

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

IN RE:

CASE NO. 99-42771-JTL

RICHARD W. PASCHEN
SSN: XXX-XX-XXXX

CHAPTER 13

DOREEN A. PASCHEN
SSN: XXX-XX-XXXX,

DEBTORS.

MEMORANDUM OPINION

American General Finance ("American General") objected to confirmation of Debtors' chapter 13 plan on the grounds of valuation and lack of good faith. American General also disagrees with Debtors' treatment of its claim under § 1322(c)(2) of the Bankruptcy Code ("Code"). After a hearing on June 22, 2000, the court took under advisement the issues related to American General's objection to confirmation. The parties have submitted briefs, and American General has stipulated as to how Debtors would testify. For the reasons that follow, the court will rule in Debtors' favor on the legal issue regarding the treatment of American General's claim under § 1322(c)(2) of the Code. The court will consider the other grounds for objection at the continued confirmation hearing scheduled for Friday, August 25, 2000 in the Bankruptcy Courtroom, 901 Front Avenue, Suite 309, Columbus, Georgia.

DISCUSSION

The parties are in agreement that Debtors' note with

American General is secured solely by real estate that is Debtors' principal residence, and the final payment on that note is due before the final payment under their chapter 13 plan. Accordingly, the parties also agree that this situation is covered by § 1322(c)(2) of the Code. Section 1322(c)(2) provides:

(c)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)(2).

The parties disagree, however, as to the meaning of § 1322(c)(2). Debtor argues that § 1322(c)(2) creates an exception to § 1322(b)(2) by allowing the bifurcation and cramdown of the secured claims on certain short-term mortgages as with any other secured claim not covered by § 1322(b)(2). For support, Debtor relies on the vast majority of cases that deal with this issue. See First Union Mortgage Corp. v. Eubanks (In re Eubanks), 219 B.R. 468 (B.A.P. 6th Cir. 1998); In re Sexton, 230 B.R. 346 (Bankr. E.D. Tenn. 1999); In re Reeves, 221 B.R. 756 (Bankr. C.D. Ill. 1998); In re Mattson,

210 B.R. 157 (Bankr. D. Minn. 1997); In re Young, 199 B.R. 643 (Bankr. E.D. Tenn. 1996). American General argues that § 1322(c)(2)'s language, "payment of the claim as modified," means only the *payment*, and not the claim, can be modified. In support of its position, American General relies on the Fourth Circuit case of Witt v. United Companies Lending Corp. (In re Witt), 113 F.3d 508 (4th Cir. 1997).

This court agrees with the reasoning of the majority line of cases, as explained in Eubanks. In that case, the court addressed and dismissed the rationale of Witt: "The cross reference to § 1325(a)(5) in § 1322(c)(2) is an unequivocal statement of congressional intent that Chapter 13 debtors are empowered by § 1322(c)(2) to bifurcate the special real estate secured claims that this new section excepts from the modification protection in § 1322(b)(2)." Eubanks, 219 B.R. at 473. See also 8 Collier on Bankruptcy, ¶ 1322.16 (Matthew Bender 15th Ed. Revised 2000) ("Section 1322(c)(2) thus expressly provides that certain mortgages may be modified and provided for under section 1325(a)(5).")

Similarly, this court has rejected the idea that § 1322(c)(2) only allows debtors to modify payments rather than claims: "To the contrary, the court agrees with cases finding that the application of § 1322(c)(2), which references § 1325(a)(5), allows for modification of an oversecured short-

term home mortgage claim including its interest rate." In re Leola Terrell, Case No. 99-70556-JTL (Bankr. M.D. Ga. Aug. 20, 1999) (holding that a market rate of interest is appropriate on claims modified pursuant to § 1322(c)(2)).

This court's reasoning in Terrell was not limited to situations where the mortgage lender is oversecured. As the court in Eubanks pointed out, the phrase "provide for payment of the claim as modified pursuant to section 1325(a)(5)" plainly contemplates that undersecured claims can be bifurcated and dealt with as any other secured claim that is not secured solely by a mortgage on the debtor's principal residence. Eubanks, 219 B.R. at 471-72. This means the claim can be stripped down to the value of the collateral and paid at a market rate of interest.

Therefore, the court will allow American General's claim to be modified pursuant to § 1322(c)(2) as discussed above. The court will consider valuation and good faith at the confirmation hearing now scheduled for Friday, August 25, 2000 at 9:00 A.M. in the United States Bankruptcy Courtroom, 901 Front Avenue, Suite 309, Columbus, Georgia.

DATED this ___ day of August 2000.

JOHN T. LANEY, III
UNITED STATES BANKRUPTCY JUDGE

