

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
)  
GLORIA IVETTE JUARBE, ) CASE NO. 08-23697 jpk  
) Chapter 13  
Debtor. )

ORDER CONCERNING FURTHER PROCEEDINGS ON MOTION TO POSTPONE CASE  
CLOSURE UNTIL DETERMINATION OF SECURED STATUS OF CREDITOR ["MOTION"]

The Motion was filed by the debtor, by counsel, as record No. 74 on March 4, 2013. On April 15, 2013, a hearing was held with respect to the Motion. The debtor appeared by counsel William H. O'Toole; the Chapter 13 Trustee appeared by counsel Amy Godshalk.

With respect to matters addressed in this order, the parties are reminded that the Motion initiates a contested matter subject to the provisions of Fed.R.Bankr.P. 9014. Pursuant to Fed.R.Bankr.P. 9014(c), Fed.R.Bankr.P. 7052 applies in contested matters. That Rule, in turn, applies Fed.R.Civ.P. 52 to contested matters, including the provisions of Fed.R.Civ.P. 52(a)(3) – which state that the “court is not required to state findings or conclusions when ruling on a motion” of the nature of that before the court. Therefore, this order will not state a detailed analysis of the determination which it makes.

The record establishes that the debtor is entitled to the entry of a discharge in this Chapter 13 case. The motion seeks to suspend the entry of discharge so that the debtor can file an adversary proceeding which seeks to “strip off” two mortgages which attached to non-residential real estate comprising property of the estate. In apparent furtherance of the Motion, the debtor, by counsel, initiated Adversary Proceeding No. 13-2054 by Complaint filed on April 15, 2013. This adversary proceeding seeks to “strip”/“cram down” mortgage liens.

The debtor's original Chapter 13 Plan (record No. 12) was confirmed by a confirmation order entered as record No. 24 on March 6, 2009. Section 6 of this plan provided for monthly payments with respect to the two mortgage debts which are subject now to Adversary

Proceeding No. 13-2054, both of which appear to be held by the same creditor. That creditor did not file claims with respect to either of those mortgage interests, and pursuant to the record No. 32 motion filed by the Chapter 13 Trustee on July 14, 2009, the debtor's plan was subsequently modified post-confirmation in order to provide for payment of funds which would have been paid to the subject creditor to be utilized instead for payment to unsecured creditors. The order implementing this modification is record No. 43, entered on November 3, 2009. That order had the effect of reducing the amount of payments provided by the confirmed plan on second and third mortgage claims, and increasing the amount payments provided for by the plan for unsecured creditors, pursuant to 11 U.S.C. § 1329(a)(1). That order was entirely within the provisions of that statute.<sup>1</sup>

The Motion seeks suspension of the entry of discharge so that the debtor can essentially modify the confirmed Chapter 13 plan, including the plan as modified post-confirmation as stated above, by changing the treatment of the holder of second and third mortgage claims with respect to non-residential property of the debtor. This alteration of treatment requires a post-confirmation modification of the plan pursuant to 11 U.S.C. § 1329(a). At the hearing on the Motion held on April 15, 2013, the court stated that an order would be entered which would require the debtor to file an amended plan designating the now-proposed treatment and serve that plan upon the affected creditor, and that the debtor would file a legal memorandum with the court in conjunction with the filing of the amended plan justifying the modification of the plan under 11 U.S.C. § 1329(a)(1). Following the hearing, the court conducted its own research concerning plan modification in the circumstances of this case. Based upon that research, the court has concluded that the debtor may not modify the plan as it now exists to provide for either "stripping" or "cramming down" of the second and third

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<sup>1</sup> In a hearing concerning the Trustee's motion, by record entry No. 41, the court stated that the debtor was to file substitute claims for Beneficial/HSBC. The debtor never filed those claims.

mortgage claims on the subject real estate: The proposed modification is beyond the scope of that allowed by 11 U.S.C. § 1329(a). It is therefore unnecessary for the debtor to either file an amended plan or to provide the court with a legal memorandum.<sup>2</sup>

The bottom line is that the debtor cannot effect the desired result of either “stripping” or “cramming down” the subject second and third mortgage interests in non-residential property in this case. Perhaps there are other options available to the debtor to effect the desired result; the court declines to speculate as to what those options might be.

IT IS ORDERED as follows:

1. The debtor shall not file an amended plan in this case in order to seek to provide for the relief sought in Adversary Proceeding No. 13-2054.

2. Adversary Proceeding No. 13-2054 fails to state a claim upon which relief may be granted in the context of this Chapter 13 case.

3. The court will suspend the entry of the debtor’s discharge until May 17, 2013, on which date an order granting the debtor’s discharge in this Chapter 13 case will be entered unless other proceedings in this case preclude the entry of the order of discharge on that date.

Dated at Hammond, Indiana on April 29, 2013.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtor, Attorney for Debtor  
Trustee, US Trustee

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<sup>2</sup> The court’s research discloses that few reported decisions have dealt with the issue of modification of a plan post-confirmation which is now before the court. However, the cases which have dealt directly with that issue or with an issue similar to it all determined that a modification of this nature cannot be sustained under 11 U.S.C. § 1329(a). Because the determinations made by those decisions address issues which are not pertinent to that before the court, the court declines to cite those decisions lest that citing be construed somehow to be the court’s endorsement of the ramifications of those decisions in circumstances other than that presented here.