

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
HARRY A TIMMIS) CASE NO. 12-13913
)
)
Debtor)

DECISION ON TRUSTEE’S OBJECTION TO CLAIM

At Fort Wayne, Indiana, on October 22, 2014.

The debtor’s chapter 13 plan was confirmed on February 26, 2013. It provides:

The debtor will surrender debtor’s interest in the following collateral securing each allowed secured claim filed by the following creditors in full satisfaction of the debt secured by same . . .

STAR Financial Bank 3916 CR 59, Butler, Indiana

Chapter 13 Plan, ¶ D, filed on Dec. 13, 2012 (emphasis original). Yet, that property was sold at foreclosure over a year before the debtors filed their case. STAR Financial has filed an unsecured claim for \$26,351.69, representing the deficiency remaining following the foreclosure. The matter is before the court on the trustee’s objection that claim. The trustee contends the claim should be disallowed because the confirmed plan provides that the real estate was surrendered in full satisfaction of the debt. Because the property was sold prior to the petition, STAR argues it never had a secured claim to which that plan provision could apply. The matter has been submitted to the court on stipulations of fact and the briefs of counsel.

“The provisions of a confirmed plan bind the debtor and each creditor . . . whether or not such creditor has objected to, has accepted, or has rejected the plan.” 11 U.S.C. § 1327(a). See also, United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 130 S.Ct. 1357 (2010). But, in determining what the parties are bound to the court should read the plan in its entirety. That includes

not just the provisions concerning the surrender of real estate in full satisfaction of a particular debt but also the plan's provisions that describe what it is that is being fully satisfied via that surrender. Here, the predicate for the surrender in full satisfaction was that there be a "secured claim" on account of which collateral could be surrendered "in full satisfaction of the debt secured by same." So the threshold question becomes: Did STAR have a secured claim? If so, the claim has been fully satisfied via the surrender of the collateral securing it, and the trustee's objection should be sustained. If not, the objection should be overruled and the claim allowed as filed.

Whether STAR held a secured claim is determined as of the date of the petition. In re Tires N Tracks, Inc., 498 B.R. 201, 206-07 (Bankr. N.D. Ill. 2013); In re Podnar, 307 B.R. 667, 673 (Bankr. W.D. Mo. 2003). The question is a simple one and initially depends upon whether it held a lien against property of the estate. 11 U.S.C. § 506(a)(1) ("An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim . . ."). In this case, the answer to that question is no. STAR's collateral had been sold at foreclosure over a year before the case was ever filed. As of the date of the petition, it held only an unsecured claim. See, Gramil Weaving Corp. v. Raindeer Fabrics, 185 F.2d 537 (2nd Cir. 1951); In re Elliott, 64 B.R. 429, 430 (Bankr. W.D. Mo. 1986); In re Garrison, 95 B.R. 461 (Bankr. E.D. Ky. 1988). Consequently, there was no secured claim to which the provisions of paragraph D of the plan can be applied.

The trustee's objection will be overruled and STAR Financial Bank's claim allowed as filed. An appropriate order will be entered.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court

Date Entered on Docket: October 22, 2014.