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JUDGE: M. A. Mahoney
PARTIES: Laura Lyons, Rice Banking Company
CHAPTER: 13
ATTORNEYS: C. Pettaway, Jr., B. B. Griggs
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

In Re:

LAURA LYONS Case No. 98-12502-MAM-13

Debtor.

ORDER SUSTAINING DEBTOR'S OBJECTION TO THE CLAIM OF RICE BANKING COMPANY

Collins Pettaway, Jr., Selma, Alabama, Attorney for debtor
Britt Batson Griggs, Montgomery, Alabama, Attorney for Rice Banking Company

This matter came before the court on debtor's objection to the secured claim filed by Rice Banking Company. This court has jurisdiction to hear this matter pursuant to 28 U.S.C. § § 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the court has the authority to enter a final order. For the reasons indicated below, debtor's objection is sustained, and Rice Banking Company's secured claim is allowed in the amount of $3,000.

FACTS

On March 5, 1993, Laura Brazil Lyons ("Lyons" or "debtor") obtained a loan from Rice Banking Company ("Rice Banking") for $6,873.12. This amount represents the $4,878.54 that debtor borrowed, plus a $1,994.58 finance charge. The interest rate for the 36 month loan was 23.81%. The loan was secured by a 1986 Chevy Celebrity and a mortgage on debtor's homestead.[1]

[1] This court found the lot described in the mortgage to be debtor's homestead in its March 5, 1998 order.

Debtor defaulted on her loan payments. Rice Banking sued on the note and obtained a judgment on June 1, 1994 for the sum of $6,735.29 plus $121.00 for court costs.

Debtor filed a chapter 7 case on November 21, 1997 and received a discharge on June 8, 1998. In her chapter 7 bankruptcy schedules, debtor valued Rice Banking's collateral at $3,500 (the 1986 Chevy was valued at $500 and debtor's homestead was valued at $3,000). Rice Banking was scheduled as a secured creditor in the amount of $5,403.39. Based on debtor's valuation of the collateral at $3,500, Rice Banking's claim was listed as unsecured in the amount of $1,903.00.

On November 21, 1997, the same date debtor filed her chapter 7 petition, Rice Banking had scheduled a foreclosure sale of debtor's homestead. Rice Banking purchased debtor's homestead at the foreclosure sale for $3,000. Rice Banking moved this court to confirm the foreclosure sale despite its occurrence shortly after the automatic stay became effective. During a hearing on the motion, Sherry Levins testified on behalf of Rice Banking. She stated that Rice Banking's collateral, the homestead, was worth between $2,000 and $3,000. This court denied Rice Banking's motion to confirm the sale. In a subsequent opinion, debtor was awarded damages and attorney's fees for Rice Banking's violation of the automatic stay.

This chapter 13 case was filed on July 17, 1998. Debtor scheduled Rice Banking as a secured creditor in the amount of $3,000. Debtor listed Rice Banking's collateral as her homestead and she valued the collateral at $3,000 in her plan.[2] Based on this valuation, debtor proposed to pay Rice Banking $62.50/month, which is $3,750.00 over five years. Debtor's plan

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[2] The 1986 Chevy Celebrity ceased to be security for Rice Banking's loan prior to debtor filing this chapter 13 case.

was confirmed on September 17, 1998. That order was not appealed and is final. On October 19, 1998, Rice Banking filed a secured claim in the amount of $9,112.76.

LAW

Lyons objects to this claim on the grounds that the court previously found the secured claim to be $3,000 either in its orders in the prior chapter 7 case of this debtor or in the September 17, 1998 confirmation order. Rice disputes that this court ever found its secured claim to be $3,000. The court concludes that the case can be resolved by a determination of the following issues: 1) what debt remained for the debtor to pay in her chapter 13 case after her chapter 7 discharge, and 2) whether both the determination of the value of the collateral for Rice Banking's secured claim and the absence of an unsecured claim for Rice Banking in the confirmation order precludes Rice Banking from filing a secured or any other claim for an amount greater than $3,000.

A.

Lyons' bankruptcy filings constitute a "chapter 20" bankruptcy case (a chapter 7 case followed immediately by a chapter 13 case). Before 1993, debtors sometimes filed chapter 20 cases to discharge all of the mortgage debt which was unsecured at the time of the chapter 7 filing and cure any defaults in the remaining secured portion over the life of the chapter 13 plan.[3] In the chapter 7 case, the lien for the unsecured portion of the debt was "stripped" from the property. In the chapter 13 case, the debtor cured any arrearage in the remaining secured debt. The Supreme Court proscribed "lien stripping" in chapter 7 cases in its decision in *Dewsnup v.*

[3] Section 506(a) of title 11 bifurcates a claim secured by a lien on property of the estate into a secured and unsecured portion.

