

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**IN RE: EL LEISHA JENISON, Debtor**

**No. 5:17-bk-72283  
Ch. 13**

**ORDER**

Before the Court is the debtor's Amended Chapter 13 plan filed on November 14, 2017, and United Bank's objection to confirmation of the plan filed on November 15, 2017. The Court heard the creditor's objection on December 20, 2017, and for the reasons stated below, sustains the bank's objection in part and allows the debtor 21 days within which to amend her plan to comply with the Court's order.

In the debtor's plan, the debtor proposes to pay \$1255.00 per month to the trustee for a term of 60 months. United Bank has a secured interest in the debtor's residence by virtue of a real estate mortgage and, according to its proof of claim, has a claim against the property in the amount of \$94,881.65 as of the date the debtor's case was filed with a pre-petition arrearage amount of \$9685.32. The mortgage secures a loan that matures on March 1, 2019. The debtor proposes to make "Pre-confirmation Adequate Protection Payments" for the benefit of United Bank in the amount of \$913.45 per month. In section 5.(B.): *Long Term Debts*, the debtor proposes to pay for the benefit of United Bank the monthly payment of \$913.45 and a monthly arrearage payment of \$211.79. Finally, in the section titled *Other Provisions*, the debtor proposes to satisfy United Bank's claim "by either refinancing or selling all or a portion of the property before sixty month bankruptcy term ends."

United Bank has objected to confirmation of the debtor's plan for two primary reasons. First, because the loan matures and becomes due in full in March 2019, United Bank believes that by proposing to make payments during the life of the plan, the debtor is impermissibly modifying the rights of United Bank in contravention of 11 U.S.C. § 1322(b)(2). Second, United Bank believes that the provision that proposes to satisfy the bank's claim by refinancing or selling the property before the 60-month commitment

period ends violates the code's requirement that payments to United Bank must be in the form of equal monthly amounts under § 1325(a)(5)(B)(iii)(I). The Court will address each objection in turn.

United Bank is correct that § 1322(b)(2) prohibits the modification of the rights of holders of secured claims when the claim is "secured only by a security interest in real property that is the debtor's principal residence . . . ." 11 U.S.C. § 1322(b)(2). The debtor testified that the loan is secured only by her interest in the real property and that the real property is her principal residence. Without more, United Bank would prevail in its objection. However, § 1322(c) is applicable in this instance and provides relief for the debtor:

Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

. . .

(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, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

11 U.S.C. § 1322(c). Because the loan by United Bank becomes due prior to the date on which the final payment under the plan is due, the debtor is permitted to modify the rights of United Bank in compliance with § 1322(c)(2) by proposing to pay the bank's loan in full under her plan. If the debtor's plan otherwise complies with § 1325(a)(5), the debtor would be allowed to modify the rights of United Bank and have her plan confirmed.

Herein lies the rub. Section 1325(a)(5) states three conditions, one of which must be met in order to confirm a plan when there is an allowed secured claim in the plan: (1) the creditor must accept the plan as proposed, (2) the debtor must surrender the property, or (3) the plan must make certain provisions relating to the subject creditor. 11 U.S.C. § 1325(a)(5). In this instance, the creditor has not accepted the plan and the debtor has not proposed to surrender the property, which means that to be confirmed, the debtor's plan must make certain provisions concerning United Bank. Those provisions are threefold: that United Bank retain its lien, that the value of the property is not less than

the allowed amount of the claim, and that the proposed periodic (monthly<sup>1</sup>) payments are in *equal monthly amounts*. 11 U.S.C. § 1325(a)(5)(B). The first two of these provisions are not at issue. However, by proposing to make a balloon payment by refinancing or selling the property before the 60-month commitment period ends, the debtor is not proposing a plan that pays the bank in equal monthly amounts.

The debtor relies on *Bank Northwest v. Potts (In re Potts)*, 421 B.R. 518 (B.A.P. 8th Cir. 2010), for her argument that balloon payments are permissible in a chapter 13 case. Her argument is based on the appellate court's finding that the debtor in *Potts* was permitted to modify a secured creditor's rights under § 1322(b)(2) and was entitled to confirm a plan that modified the creditor's contractual default remedies and provided for a balloon payment to the creditor at the end of five years.<sup>2</sup> However, unlike the case before this Court, in *Potts* the creditor did not hold a claim secured only by the debtor's principal residence and the creditor apparently did not object to the balloon payment.

United Bank has objected to confirmation of the debtor's plan because the plan does not propose to make equal monthly payments. Although the debtor has proposed to pay approximately \$1100 a month for the benefit of United Bank, she has also proposed to pay the bank's claim in full "by either refinancing or selling all or a portion of the property before sixty month bankruptcy term ends." By proposing such treatment, the debtor is not proposing an equal monthly amount to be paid to the bank and, under § 1325(a)(5)(B), the debtor's plan cannot be confirmed. *See Hamilton v. Wells Fargo Bank N.A. (In re Hamilton)*, 401 B.R. 539, 545-46 (B.A.P. 1st Cir. 2009); *In re Lemieux*,

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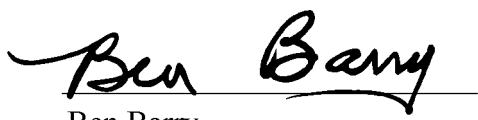
<sup>1</sup> "Periodic" refers to an event that occurs regularly or repeatedly. *Hamilton v. Wells Fargo Bank N.A. (In re Hamilton)*, 401 B.R. 539, 544 (B.A.P. 1st Cir. 2009). The debtor has proposed a monthly payment to the trustee for a period of 60 months.

<sup>2</sup> The fact that the plan the bankruptcy court confirmed included a balloon payment was not one of the issues on appeal. The related issue on appeal was the creditor's argument that projected income from the sale of cattle was too speculative to allow for confirmation.

347 B.R. 460, 464 (Bankr. D. Mass. 2006) (stating plain meaning of § 1325(a)(5)(B)(iii)(I) precludes confirmation of plan that includes balloon payment); *In re Wagner*, 342 B.R. 766 (Bankr. E.D. Tenn. 2006). To satisfy § 1325(a)(5)(B), the debtor would need to propose a plan that pays the bank's claim in full over a 60 month period in equal monthly amounts. Her plan as proposed does not do that.

For these reasons, the Court sustains United Bank's objection to confirmation of the debtor's proposed plan. The debtor shall have 21 days from the date of this order to propose an amended plan that complies with the Court's order.

IT IS SO ORDERED.

  
Ben Barry  
United States Bankruptcy Judge  
Dated: 12/27/2017

cc: Cindy L. Hawkins  
Kyle T. Unser  
Joyce B. Babin