UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION

IN RE:

KIMBERLY MARLA RATLIFF CASE NO. 14-21064

DEBTOR

ORDER OVERRULING CHAPTER 13 TRUSTEE'S RECOMMENDATION AS TO CONFIRMATION

This matter came on for hearing on confirmation of Debtor's Amended Chapter 13 Plan [Doc. 26] on October 14, 2014. No party filed an objection to confirmation; however, the Chapter 13 Trustee filed a "Report and Recommendation as to Confirmation" in which she recommended confirmation, but stated that a special provision in the plan "is contrary to prevailing legal authority" [Doc. 29]. The Trustee requests that the provision be deleted from the plan. Following briefing, the matter was submitted for decision.

The special provision that the Trustee contends is contrary to legal authority states:

> In the event that relief from stay is granted to any creditor addressed in Section II, or in the event that the Debtor surrenders the collateral to the creditor after confirmation, any resulting deficiency, after liquidation of the collateral, shall be classified and paid only as a general unsecured claim, but only up to the amount of said deficiency. Any amount unpaid on said deficiency claim shall be discharged upon completion of the plan. This special provision is intended to cover any and all secured claims, whether payment on the claims are to be made through the plan by the Trustee or to be made directly by the Debtor.

[Doc. 26, Art. VII.B]. The Trustee argues that this special provision for collateral surrendered or repossessed post-confirmation is contrary to binding Sixth Circuit law set forth in Chrysler Fin. Corp. v. Nolan (In re Nolan), 232 F.3d 528 (6th Cir. 2000) and Ruskin v. DaimlerChrysler Servs. N.A., L.L.C. (In re Adkins), 425 F.3d 296 (6th Cir. 2005).

In Nolan, the confirmed plan provided for payment of the creditor's allowed secured claim which was set at the value of its collateral. Post-confirmation, the Debtor sought to modify the plan to surrender the collateral and treat any deficiency as an unsecured claim. The Sixth Circuit held that the reclassification of a secured claim was not an authorized modification under 11 U.S.C. § 1329. Five years later, in Adkins, a secured creditor sought and obtained stay relief, repossessed its collateral and liquidated it post-confirmation. Relying on Nolan, the Court held that the Trustee was required to pay the deficiency amount of its allowed secured claim in accordance with the confirmed plan and the deficiency claim could not be reclassified, post-confirmation, as an unsecured claim.

In further support of her position, the Trustee asserts that a plan with similar language was confirmed over a creditor's objection, but that the Court reserved ruling on the allowance of any deficiency claim until such time as a deficiency claim arose. In re Potter, No. 05-17003, slip op. (Bankr. E.D. Ky. May 30, 2006).

The Debtor distinguishes Nolan and Adkins, arguing that those cases addressed attempted post-confirmation plan modifications/reclassifications and not the treatment of a secured claim in an original plan awaiting confirmation. Debtor contends that § 1325(a)(5)(A) does not limit the treatment of a secured claim if the holder of the secured claim has accepted the plan, and here, the special provision has drawn no objection.

The Court agrees with the Debtor's position. Nolan and Adkins involved post-confirmation attempts to reclassify and pay claims that varied from the terms of a confirmed plan in violation of §§ 1329 and 1327, not whether the treatment of a secured claim is permissible when the creditor is deemed to have accepted the plan. In Adkins, the Court reasoned:

> [S]ection 1327 provides that once a plan is confirmed, its provisions bind the debtor and each creditor. Indeed, confirmation of a plan has been described as "res

judicata of all issues that could or should have been litigated at the confirmation hearing." In re Cameron, 274 B.R. 457, 460 (Bankr. N.D. Tex. 2002).

> Because all issues addressed during a plan confirmation are given preclusive effect, the bifurcation of a creditor's claim into a secured and an unsecured claim is likewise given preclusive effect. Thus if a creditor has an allowed secured claim of x dollars, which must be paid during the life of the plan, that issue has been litigated and cannot be altered.

Adkins, 425 F.3d at 302 (quoting In re Coffman, 271 B.R. 492, 495 (Bankr. N.D. Tex. 2002)). Here, unlike either Nolan or Adkins, the bifurcation of the claim and the potential change in the claim's classification, is set forth as part of the original plan confirmation process. Thus, absent an objection from a secured creditor, each has accepted the chapter 13 plan and this treatment of its claim. Flynn v. Bankowski (In re Flynn), 402 B.R. 437, 443 (B.A.P. 1st Cir. 2009); In re Averhart, 372 B.R. 441, 444 (Bankr. E.D. Wis. 2007). Likewise, it is for this reason that Potter, *supra*, is distinguishable from the instant case—in Potter, the creditor objected to the claim treatment and did not accept the plan. The plan is not contrary to the Nolan or Adkins prohibitions where the creditor has accepted this treatment of its claim.

IT IS HEREBY ORDERED that the Amended Chapter 13 Plan [Doc. 26] shall be confirmed, and the Chapter 13 Trustee is directed to tender a proposed confirmation order in conformity with the local form, KYEB Local Form 3015-3.

Signed By:
Tracey N. Wise
Bankruptcy Judge
Dated: Monday, November 10, 2014
(tnw)