

**UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

LUCILLE D. BUSBY,

CASE NO. 08-50033-NPO

DEBTOR.

CHAPTER 13

**MEMORANDUM OPINION AND ORDER
DENYING TRUSTEE'S OBJECTION TO CONFIRMATION**

On March 31, 2008, there came on for hearing (the "Hearing") the Trustee's Objection to Confirmation (the "Trustee's Objection") (Dk. No. 17) and the Debtor's Reply to Trustee's Objection to Confirmation ("Debtor's Reply") (Dk. No. 21) in the above-referenced chapter 13 proceeding. At the Hearing, Samuel J. Duncan represented J.C. Bell, the chapter 13 trustee (the "Trustee"), and R. Allen Flowers represented Lucille D. Busby (the "Debtor"). After hearing the arguments of counsel, the Court took the matter under advisement. The Trustee objects to the confirmation of the amended chapter 13 plan (the "Amended Plan") (Dk. No. 8) proposed by the Debtor and contends that the Debtor's proposed Amended Plan contains special provisions that go beyond the Uniform Local Plan form used in the Southern District of Mississippi in contravention to an order issued by Judge Edward Ellington in In re Shinikki Edwards, United States Bankruptcy Court for the Southern District of Mississippi, Case No. 06-0296.¹ The Debtor argues that the Uniform Local Plan form provides a space for unspecified "Special Provisions" and that she is utilizing that space to implement 11 U.S.C. § 524(i) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").²

¹The Trustee's Objection also contained an objection regarding Debtor's Schedule I. This objection was not prosecuted at the Hearing and, therefore, is dismissed without prejudice.

²Hereinafter all code sections refer to the United States Bankruptcy Code located at Title 11 of the United States Code unless otherwise noted.

Jurisdiction

This Court has jurisdiction over the parties and the subject matter of these proceedings pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157 (b)(2)(A) and (L). Notice of the hearing on the Trustee's Objection and the Debtor's Reply was proper under the circumstances.

Facts

The Debtor filed her voluntary petition pursuant to chapter 13 of the Bankruptcy Code (Dk. No. 1) on January 8, 2008. That same day, the Debtor filed her initial plan (the "Plan") (Dk. No. 2), but it was unsigned. On January 10, 2008, the Debtor filed her Amended Plan which is substantively the same as the originally filed Plan but which was signed by the Debtor. In the Special Provisions section on the second page of the Amended Plan (the "Special Provisions"), the Debtor included the following language:

SPECIAL PROVISIONS for all payments to be paid through the plan, including, but not limited to, adequate protection payments:

Debtor's Mortgage Company, including its successors, assigns and servicing agent(s) (hereinafter "Mortgage Entities"), shall not charge any post-Petition fees (of any kind or nature) to Debtor's account, and shall not assess any such fees to the Debtor during the period of this Chapter 13 Plan or upon conversion of this case to another Chapter of the Bankruptcy Code, without prior Bankruptcy Court approval. Confirmation of this Plan imposes a duty on the Mortgage Entities to: deem any pre-Petition arrearage as contractually cured so that no post-Petition delinquency status is declared due to pre-Petition events that are addressed in the Plan; apply Trustee payments on pre-Petition arrearages only to such arrearages; apply mortgage payments made during the Plan to the month in which they were made (or designated to be made) under or during the Plan; post all payments made in accord with the promissory note, mortgage and/or deed of trust; notify the Trustee, the Debtor and the Attorney for the Debtor of any changes in the interest rate (and any new resulting payment amount), and of any changes in the taxes and/or insurance related to the collateral, and; comply fully with the provisions of 11 U.S.C. § 524(i). Pre-Petition arrearages shall include only those sums included in the "allowed" proof of claim.

On January 11, 2008, the Debtor sent notice (the "Notice") (Dk. No. 9) to Ocwen Loan Servicing, LLC ("Ocwen"), the servicer for the Debtor's mortgage lender, and J. Gary Massey, Ocwen's attorney, allowing thirty (30) days to file written objections to the Amended Plan. The Debtor attached to the Notice a copy of the Amended Plan with the Special Provisions. On February 13, 2008, Ocwen filed an Objection to Proposed Chapter 13 Plan and Confirmation Thereof ("Ocwen's Objection") (Dk. No. 13). Ocwen's Objection asserted that the amount of the arrearage was higher than the amount noted in the Amended Plan. It did not assert an objection to the language in the Special Provisions section of the Amended Plan. The Debtor filed her Response to Objection to Confirmation of Plan (Dk. No. 13). On April 25, 2008, the Debtor, the Trustee, and Ocwen entered an Agreed Order ("Agreed Order")(Dk. No. 26) whereby the arrearage issue was resolved and Ocwen's Objection was withdrawn.

On March 3, 2008, the Trustee filed the Trustee's Objection which asserts that the Amended Plan should not be confirmed because the Special Provisions contained therein governing application of mortgage payments and requiring a home mortgage lender to provide timely notice of post-petition fees, charges, and rate changes assessed pursuant to the relevant loan and security documents go beyond the Uniform Local Plan form used in this District. The Debtor's Reply was filed on March 13, 2008, asserting the Debtor's right to implement 11 U.S.C. § 524(i). As noted, the Court subsequently held a Hearing and took the matter under advisement.

Issue

The issue is whether the Court may confirm the Amended Plan since it includes provisions governing application of mortgage payments and requiring a home mortgage lender to provide timely notice of post-petition fees, charges, and rate changes assessed pursuant to the relevant loan and security documents.

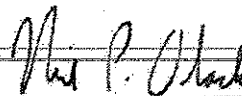
Discussion

The Trustee and the Debtor have presented arguments supporting their positions regarding the appropriateness of including Special Provisions in the Amended Plan. Based on the facts of this particular case, however, the Court declines to decide the matter on those grounds. In this case, Ocwen received Notice of the Amended Plan including the Special Provisions. Ocwen was represented by counsel who filed Ocwen's Objection and subsequently entered an Agreed Order withdrawing same. Under these facts, Ocwen has consented to the Special Provisions. The Trustee cannot now object to that which Ocwen already has agreed.

This Court does not make any determination regarding whether in other instances the Court would confirm a proposed chapter 13 plan that includes the same or similar special provisions governing application of mortgage payments and requiring a home mortgage lender to provide timely notice of post-petition fees, charges, and interest rate changes assessed pursuant to the relevant loan and security documents. The Trustee shall continue to file appropriate objections consistent with In re Shinikki Edwards, if the creditor has not consented, to the provisions which vary from the Uniform Local Plan.

IT IS, THEREFORE, ORDERED that the Trustee's Objection is denied.

SO ORDERED,



Neil P. Olack
United States Bankruptcy Judge

Dated: May 22, 2008