

**UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF KENTUCKY**

IN RE:)	
)	
GARY SMITH)	CASE NO. 07-31450(1)(13)
VICKIE P. SMITH)	
)	
)	
_____ Debtor(s))	

ORDER

This matter is before the Court on the Objection to Debtor’s Plan by Homecomings Financial, LLC (“Homecomings”). Debtors Gary and Vickie Smith (“Debtors”), filed a Response to Homecomings’ Objection and the parties also filed Supplemental Briefs. The Court reviewed each of the parties submissions and considered the arguments of counsel on the matter.

Homecomings objects to the language in paragraph 13 of Debtors’ proposed Plan. Clearly, 11 U.S.C. §1322(b)(2) provides that a Plan may not modify the rights of holders of a secured claim secured only by a security interest in real property that is the debtor’s principal residence. Homecomings is such a creditor whose rights may not be modified.

The language proposed by Debtors in paragraph 13 of the Plan impermissibly attempts to modify the Creditor’s rights and impose additional duties upon the Creditor that are not provided for in the Bankruptcy Code. For instance, Debtors’ proposed Plan language provides that all pre-petition arrearages are deemed contractually cured upon confirmation of the Plan. If all regular Plan payments and all payments to be made outside of the Plan are timely made, the defaults should be cured upon completion of the Plan. The Code does not require and indeed it would be premature to deem the defaults cured upon confirmation of the Plan.

The Court agrees with Homecomings that the Debtors' proposed Plan language in paragraph 13 imposes duties not set forth in 11 U.S.C. §524. The loan documents constitute the parties' agreement and govern the rights and responsibilities of the parties. The Court agrees with the reasoning of Homecomings' Objection as fully set forth in its briefs. The Court is not unmindful of the frustrations encountered by Debtors and their counsel with respect to accurate accounting on defaults, penalties and interest. However, Debtors' remedies exist in 11 U.S.C. §524 and their specific contract. Debtors cannot be permitted to add additional duties and responsibilities by supplementing the Bankruptcy Code with Plan terminology.

The Court being duly advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Objection to Debtors' Plan by Homecomings Financial, LLC , be and hereby is, **SUSTAINED**.