 1322(c)(2).*

In re Hubbell, 496 B.R. at 791-92 (emphasis added) (footnote omitted).

The *Witt* holding also was examined recently by the Bankruptcy Court for the District of Columbia, which found that "[t]he issue in *Witt* was whether the claim could be bifurcated into secured and unsecured parts, not whether the plan could provide for payment in a different manner than specified by the promissory note." *In re Davenport*, 2017 WL 4011012, at *7. In *Davenport*, the objecting creditors disagreed with the debtor's proposed treatment that would

allocate their equal monthly payments to both principal and interest, arguing that requiring them to accept payments on their principal balances would modify their rights under § 1322(b)(2). *See id.* at *6. After examining the note in question and finding that the loan had matured and all components of the debt were equally due, the court stated that § 1322(c)(2) permitted modification of the original obligation, relying in part on the *Witt* decision to reach its conclusion that a confirmed chapter 13 plan "treats the Note as matured, and the whole debt is to be paid on an amortized basis beginning on the confirmation date." *Id*. at *7-8. The *Davenport* court also expressly stated that "[i]nterest rates can be modified by § 1322(c)(2)[; t]herefore, the creditors' right to a 10.5 percent interest rate under the Note has been modified to a six percent interest rate under the plan to be paid on the aggregate amount owed on the confirmation date." *Id*. at *6 n.2 (citing *In re Hubbell*, 496 B.R. at 789-90).

After examining the issue and the relevant cases (especially the Sixth Circuit BAP's rejection of the *Witt* reading of § 1322(c)), this Court finds the majority view to be more persuasive in light of the express language of the statute and holds that as long as the treatment in a plan otherwise complies with the requirements of § 1325(a)(5), § 1322(c)(2) allows a debtor to cramdown the interest rate on a claim that is secured by a lien on the debtor's residential real property that will be paid out within the life of the plan.

B. The Amended Plan Meets the Confirmation Requirements of § 1325.

On review of its objection, the Court concludes that Bayview's only contention is that Debtor has proposed to cramdown the interest rate – *i.e.,* Bayview does not otherwise argue that the Amended Plan fails to meet the requirements of § 1325(a)(5)(B), nor does it argue that the proposed monthly payment is unacceptable. Neither does Bayview argue that the proposed 6% interest rate fails to comport with *Till v. SCS Credit Corp.*, 541 U.S. 465, 478-79 (2004), which

dictates a formulaic approach to determining an appropriate interest rate. Indeed, the Court finds that the 6% proposed interest rate satisfies the requirements of *Till*. Absent any additional arguments against confirmation of the Amended Plan, the Court finds that the § 1325 requirements have been satisfied, and the Amended Plan should be confirmed.

III. ORDER

Because the Amended Plan does not improperly violate § 1322(b)(2), complies with § 1322(c)(2), and has satisfied the requirements of § 1325, the Court directs the following:

1. The Objection to Confirmation filed by JPMorgan Chase Bank, National Association on February 7, 2018 [Doc. 23] is OVERRULED.

2. The Chapter 13 Trustee shall submit the required documents to effectuate confirmation as soon as possible.

# # #