



Dated: July 17, 2020
The following is ORDERED:

A handwritten signature in cursive script that reads "Jennie D. Latta".

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
SHELANDRA YVETTE FORD,
Debtor.

Case No. 14-26442
Chapter 13

Winning Properties, LLC,
Movant,
v.
Shelandra Yvette Ford,
Respondent.

Motion to Modify Plan [Dkt. No. 114];
Motion to Set Aside Order [Dkt. No. 136];
and Objection to Amended Proof of Claim
[Dkt. No. 140]

OPINION

BEFORE THE COURT are the following:

1. *Motion to Set Aside Discharge Order* filed by Winning Properties, LLC (“Winning”) on November 11, 2019 [Dkt. No. 113];

2. *Motion to Modify Plan to Increase Percentage Paid to Unsecured Creditors, or Alternatively, Deny Discharge*, filed by Winning on November 11, 2019 [Dkt. No. 114];
3. *Response to Motion to Set Aside Discharge Order* filed by the Debtor on January 1, 2020 [Dkt. No. 119];
4. *Response to Motion to Modify Plan* filed by the Debtor on January 1, 2020 [Dkt. No. 120];
5. *Motion to Set Aside April 28, 2020 Order Pursuant to B.R. 9024 and FRCP 60(b)(6)* filed by the Debtor on June 30, 2020 [Dkt. No. 136];
6. *Response to Debtor's Motion to Set Aside April 28, 2020 Order* filed July 13, 2020 [Dkt. No. 139];
7. *Amended Proof of Claim* filed by Winning on July 10, 2020 [Claim No. 18-2]; and
8. *Debtor's Objection to Amended Proof of Claim Filed by Creditor Winning Properties, LLC*, filed July 14, 2020 [Dkt. No. 140].

For the following reasons, the *Motion to Modify Plan* will be denied; the *Motion to Set Aside April 28, 2020 Order* will be granted; and the *Objection to Amended Proof of Claim* will be sustained. This is a core proceeding. 28 U.S.C. § 157(b)(2)(A), (B), (I), and (J).

BACKGROUND FACTS

The Debtor filed her voluntary petition for relief under Chapter 13 of the Bankruptcy Code on June 24, 2014. Her plan was also filed that day. [Dkt. Nos. 1 and 2]. The case was assigned to Bankruptcy Judge George W. Emerson and Chapter 13 Trustee Sylvia Ford Brown.

Pursuant to 11 U.S.C. § 1326(a)(1), the Debtor's first payment was due thirty days thereafter, on July 24, 2014.

The Debtor's applicable commitment period was three years. [Dkt. No. 5].

The Debtor entered into a Residential Lease Agreement with Winning on September 27, 2014, after the petition was filed. [Attachment to Proof of Claim 18-1].

The *Order Confirming Plan* was entered February 12, 2015. [Dkt. No. 55]. The confirmed plan made no provision for any potential claim of Winning.

Winning filed a *Motion for Request for Allowance and Immediate Payment of Administrative Expenses* on May 4, 2016, reciting that the Debtor and Winning had entered into a residential lease after her petition was filed, and that a default had occurred. [Dkt. No. 71].

On May 4, 2017, this court entered its order allowing Winning a postpetition claim in the amount of \$3,223.00, plus unspecified attorney fees to be treated as a class 1 unsecured claim.¹ [Dkt. No. 77]. In this district, Class 1 claims are generally paid at 100%, but the docket does not reflect the filing of a modified plan specifically providing for this claim.

Winning filed a proof of claim on November 28, 2017, in the amount of \$6,752.00, presumably consisting of the rent arrearage allowed by the court together with attorney's fees in the amount of \$3,529.00. [Proof of Claim No. 18-1]. No objection was filed.

