IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
HONORABLE A. BRUCE CAMPBELL

In re:	)
CHRIS W KNAPP	) Case No. 08-24134ABC
HEATHER F KNAPP	) Chapter 13
	)
Debtors.	)

ORDER DENYING MOTION TO APPROVE POST CONFIRMATION MODIFICATION

Before the Court is the Debtors' ***Motion Requesting Modification*** filed at Docket #43 ("Motion") and Debtors' First Modified Chapter 13 Plan at Docket #42 ("Modified Plan"). Debtors propose to modify their confirmed plan to provide for surrender of the real property that was their residence ("Real Property") to Taylor, Bean & Whitaker Mortgage Corp ("TBWMC"), the holder of the first mortgage on Debtors' Real Property.[1] The provision of their Modified which provides for the surrender of the Real Property to TBWMC reads as follows:

> Property being surrendered: The debtor surrenders the following property securing an allowed secured claim to the holder of such claim. . .

The Modified Plan also provides:

> . . . With respect to the property surrendered, no distribution on the creditor's claim shall be made unless the creditor files a proof of claim or an amended proof of claim to take into account the surrender of the property.

The implication of the foregoing is that any deficiency claim which may arise following the lender's sale of the Real Property will only share in the distributions to Class 4 creditors if the lender files a proof of claim or amended proof of claim, and failure to do so, will subject such claim to any discharge Debtors' might receive in this case. TBWMC did not file (and did not need to file) a proof of claim in this case, and the deadline to file such claims expired on February 2, 2009.

The Debtors' Confirmed Plan (Docket #18) ("Confirmed Plan") provided that Debtors would pay TBWMC directly in accordance with the terms of the loan. The Confirmed Plan did

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[1]Debtors' amended plan was confirmed on February 5, 2009. In their Motion seeking approval of their modified plan, Debtors assert that they moved due to a change of employment for Debtor Husband. Exactly when Debtors moved is not clear but a change of address was not filed until eight (8) months post confirmation. In the Modified Plan, Debtors set the anticipated date of surrender at May 1, 2013, approximately four (4) years post-confirmation.

not cure any arrearage, and because TBWMC was the holder of the first mortgage on the Debtors' then residence, the Debtors could not modify its rights in any manner. See 11 U.S.C. §1322(b)(2). In addition, in their Confirmed Plan, which was a 60 month plan, Debtors indicate that as of December of 2008, there were 312 months remaining on the term of the loan to TBWMC.

Section 1329(a) of the Bankruptcy Code provides:

> At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to–
>
> (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
> (2) extend or reduce the time for such payments;
> (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or
> (4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor
> . . .

Section 1329 limits what modifications may be made to a confirmed plan. Of the permissible grounds for modifying a plan, only sections 1329(a)(1), (2), or (3) are potentially applicable to the relief the Debtors seek. A debtor may modify the confirmed plan so as to address either the ***amount or timing*** of payments on claims of a particular class, or the ***distribution*** on a claim based on payment other than under the plan. It does not speak to altering the amount of an allowed claim.[2]

What Debtors propose in their Modified Plan is to change the nature of the claim held by TBWMC. In the Confirmed Plan, Debtors' treatment of TBWMC is consistent with 11 U.S.C. §1322(b)(2). TBWMC's claim is one on which the last payment is due after the final payment under the plan is due. 11 U.S.C. §1322(b)(5). It is also a claim which is excepted from any discharge the Debtors may receive in this case. 11 U.S.C. §1328(a)(1). Debtors Modified Plan would bifurcate that claim into secured and unsecured portions with the intent and effect of discharging the unsecured portion of the claim.

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[2]The clearest example of this is when debtors modify their plans to take account of a decrease or increase in income. It may change the percentage of the payout on an allowed unsecured claim, or the number of months to pay on the claim, but it does not change the amount of the allowed claim.

Section 1327 of the Code governs the effect of the provisions of a confirmed plan and the order confirming a plan. Section 1327(a) speaks to the finality of the provisions of a confirmed plan and binds the debtor and each creditor regardless of whether the claim of the creditor is provided for by the plan and regardless of whether the creditor has objected to the plan. Section 1327(b) of the Code provides that "except as otherwise provided in the plan or in the order confirming the plan, the confirmation of a plan vests all property of the estate in the debtor." Section 1327(c) provides that "except as otherwise provided in the plan or in the order confirming the plan," the property so vested "is free and clear of any claim or interest of any creditor provided for by the plan." In a case such as this, where the Debtors were paying the secured creditor directly in accordance with the original note and deed of trust, and the rights of the creditor are subject to the anti-modification provision of section 1322(b)(2), the Real Property vested in the Debtors at confirmation subject to the lien of the secured creditor.

Debtors are bound to the provisions of their Confirmed Plan. Section 1327 speaks to the finality of the order of confirmation and section 1329 limits the extent to which the confirmed plan can be modified. Section 1329 neither contemplates nor provides for a *sub rosa* rewrite of a plan. Certainly, if debtors surrender collateral to a secured creditor post confirmation, or a secured creditor is granted relief from stay to repossess collateral post confirmation, there may be budgetary implications for such debtors which would require that they move to modify their plan. What such debtors cannot do is seek to redetermine the amount of an allowed secured claim or bifurcate a secured claim, which was subject to section 1322(b)(2) and (5), and discharge the undersecured portion of the claim. Accordingly, it is

ORDERED that Debtors' Motion is DENIED, without prejudice to seek further relief consistent with this Order and the limitations of section 1329(a).

DATED: July 5, 2013

BY THE COURT:

A. Bruce Campbell
United States Bankruptcy Judge