Timm, 502 U.S. 410, 112 S.Ct. 773, 116 L.Ed.2d 903 (1992). After a chapter 7 discharge, even though the debtor's personal liability on the unsecured portion of the debt might be extinguished, the lien itself survived the discharge and attached to all value in the property. The mortgage in essence became a nonrecourse debt. In a decision the following year, the Supreme Court held that residential mortgages could not be stripped in a chapter 13 case due to the language in 11 U.S.C.§ 1322(b)(2).[4] *Nobleman v. American Savings Bank*, 508 U.S. 324, 113 S.Ct. 2106, 124 L.Ed. 2d 228 (1993).

What these cases did not specifically answer was whether, taken together, they prevent a lien stripping of a residential mortgage in a chapter 20 case. A law review article footnote and three bankruptcy court decisions have concluded that the same answer, i.e., lien stripping of residential mortgages is impermissible, must be reached in a chapter 20 case. Lawrence Ponoroff and F. Stephen Knippenberg, *The Immovable Object Versus the Irresistible Force: Rethinking the Relationship Between Secured Credit and Bankruptcy Policy*, 95 Mich. L.Rev. 2234, 2299-2300, n. 251 (1997); *Parker v. Federal Home Loan Mortgage Corp*., 179 B.R. 492 (E.D.La. 1995); *Gelletich v. Household Realty Corp. (In re Gelletich)*, 167 B.R. 370 (Bankr.E.D.Pa. 1994)*; In re Dydo*, 163 B.R. 663 (Bankr.D.Conn.1994).[5]

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[4] Section 1322(b)(2) provides that a chapter 13 plan may, "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . . ."

[5] The case of *In re Kirchner*, 216 B.R. 417 (Bankr. W.D. Wisc. 1997), questioned whether a chapter 13 plan which proposed to pay the entire secured portion of a home mortgage debt immediately was a modification of the lender's rights in a chapter 20 case. However, this is not the situation this court has in this case.

Therefore, the court concludes that Rice Banking's entire claim survived the chapter 7 discharge of debtor and remained a lien on her homestead. Debtor is no longer personally liable, but the entire claim is an in rem claim against her home in her chapter 13 case.

B.

Since Rice Banking's claim survived, Lyons had to deal with the entire claim in her chapter 13 plan. She provided that $3,000 of the claim be treated as secured. The plan does not state that Rice Banking is an unsecured creditor. In fact, Lyons' schedules state that Rice Banking is only a secured creditor to the extent of $3,000 and lists no unsecured claim. The plan payment to unsecured creditors is 100% of their claims. Since Lyons' only debts are Rice Banking's mortgage and a $155 bad check charge, essentially all of the chapter 13 payments will go to Rice Banking.

The plan was confirmed on September 17, 1998 without any objection by Rice Banking. The confirmation order is final and has res judicata effect. *Wallis v. Justice Oaks II, LTD.* (*In re Justice Oaks II, LTD.*), 898 F.2d 1544, 1550 (11th Cir.1990), *cert. den.*, 498 U.S. 959, 112 L.Ed.2d 398, 111 S.Ct. 387 (1990); *In the matter of Bernard*, 189 B.R. 1017 (Bankr.N.D.Ga.1996). If Rice Banking has any issues in regard to payment of its claim, whatever the amount, it will need to attack the confirmation order.

However, Lyons and Rice Banking are before the court solely on Lyons' objection to Rice Banking's claim status and amount, not on an objection to its plan treatment. The two issues are definitely connected. The final order on confirmation disposes of the claim objection issue. As stated above, Rice Banking's entire claim survived Lyons' chapter 7 discharge. Even though Lyons has no personal liability on the debt after her chapter 7 discharge, the entire debt

owed to Rice Banking is a claim in this chapter 13 case to the extent it attaches to the homestead. However, since the debtor's plan stripped Rice Banking's lien down to the value of the collateral, the unsecured portion of the claim is unenforceable. It cannot be enforced personally against Lyons after her chapter 7 discharge absent the protection against modification that 11 U.S. C. 1322(b)(2) affords home lenders. When the plan took that protection away, the unsecured debt was wiped out.

Pursuant to 11 U.S.C. § 1324, Rice Banking had the opportunity to object at confirmation that Lyons could not modify its debt due to the exception in 11 U.S.C. § 1322(b)(2), but it raised no objection and the plan was confirmed paying Rice Banking's secured claim of $3,000 at $62.50/month. The confirmed plan binds Lyons and Rice Banking. 11 U.S.C. § 1327(a). The confirmation order has been in place approximately four months. The court will give the order the res judicata effect it deserves unless it is modified or set aside.

Therefore, Rice Banking's secured claim is $3,000. Debtor's confirmed plan established that value.

THEREFORE, IT IS ORDERED that debtor's objection to the claim of Rice Banking Company is SUSTAINED and Rice Banking Company's claim is allowed in the amount of $3,000.

Dated: January 26, 1999

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE