

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

IN RE:

SHELLY MARTIN

CASE NO. 12-50349

DEBTOR

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the Creditor Bank of America's objection [Doc. 10] to confirmation of the Debtor's Chapter 13 plan [Doc. 3]. The Debtor's plan proposes to cram down the Creditor's lien on the Debtor's mobile home and the real estate on which it sits to the value of the real estate and mobile home pursuant to 11 U.S.C. §506(a). The Creditor objects and argues the Debtor is seeking to impermissibly modify its claim in violation of the anti-modification provision in §1322(b)(2). For the following reasons, the Creditor's objection to confirmation shall be overruled.

Facts

The Debtor filed for Chapter 13 relief on February 9, 2012. On Schedule A, she lists a 1.8 acre lot located at 573 Fairground Road, Stanford, Kentucky, valued at \$9,000.00 (the "Real Property") and encumbered by the Creditor's first mortgage in the estimated amount of \$66,709.00. On Schedule B, the Debtor lists a 1996 double-wide Fairmont Mobile Home (the "Mobile Home") located on the Real Property, valued at \$20,000.00.

Shortly after the filing of the petition, the Creditor filed a proof of claim (POC #6-1) (the "Claim") asserting a fully secured claim of \$85,933.87. Attached to the Claim is a properly recorded Mortgage encumbering the Real Property. The Mortgage contains a "Manufactured Home Rider" stating the parties' intent to convert the Mobile Home to the Real Property

encumbered by the Mortgage. The Claim does not include an affidavit of conversion or a certificate of title to the Mobile Home.

Concurrent with the filing of her petition, the Debtor proposed a Chapter 13 Plan [Doc. 3] (the "Plan") that crams down the Creditor's Claim on the Real Property and the Mobile Home to \$29,000.00 (based on a value of \$9,000.00 for the Real Property and \$20,000.00 for the Mobile Home) pursuant to §506(a). The Debtor proposes to pay the Creditor's Claim inside the Plan with monthly payments of \$604.14 at a 5.25% interest rate.

The Creditor objects to confirmation of the Debtor's Plan [Doc. 10], arguing that the Debtor is impermissibly seeking to cram down its fully secured claim on the Debtor's real property that is her primary residence, which is prohibited by §1322(b)(2).¹

In response, the Debtor argues [Doc. 11] that the proposed cram down of the Creditor's lien to the value of the Real Property and Mobile Home is appropriate. According to the Debtor, the Creditor is not fully secured by the value of the Real Property and Mobile Home because its lien on the Real Property does not extend to the Mobile Home where the requirements of K.R.S. §186A.297² are not satisfied by the surrender of the certificate of title and filing of the affidavit of conversion. The Debtor argues that because the Mobile Home is personal property and not part of the real estate, the anti-modification provision of §1322(b)(2) preventing modification of a lien on the Debtor's primary residential real estate does not apply. *See, e.g., In re Belcher*, E.D. Ky., Case No. 07-60382 [Doc. 43] (holding §1322(b)(2) does not prevent a debtor from cramming

¹ 11 U.S.C. §1322(b)(2) states, in part, "Subject to subsections (a) and (c) of this section, the plan may...modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders in any class of claims."

² K.R.S. §186A.297 states, in part, "When a manufactured home is or is to be permanently affixed to real estate, the owner may execute and file an affidavit of conversion to real estate with the county clerk of the county in which the real estate is located. The affidavit shall attest to the fact that the home has been or will be permanently affixed to the real estate and be accompanied by a surrender of the Kentucky certificate of title. The county clerk shall file the affidavit of conversion to real estate in the miscellaneous record book."

down a creditor's claim secured by a mobile home that is personal property and the debtor's principal residence); *In re Wilson*, E.D. Ky., Bankr. Case No. 02-34305 [Doc. 45] (holding the anti-modification protection of §1322(b)(2) applies only if the claim is secured by a security interest in real property that is the debtor's principal residence and does not apply to a mobile home that is personal property and the debtor's principal residence). Furthermore, although the Debtor argues the Creditor cannot claim a secured interest in the Mobile Home as personal property because the Creditor failed to note its lien on the certificate of title pursuant to K.R.S. §186A.190³, the Debtor's Plan proposes to pay the value of the Real Property and the Mobile Home to the Creditor as its secured claim.

