

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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In re

CALLIE MAY WILSON TAYLOR,  
  
Debtor.

Case No. 99-24839-L  
Chapter 13

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**OPINION AND ORDER  
DENYING CONFIRMATION OF PROPOSED PLAN**

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This chapter 13 case came before the Court for hearing on September 15, 1999, upon the objections to the Debtor's Second Modification of Plan Before Confirmation filed by the holders of second and third priority liens upon the Debtor's residence. The objections raise two issues. First, whether 11 U.S.C. § 1322(b)(2) permits modification of an undersecured residential mortgage for which the final payment is due after the conclusion of the proposed plan. Second, whether 11 U.S.C. § 1322(b)(2) and 11 U.S.C. § 1322(c)(2) permit modification of a wholly unsecured residential mortgage for which the final payment is due during the life of the plan. The Court answers no to the first question, but yes to the second. When a residential mortgage is wholly unsecured under any fair valuation of the property and the final payment is due before the conclusion of the chapter 13 plan, 11 U.S.C. § 1322(c)(2) permits modification of the claim pursuant to 11 U.S.C. § 1325(a)(5)(B). This is a core proceeding. *See* 28 U.S.C. § 157(b)(2)(L).

The petition initiating this chapter 13 case was filed on April 21, 1999. The only real property owned by the Debtor and her invalid husband is their residence which is encumbered by three mortgages. According to Mrs. Taylor, the value of the property is \$40,300.00. No other

evidence of the value of the property was presented, thus the Court accepts Mrs. Taylor's valuation of the property as its own.

The parties stipulated to the following facts. The first mortgage, held by EquiCredit Corporation, had an outstanding balance as of the filing of the petition of \$31,414.59 with \$2,271.20 in arrears.

The second mortgage is held by Tri-State Home Improvement, Inc., d.b.a. The Money Store. Its outstanding balance as of the filing of the petition was \$15,985.55 with \$1,064.14 in arrears. The obligation is evidenced by a Home Improvement Retail Installment Contract, dated August 19, 1996. According to the contract, the original principal obligation of 14,986.00 was to repaid together with interest at the annual rate of 13.990% in 180 equal monthly installments of \$199.47. The first payment was due September 18, 1999.

The third mortgage is held by Commercial Credit Plan Incorporated (Commercial Credit). Its outstanding balance on the date of the petition was \$5,580.93. The combined Disclosure Statement, Note and Security Agreement signed by the Taylors provides amortization of the original principal obligation of \$7,547.34 together with interest at the annual rate of 20.99% over 60 months in equal installments of \$204.14. The first payment was due on January 11, 1997.

The Debtor's plan as modified on June 14, 1999, proposes that the Trustee will disburse ongoing payments to EquiCredit in the amount of \$376.22 per month together with a payment of \$50.00 per month toward the arrearage. The Debtor proposes to treat the claim of The Money Store

as secured only as to the difference between the value of the property (\$40,300.00) and the amount of the first mortgage (\$31,414.59), or \$ 8,885.41. The Debtor proposes to continue to make ongoing mortgage payments to The Money Store in the contractual amount, but to pay only \$8,885.41, rather than the full outstanding balance. The Debtor proposes to treat the balance due to The Money Store as a general unsecured claim. The Debtor proposes that the claim of Commercial Credit, which is wholly unsecured, as a general unsecured claim. Finally, the Debtor proposes that the duration of the plan be 60 months.

Both The Money Store and Commercial Credit object to the Debtor's proposed plan. Both parties contend that 11 U.S.C. § 1322(b)(2) bars modification of any mortgage secured by real property which serves as the Debtor's principal residence regardless of whether the claim is supported by value.