On February 9, 2018, the Chapter 13 Trustee filed a *Motion to Modify Plan*, which stated that the monthly payment to Winning was insufficient to pay out their claim within the life of the plan, and that the monthly payment to Winning should be increased, with a corresponding increase

¹ Under the Bankruptcy Code, postpetition claims may be allowed pursuant to section 1305 if they: (1) are for consumer debts, (2) that arise after the order for relief, and (3) that are for property or services necessary for the debtor's performance under the plan. 11 U.S.C. § 1305(a)(2). These are not administrative expenses allowable under section 503, and they may or may not be provided for in the chapter 13 plan. If a proof of claim is filed by a claimant that holds a postpetition consumer claim, it is determined under section 502(a) as of the date the claim arose, and allowed or disallowed under sections 502(a), (b), (c), (d), or (e), as if it had arisen before the filing of the petition. 11 U.S.C. § 1305(b). If postpetition claims are provided for in a confirmed plan, those claims are subject to discharge unless prior approval by the trustee of the debtor's incurring the debt was practicable and was not obtained. 11 U.S.C. § 1328(d).

in the Debtor's monthly plan payment. [Dkt. No. 84]. On April 19, 2018, the Debtor filed an *Expedited Motion to Reduce Percentage to Unsecured Creditors*, which sought to reduce the dividend to unsecured creditors to ten percent (10%) or what had already been paid. [Dkt. No. 88].

The Debtor's *Expedited Motion to Reduce Percentage* was granted, and, on May 18, 2018, an order was entered which reduced the dividend to unsecured creditors to ten percent (10%). The order also increased the Debtor's plan payment from \$160.00 to \$199.00, semi-monthly. [Dkt. No. 91]. The Chapter 13 Trustee entered an order withdrawing her *Motion to Modify Plan* later that day. [Dkt. No 93].

On September 3, 2019, the Trustee again filed a *Motion to Modify Plan to Increase Percentage Paid to Unsecured Creditors and to Increase Plan Payment*, indicating that it had come to the Trustee's attention that the Debtor had recently been elected Register of Deeds for Shelby County, Tennessee, resulting in an increase in her income that could be used to pay a 100% dividend to her unsecured creditors. [Dkt. No. 97]. On September 24, 2019, Debtor filed an *Amended Schedule I and Schedule J*, which listed monthly net income of \$8,229.18 and monthly expenses of \$8,491.00. [Dkt. No. 100]. On November 5, 2019, an order was entered withdrawing the Chapter 13 Trustee's *Motion to Modify*. [Dkt. No. 105].

On November 6, 2019, the Chapter 13 Trustee gave notice that the Debtor "ha[d] completed all plan payments, performed all requirements under the confirmed plan and [was] otherwise entitled to a discharge under 11 U.S.C. 1328(a)." [Dkt. No. 106].

On November 7, 2019, the court entered its Order of Discharge pursuant to 11 U.S.C. § 1328(a). [Dkt. No. 107].

Winning filed its *Motion to Set Aside Discharge* on November 11, 2019. [Dkt. No. 113]. Winning sought to set aside the discharge pursuant to Fed. R. Bankr. P. 9024 "due to (1) mistake,

inadvertence, surprise, or excusable neglect; ... or (6) any other reason that justifies relief.” Winning asserted that it did not receive notice of the Chapter 13 Trustee’s intention to withdraw its *Motion to Modify Plan to Increase Percentage*.

Winning also filed its *Motion to Modify Plan Payment, or Alternatively, Deny Discharge* on November 11, 2019 [Dkt. No. 114], citing the same grounds as for the *Motion to Set Aside Discharge*. Debtor filed her *Response to Motion to Modify Plan* on January 1, 2020. [Dkt. No. 120].

The court granted the *Motion to Set Aside Discharge* on April 28, 2020, in an order prepared by counsel that does not state the reasons that the motion was granted. [Dkt. No. 130].

The Debtor obtained new counsel, Curtis D. Johnson, Jr., on June 18, 2020. Through counsel, on June 30, 2020, the Debtor filed her *Motion to Set Aside April 28, 2020 Order Pursuant to B.R. 9024 and FRCP 60(b)(6)* [Dkt. No. 136] and Winning filed a *Response* on July 13, 2020. [Dkt. No. 139].

Bankruptcy Judge Emerson retired on June 30, 2020, and the undersigned was assigned to this case as bankruptcy judge on July 1, 2020.

On July 10, 2020, Winning filed its *Amended Claim No. 18-2*, for “[o]utstanding rents owed under Residential Lease Agreement,” in the amount of \$12,328.05. On July 14, 2020, Debtor filed her *Objection to Amended Proof of Claim*. [Dkt. No. 140].

The court conducted a pretrial conference on July 16, 2020, where it became apparent that there are no disputed questions of material fact. Specifically, counsel for Winning acknowledged

that Winning's original claim had been paid in full through the plan.² Thus, the issues raised by the various motions, objection, and responses are ready for decision.