The Creditor filed a supplemental objection [Doc. 38] in response to the Debtor's arguments and takes the position that the intent of the parties was to convert the Mobile Home to real estate pursuant to the Manufactured Home Rider. The Creditor argues it is entitled to an equitable lien on the Mobile Home because the Debtor failed to timely take title to the Mobile Home and surrender the title for conversion to the Real Property, leaving the Creditor unable to perfect its security interest in the Mobile Home. The Creditor further contends that because it has "substantially complied" with the requirements of K.R.S. §186A.297 by recording the Manufactured Home Rider with the Mortgage, the Mobile Home converted to real estate, and its lien therefore encumbers the Debtor's primary residential real estate, thus it is protected by the anti-modification provision of §1322(b)(2).

³ K.R.S. §186A.190 states, in part, "(1) Except as provided in subsection (4) of this section and in K.R.S. §355.9-311(4), the perfection and discharge of a security interest in any property for which has been issued a Kentucky certificate of title shall be by notation on the certificate of title. The notation of the security interest on the certificate of title shall be in accordance with this chapter and shall remain effective from the date on which the security interest is noted on the certificate of title for a period of seven (7) years, or, in the case of a manufactured home, for a period of thirty (30) years, or until discharged under this chapter and KRS Chapter 186. The filing of a continuation statement within the six (6) months preceding the expiration of the initial period of a notation's effectiveness extends the expiration date for seven (7) additional years."

The Debtor responded to the supplemental objection [Doc. 40] by arguing that the Creditor is not entitled to an equitable lien, “substantial compliance” is insufficient to satisfy the requirements of K.R.S. §186A.297, and the Creditor may only perfect a lien against the Mobile Home by notation on the certificate of title. See K.R.S. §186A.297; *U.S. Bank, NA v. Barbee (In re Barbee)*, 461 B.R. 711, 717 (6th Cir. BAP 2011) (holding under Kentucky law, a creditor did not perfect its lien on the debtor’s manufactured home where it did not place a notation of the lien on the certificate of title, file an affidavit of conversion and surrender the certificate of title, or seek a court order converting the property).

The Trustee filed her report and recommendation [Doc. 27] on July 9, 2012, and takes the position that the Creditor may have a non-perfected, avoidable lien on the Mobile Home, but abandons the Estate’s interest therein.

The Court held a hearing on the Creditor’s objection to confirmation on November 1, 2012 [Doc. 48] and took the matter under submission. The matter is now ripe for determination.

Jurisdiction

The Court has jurisdiction pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B) and (L). Venue is proper pursuant to 28 U.S.C. §1408.

Analysis

Before the Court is the Creditor’s objection to plan confirmation. Thus, the only issue to determine is whether the Creditor holds the kind of claim which cannot be modified pursuant to §1322(b)(2). This is not a lien avoidance action; rather, the procedural posture of this matter is no different than that approved in *In re Belcher* and *In re Wilson, supra*. As part of the confirmation process, the Court may determine whether the Creditor’s Claim may be modified in the Debtor’s Plan without an adversary proceeding. See *In re Stark*, No. 10-22108, 2011 WL 248521, *2 (Bankr. E.D. Ky. Jan. 24, 2011).