## **II.**

Generally, 11 U.S.C. § 506(a) provides that an allowed claim secured by a lien on property in which the estate has an interest is secured to the extent of the value of the creditor's interest in the estate's interest in the property and is unsecured as to any remaining balance. For most types of collateral, this means that the chapter 13 debtor may propose a plan which bifurcates the claim of an undersecured creditor into its secured and unsecured components. This relief is not available, however, with respect to claims secured only by the debtor's principal residence. 11 U.S.C. § 1322(b)(2) prohibits the modification of the rights of the holder of a claim secured only by a

secured interest in the debtor's residence. In *Nobleman v. American Savings Bank*, 508 U.S. 324, 443 S. Ct. 2106 (1993), the Supreme Court held that § 1322(b)(2) prohibits chapter 13 debtors from bifurcating the claims of undersecured mortgage creditors.

The decision in *Nobleman* controls the treatment that must be provided to The Money Store. The Debtor may not modify the claim of The Money Store by bifurcating its claim into secured and unsecured portions. The objection of The Money Store will be sustained.

### III.

The Debtor's proposed treatment of the claim of Commercial Credit raises a slightly different issue than that of The Money Store. According to its original terms, the last payment to Commercial Credit is due before the date on which the final payment under the proposed plan is due. 11 U.S.C. § 1322(c) provides an exception to the operation of 11 U.S.C. § 1322(b) for claims secured by the debtor's principal residence for which the last payment on the original payment schedule is due before the final payment under the plan. The plan may provide for payment of these types of claims as modified pursuant to § 1325(a)(5). Section 1325(a)(5) provides:

(a) Except as provided in subsection (b), the court shall confirm a plan if ---

(5) with respect to each allowed secured claim provided for by the plan ---

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or  
(C) the debtor surrenders the property securing such claim to such holder.

11 U.S.C. § 1325(A)(5).

The Debtor argues in effect that Commercial Credit has no “allowed secured claim,” and thus that she has satisfied the requirements of § 1325(a)(5) by providing no distribution to Commercial Credit on account of its allowed secured claim. Put another way, the Debtor argues that the value of Commercial Credit’s allowed secured claim is zero and that the present value of the payments proposed by the Debtor on account of this allowed secured claim is also zero. Thus the requirement of § 1325(a)(5) is met.

The Debtor is correct. “Section 1322(c)(2) now creates an ‘exception to the exception’ for the subset of real property secured claims ‘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.’” *First Union Mortgage Corp. v. Eubanks (In re Eubanks)*, 219 B.R. 468, 470-71 (6<sup>th</sup> Cir. BAP 1998). For these claims, Congress “abrogated the protection of home mortgages from modification in Chapter 13 . . . .” *Id.* at 471. Further, even if Commercial Credit’s claim were not within the exception to the exception of § 1322(c), the fact that it is wholly unsecured would provide a basis

for the treatment proposed by the Debtor according to most courts. *See* cases cited in *Smith v. First Citizens Bank (In re Smith)*, 215 B.R. 716, 719 (Bankr. W.D. Tenn. 1998) (Boswell, J.) Commercial Credit is not the holder of an allowed secured claim. The objection of Commercial Credit to confirmation of the Debtor's proposed plan will be overruled.

### **ORDER**

The objection of The Money Store is sustained. The objection of Commercial Credit is overruled. Confirmation of the Debtor's proposed plan as modified is denied. The Debtor shall have fifteen (15) days from the entry of this order to file an amended plan in conformity with this opinion. Failure of the Debtor to timely propose an amended plan will result in the dismissal of this case without further notice.

BY THE COURT

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JENNIE D. LATTA  
United States Bankruptcy Judge

Date: October 25, 1999  
Unpublished

*In re Callie May Wilson Taylor*  
Chapter 13 Case No. 99-24839-L  
Opinion and Order Denying Confirmation of Proposed Plan

cc: Debtor  
Attorney for Debtor  
Attorney for Creditor EquiCredit Corporation  
Attorney for Tri-State Home Improvement, Inc., d.b.a. The Money Store  
Attorney for Commercial Credit Plan Incorporated  
Chapter 13 Trustee