ISSUES

In her *Motion to Set Aside April 28, 2020 Order*, the Debtor asserts that Winning's *Motion to Set Aside Order of Discharge* should not have been granted for three reasons:

- (1) Winning lacked standing to object to the chapter 13 discharge after confirmation;
- (2) The relief sought by Winning was futile because its *Motion to Modify* was untimely;
- (3) Winning was not a "party in interest" because its claim had already been paid in full.

In her *Objection to Amended Proof of Claim*, the Debtor asserts that the amended claim should be disallowed because it was filed after the Debtor completed all payments under the plan.

These issues, of course, go to the propriety of granting or denying the *Motion to Modify* which, although filed last November, remains pending before the court. Winning asserts that its *Motion to Modify* should be granted because the Debtor's election as Shelby County Register of Deeds entitled her to a substantial increase in monthly income, but that she did not update her bankruptcy schedules to reflect her increased income until after the Chapter 13 Trustee filed her *Motion to Modify Plan to Increase Percentage Paid to Unsecured Creditors and to Increase Plan Payment* on September 3, 2019. [Dkt. No. 97].

² Winning apparently did not negotiate two of the checks provided by the Chapter 13 Trustee. Following the discussion with the court on July 16, 2020, the parties agreed that these payments could be reissued to Winning to complete payment of its claim.

In the alternative, Winning asks that the Debtor's discharge be denied based on lack of good faith. Winning does not address the question of whether its claim was subject to discharge pursuant to the terms of the Bankruptcy Code, but the court feels that it is important, and will do so.

ANALYSIS

Standing

In her *Motion to Set Aside* the Debtor asserts that Winning lacks standing to object to the Chapter 13 discharge after confirmation. The Debtor is correct. Winning did not become a party to this Chapter 13 case until it filed its *Request for Allowance and Immediate Payment of Administrative Expenses* on May 14, 2016, well after the plan was confirmed. It was under no obligation to participate in the plan. See *In re Sims*, 288 B.R. 264, 268 (Bankr. M.D. Ala. 2003) (“[T]he permissive language in subsection (a) of [section 1305] shows that the post-petition creditor and not the debtor, controls whether to file a proof of claim for the post-petition debt.”); see also *In re Haith*, 193 B.R. 341, 343 (Bankr. N.D. Ala. 1995); *In re Goodman*, 136 B.R. 167, 169-70 (W.D. Tenn. 1992).

The court agrees that Winning, a postpetition creditor whose claim was paid in full, lacks standing to raise questions about the percentage to be paid to general unsecured creditors under the confirmed plan. A plan, once confirmed, binds the debtor and each creditor, whether or not the claim of the creditor is provided for under the plan, and whether or not the creditor has objected to, has accepted, or has rejected the plan. 11 U.S.C. § 1327(a). The prepetition creditors were bound by the confirmed plan. The Debtor entered into the Residential Lease Agreement *after* the Debtor's petition was filed. The confirmed plan made no provision for postpetition claims. The court's order of May 14, 2017, however, provided for treatment of Winning's claim as a Special

Class 1 claim. As a result, its claim was paid in full. Winning is not similarly situated with general unsecured creditors, and thus lacks standing to raise issues belonging only to them.

The Motion to Modify is Futile

A confirmed plan may be modified upon the request of the debtor, the trustee, or the holder of an allowed unsecured claim, but only *before* the completion of payments under the plan. 11 U.S.C. § 1329(a). The *Motion to Modify* was filed after the Chapter 13 Trustee certified that all plan payments had been made. Thus, the *Motion to Modify* was untimely. Moreover, a plan as modified may not provide for payments over a period that expires after the applicable commitment period under section 1325(b)(1)(B). *See* 11 U.S.C. § 1329(c). The Debtor's applicable commitment period expired July 24, 2017, three years after the first payment was due under the plan. The court may approve a longer period for cause, but the court may not approve a period longer than five years after the first payment is due. *Id.* Five years after the Debtor's first payment was due was July 24, 2019. Winning's *Motion to Modify* was filed well beyond even the maximum period of extension possible for a modified plan. Winning points to the change in the Debtor's income resulting from her election as Shelby County Register of Deeds in August 2018 as grounds for its motion. Events that occur after the expiration of the applicable commitment period seldom if ever provide cause for modifying a confirmed plan.