The party objecting to confirmation of a Chapter 13 plan carries the initial burden to produce evidence in support of an objection and the debtor has the ultimate burden of proof to show that confirmation requirements pursuant to §1325 are satisfied. *See, e.g., In re Lofty*, 437 B.R. 578 (Bankr. S.D. Ohio 2010). The Creditor's objection turns on its characterization of the Mobile Home as real estate rather than personal property. If the Mobile Home is real estate and the Debtor's primary residence, the Creditor's Claim cannot be modified pursuant to §1322(b)(2). In contrast, the Debtor's Plan treats the Mobile Home as personal property and a claim on personal property that is the Debtor's primary residence may be modified without violating §1322(b)(2). Therefore, to succeed in its objection, the Creditor must provide evidence sufficient to support its characterization of the Mobile Home as real estate. The Creditor fails to meet its burden.

In Kentucky, a mobile home is personal property for which a certificate of title is required unless affirmative steps are taken to convert the home to real property. *See* K.R.S. §186A.070(1); *Palmer v. Washington Mutual Bank (In re Ritchie)*, 416 B.R. 638, 643 (6th Cir. BAP 2009) ("Under Kentucky law, a manufactured home is personal property unless and until one complies with K.R.S. §186A.297..."); *PHH Mortgage Servs. v. Higgason*, 345 B.R. 584, 586-87 (E.D. Ky. 2006) (same). The requisite steps are set forth in K.R.S. §186A.297:

When a manufactured home is or is to be permanently affixed to real estate, the owner may execute and file an affidavit of conversion to real estate with the county clerk of the county in which the real estate is located. The affidavit shall attest to the fact that the home has been or will be permanently affixed to the real estate and be accompanied by a surrender of the Kentucky certificate of title. The county clerk shall file the affidavit of conversion to real estate in the miscellaneous record book.

The Creditor admits that the statutory requirements of K.R.S. §186A.297 have not been met. No affidavit of conversion has been filed in the miscellaneous record book and the Debtor did not surrender the certificate of title. The Creditor argues that it has "substantially complied" with K.R.S. §186A.297 in recording the Manufactured Home Rider indicating the parties intent to

convert the Mobile Home to real estate and this is sufficient to convert the Mobile Home to real estate. But the Creditor admits “Kentucky Courts have not considered applying substantial compliance to K.R.S. §186A.297” [Doc. 38 at 3]. The requirements of K.R.S. §186A.297 are clear. If the language of a statute is “clear and unambiguous and if applying the plain meaning of the words would not lead to an absurd result, further interpretation is unwarranted.” *Autozone, Inc. v. Brewer*, 127 S.W.3d 653, 655 (Ky. 2004). The Court will not deviate from the plain language of the statute absent authority to the contrary.

Finally, the Creditor argues it is entitled to an equitable lien based on the Debtor’s conduct. This argument is not persuasive. The Creditor seeks an equitable remedy that may only exist by the grace of judicial action. The Creditor does not have a pre-petition judgment entitling it to an equitable lien and this Court cannot create one post-petition. See *XL/Datacomp, Inc. v. Wilson (In re Omegas Group, Inc.)*, 16 F.3d 1443 (6th Cir. 1994).

Conclusion

The Creditor has not complied with K.R.S. §186A.297 and, under Kentucky law, the Mobile Home is personal property. Thus, the proposed modification of the Creditor’s Claim in the Debtor’s Plan does not violate §1322(b)(2). For this reason, IT IS HEREBY ORDERED the Creditor’s objection [Doc. 10] to confirmation of the Debtor’s Chapter 13 Plan [Doc. 3] is OVERRULED.

IT IS HEREBY FURTHER ORDERED the confirmation hearing is CONTINUED to **9:30 a.m. on Thursday, February 7, 2013, in the U.S. Bankruptcy Courtroom, 100 E. Vine Street, 2nd Floor, Lexington, Kentucky.**

Copies To:
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Katherine Sanford, Esq.
Beverly Burden, Esq.
Elizabeth Thompson, Esq.

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Gregory R. Schaaf**  
**Bankruptcy Judge**  
**Dated: Friday, January 04, 2013**  
**(tnw)**