

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

In the Matter of: : Chapter 13
: :
ALICE R. McCOLUMN, : :
: :
Debtor : Case No. 99-54106 RFH
: :
: :
ALICE R. McCOLUMN, : :
: :
Movant : :
: :
: :
vs. : :
: :
: :
CITY OF MACON, : :
: :
Respondent :

BEFORE

ROBERT F. HERSHNER, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Movant: ROBERT M. MATSON
Post Office Box 1773
Macon, Georgia 31202-1773

For Defendant: THOMAS W. JOYCE
Post Office Box 6437
Macon, Georgia 31208-6437

The Chapter 13 Trustee: CAMILLE HOPE
Post Office Box 954
Macon, Georgia 31202

MEMORANDUM OPINION

Alice R. McColum, Movant, filed on August 11, 2000, a motion to modify her Chapter 13 plan after confirmation. The City of Macon, Respondent, filed an objection on August 21, 2000. A hearing was held on October 23, 2000. The Court, having considered the evidence presented and the arguments of counsel, now publishes this memorandum opinion.

Movant's residence is encumbered by four liens. Associates Financial Services holds the first and fourth liens. Respondent holds the second and third liens.

Movant filed a petition under Chapter 13 of the Bankruptcy Code on October 25, 1999. Movant filed on February 14, 2000, a proposed Chapter 13 plan.¹ Respondent filed an objection to confirmation on March 1, 2000. Movant and Respondent reached an agreement on the treatment of Respondent's liens.²

The Court entered an order on April 17, 2000, confirming Movant's Chapter 13 plan. The confirmed plan treats Respondent's liens as secured claims. The confirmed plan provides that Movant would act as her own disbursing

¹ This Chapter 13 plan was a modification before confirmation of Movant's original Chapter 13 plan. 11 U.S.C.A. § 1323 (West 1993).

² Counsel for Movant and Respondent circulated a proposed consent order which was not presented to the Court.

agent for payments on Respondent's second lien. The confirmed plan provides that Movant would make payments on Respondent's third lien through her Chapter 13 plan.

Movant became delinquent on her payments on the first lien held by Associates Financial Services.³ Movant filed on August 11, 2000, a motion to modify her Chapter 13 plan after confirmation. Movant proposes, in relevant part, to modify her confirmed Chapter 13 plan to treat Respondent's liens as wholly unsecured claims. The modified plan proposes no payments on unsecured claims, including the liens held by Respondent. Respondent contends that res judicata and section 1327(a) of the Bankruptcy Code⁴ prevent the proposed modification.

Movant testified that her monthly income has decreased by \$300. Movant testified that her utility expenses have increased. Respondent concedes that there is no equity

³ Movant was acting as her own disbursing agent for payments on the first lien held by Associates Financial Services.

⁴ 11 U.S.C.A. § 1327(a) (West 1993). This section provides as follows:

§ 1327. Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and 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).

in Movant's residence for its liens.⁵ The current balance owed on Respondent's second and third liens is \$15,000 and \$8,000 respectively.

Section 1329(a) and (b) of the Bankruptcy Code⁶ provides that a confirmed Chapter 13 plan may be modified. Section 1329(a) and (b) provides as follows:

§ 1329. Modification of plan after confirmation

(a) 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; or

(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.

⁵ The Eleventh Circuit Court of Appeals has held that a wholly unsecured lien on a residence is not entitled to the anti-modification protection of section 1322(b)(2) of the Bankruptcy Code. Thus, a Chapter 13 plan may "strip off" a wholly unsecured lien on a residence. Tanner v. FirstPlus Financial, Inc. (In re Tanner), 217 F.3d 1357 (11th Cir. 2000); see also American General Finance, Inc. v. Dickerson (In re Dickerson), 222 F.3d 924 (11th Cir. 2000).

⁶ 11 U.S.C.A. § 1329(a), (b) (West 1993).

(b)(1) Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

11 U.S.C.A. § 1329(a), (b) (West 1993).

Movant relies upon Day v. Systems & Services Technologies, Inc. (In re Day).⁷ In that case, the confirmed Chapter 13 plan provided that the creditor's claim was fully secured by a lien on the debtor's truck. The debtor later learned that she would be transferred overseas. This Court allowed the debtor to modify her confirmed Chapter 13 plan by surrendering her truck to the secured creditor and then reclassifying the unpaid balance of the claim as unsecured.

In the case at bar, Movant does not purpose to surrender the collateral, namely, her residence. Movant's confirmed Chapter 13 plan provided that Respondent's liens would be treated as secured claims. The Court is not persuaded that Movant's loss of income changes the nature of Respondent's secured claims as established by the order of confirmation.

An order in accordance with this memorandum opinion will be entered this date.

⁷ 247 B.R. 898 (Bankr. M.D. Ga. 2000).

DATED the 12th day of February, 2001.

ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court

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ALICE R. McCOLUMN,	:	
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Movant	:	
	:	
vs.	:	
	:	
	:	
CITY OF MACON,	:	
	:	
Respondent	:	

ORDER

In accordance with the memorandum opinion entered this date; it is

ORDERED that the Objection to Confirmation of Debtor's Modified Chapter 13 Plan filed on the 21st day of August, 2000, by the City of Macon, Respondent, hereby is sustained; and it is further

ORDERED that the Motion for Amendment and Modification of Plan After Confirmation filed on the 11th day of August, 2000, by Alice R. McColumn, Movant, hereby is denied.

SO ORDERED this 12th day of February, 2001.

ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court

CERTIFICATE OF SERVICE

I, Carolyn Hubbard, certify that a copy of the attached and foregoing was mailed to the following:

Mr. Robert M. Matson
Attorney at Law
Post Office Box 1773
Macon, GA 31202-1773

Mr. Thomas W. Joyce
Attorney at Law
Post Office Box 6437
Macon, GA 31208-6437

Ms. Camille Hope
Chapter 13 Trustee
Post Office Box 954
Macon, GA 31202

This 12th day of February, 2001.

Carolyn Hubbard
Deputy Clerk
United States Bankruptcy Court