

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

IN RE:

JOHNNY CABLE
TONI CABLE

CASE NO. 11-70169
CHAPTER 13

DEBTORS

MEMORANDUM OPINION AND ORDER

Debtors propose to modify their confirmed plan in order to reimburse their mortgage holder U.S. Bank National Association a/k/a U.S. Bank, N.A. ("the Bank") for back taxes and a solid waste bill that were paid by the Bank.

The proposed modification seeks to increase Debtors' monthly payments. A hearing was held on June 13, 2012, and the matter was taken under submission to determine whether the Bank's legal argument that the arrears are postpetition arrears that cannot be cured pursuant to 11 U.S.C. §1322(b)(2) and Nobelman v. American Savings Bank, et al., 508 U.S. 324, 331 (1993) is correct.

Section 1322(b)(2) prohibits a plan from modifying a secured claim when the claim is secured only by a security interest in real property that is the debtor's principal residence. The Bank's citation to Nobelman points to a page where the U.S. Supreme Court discussed that a creditor's rights may not be modified under section 1322(b)(2) when the lender's claim is secured only by a lien on the debtor's principal residence. Nobelman, 508 U.S. at 331.

Subsection 5 of Section 1322(b) states that a plan may:

notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due; . . . 11 U.S.C. §1322(b)(5)

Thus, section 1322(b)(5) by its express terms allows a cure of default despite section 1322(b)(2).

“Although section 1322(b)(5) is not limited to secured or residential loans, its most common use by far is to cure defaults on residential mortgages. It may be utilized to cure postpetition defaults as well as prepetition defaults.” 8 COLLIER ON BANKRUPTCY ¶ 1322.09[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2012) *citing* In re Mendoza, 111 F.3d 1264 (5th Cir. 1997); In re McCollum, 76 B.R. 797 (Bankr. D. Or. 1987); In re Simpkins, 16 B.R. 95 (Bankr. E.D. Tenn. 1982).

The Court finds that Debtors are not prohibited by 11 U.S.C. §1322 from curing the postpetition arrears due to the Bank, and the Bank’s objection on this issue is OVERRULED.

The Court makes no finding with respect to the adequacy of the proposed modification, and IT IS FURTHER ORDERED that Debtors’ Motion to Modify Plan after Confirmation [Doc. 70] is continued for hearing on July 11, 2012, at 11:00 a.m., in the U.S. Bankruptcy Courtroom, 608 BB&T Bank Building, 164 Main Street, Pikeville, Kentucky.

COPIES TO:

Debtors

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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:**  
**Tracey N. Wise**  
**Bankruptcy Judge**  
**Dated: Tuesday, June 19, 2012**  
**(tnw)**