Winning Was Not a Party in Interest

The Debtor's final argument is a variation of its argument that Winning lacked standing to bring the *Motion to Modify*. The Debtor argues that Winning had no stake in the outcome because its claim had already been paid. The Chapter 13 Trustee did certify on November 6, 2019, that all claims had been paid, and counsel for Winning admitted that its initial claim had been paid in full. The Debtor is correct.

The Request for Denial of Discharge Comes Too Late

Winning asserts that the failure of the Debtor to disclose the increase in her earnings constitutes a lack of good faith that should result in denial of her discharge. The Debtor counters that her election and salary were matters of public record so should have come as no surprise to anyone. Moreover, the question of good faith may be raised with respect to the filing of a Chapter 13 case and the confirmation of a Chapter 13 plan [11 U.S.C. §§ 1325(a)(3) and (7)]; a creditor is not afforded a third bite at the apple after a plan is completed. In general, a debtor's plan is proposed in good faith if the plan proposes to pay all of the debtor's projected disposable income to be received in the applicable commitment period to its unsecured creditors over the life of the plan. 11 U.S.C. § 1325(b)(1)(B). The Debtor's plan was confirmed under this standard. Her applicable commitment period was three years. The events that Winning complains of occurred after the expiration of the applicable commitment period. They cannot provide the basis for a "redo" of the confirmed plan, which binds the debtor and each creditor. 11 U.S.C. § 1327(a). Once a debtor has completed all payments under a confirmed plan, discharge should be entered. 11 U.S.C. § 1328(a). The discharge reaches all claims allowed under section 502(a), which would include Winning's allowed postpetition claim, unless obtaining the trustee's approval to incur the debt was practicable, and approval was not obtained. 11 U.S.C. § 1328(d). Winning has not asserted lack of approval of the Residential Lease Agreement by the Trustee as a basis for its motion to deny discharge. Even if it had, that argument could provide a basis for excepting Winning's particular claim from discharge but would not support denial of the general discharge.

The Prior Order Setting Aside Discharge Order Should be Vacated

The Debtor has demonstrated that it was a mistake for the court to vacate the Discharge Order based upon the motion of Winning. The Trustee certified that all claims had been paid under

the plan and that the case was ready for discharge. The relief sought by Winning was inappropriate and untimely. Thus, the prior *Order Setting Aside Discharge Order* was entered by mistake and should be vacated, leaving the prior *Order of Discharge* in place. Fed. R. Civ. P. 60(b)(1), made applicable in bankruptcy by Fed. R. Bankr. P. 9024.

Winning's Amendment to Its Proof of Claim Comes Too Late

Winning amended its proof of claim on July 10, 2020, more than eight months after the Trustee certified that all plan payments had been made. The claim was amended to increase the attorneys' fees claimed from \$3,529.00 to \$9,105.05, almost three times the amount of the underlying claim! No itemization of these asserted fees is provided as required by Federal Rule of Bankruptcy Procedure 3001(c). The Residential Lease Agreement provides for payment of "a reasonable attorney fee, which is a 33 1/3% of amount due, plus all costs and expenses of any proceedings, judicial or otherwise, resorted to for the purpose of collection." [Attachment to Proof of Claim 18-1]. Under the terms of the Residential Lease Agreement, the claim should have been limited to \$4,297.33 ($\$3,223 + 1/3 \text{ of } \$3,223 = \$4,297.33$). The amendment is simply too late, and the amount requested is unreasonable. Because no objection was lodged with respect to the original claim and the claim has been paid, the court will not reduce the amount of that claim at this late date.

CONCLUSION

For the forgoing reasons, the court will enter separate orders providing the following:

1. Winning's *Motion to Modify Plan to Increase Percentage to Creditors, Or Alternatively, Deny Discharge* will be **DENIED**.
2. Debtor's *Motion to Set Aside April 28, 2020 Order Pursuant to BR 9024 and FRCP 60(b)(6)* will be **GRANTED**.

3. *Debtor's Objection to Amended Proof of Claim Filed by Creditor Winning Properties, LLC*, will be **SUSTAINED**.

cc: Debtor
Attorney for Debtor
Creditor Winning Properties, LLC
Attorney for Creditor Winning Properties, LLC
Chapter 13 Trustee
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