UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION

IN RE:	:	CASE NO. 00-60397-JTL
	:	
LESTER BEN DASHER,	:	
SSN: XXX-XX-XXXX	:	
	:	CHAPTER 13
BRENDA JOYCE DASHER,	:	
SSN: XXX-XX-XXXX	:	
	:	
Debtors.	:	
	:	
WILLIAM H. WASDEN,	:	
	:	
Movant,	:	
	:	
vs.	:	
	:	
LESTER BEN DASHER and	:	
BRENDA JOYCE DASHER,	:	
	:	
Respondents.	:	

MEMORANDUM OPINION

On September 26, 2000, the court held a hearing on confirmation of Debtors' proposed plan and William H. Wasden's ("Movant") objection to confirmation. At the conclusion of the hearing, the court took the matter under advisement. After considering the evidence and the applicable statutory and case law, the court, for reasons indicated below, will overrule Movant's objection to confirmation.

FACTS

Movant agreed to sell a one acre tract of land to Debtors for the sale price of $10,000.00. Debtors made a $1000.00 down

payment and, as evidenced by a deed to secure debt and a promissory note, Movant financed the remaining $9000.00. (Movant's Exh. "A"). According to the terms of this agreement, Debtors were to pay $100.00 per month commencing on January 1, 1998 until the maturity date of December 1, 1999, at which time Debtors were to make a final "balloon" payment of $8785.85. Debtors defaulted in making this final balloon payment.

On May 15, 2000, Debtors filed a voluntary petition under Chapter 13 of the Bankruptcy Code. In Debtors' Chapter 13 plan ("Plan"), they proposed to pay Movant in full over the life of the fifty-seven month Plan plus interest at a rate of 9% per annum.[1] On May 25, 2000, Movant filed his objection to confirmation and on August 2, 2000, Movant filed a letter brief ("Movant's Br.") in support of his objection.

DISCUSSION

Movant argues that Debtors' attempt to modify his rights by deferring the final balloon payment over the life of the Plan on a note that matured prepetition, is prohibited under the Code. See Nobleman v. American Savings Bank, 508 U.S. 324 (1993). Movant agrees that § 1322(c)(2) permits the modification of claims secured only by a security interest on Debtors' principal residence when the last payment on the original payment schedule

[1] Debtors have agreed that they would pay Movant at the contract rate of 10% per annum.

is due before the date on which the final payment under the Plan is due. See 11 U.S.C. § 1322(c)(2).

However, Movant asserts that § 1322(c)(2), an "exception" to § 1322(b)(2),[2] does not apply in this case and therefore, § 1322(b)(2) is the applicable law. Since there was only a balloon payment due, Movant argues that § 1322(c)(2) does not contemplate the present situation. Moreover, Movant is an individual creditor who relied on the payment and modification would be "grossly unfair" forcing him to make a loan that he could not afford. See In re Lobue, 189 B.R. 216, 219 (Bankr. S.D. Fla. 1995)(Cristol, J., dictum).

Debtors argue that the plain language of § 1322(c)(2) is clear. That subsection allows for the payment of the full amount of a short term mortgage over the life of the plan provided that Debtors pay the full amount of the allowed secured claim. The fact that Movant is an individual creditor is irrelevant. Debtors further argue that under § 1322(b)(3), a plan may "provide for the curing or waiving of any default;" 11 U.S.C. § 1322(b)(3).

The issue before the court is whether a balloon payment that

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[2] Section 1322(b)(2) provides, in pertinent part:

> (b) Subject to subsections (a) and (c) of this section, the plan may–
> . . .
> (2) 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 . . .

11 U.S.C. § 1322(b)(2).

matured prepetition can be modified and paid out through the life of the Plan. Before the Bankruptcy Reform Act of 1994[3] ("Reform Act"), it was impermissible for Debtors to modify such claims. See Nobleman, 508 U.S. at 332. However, the revised § 1322(c)(2) under the Reform Act carved out an exception to § 1322(b)(2).

Although the Eleventh Circuit has not ruled on this issue, bankruptcy courts within this circuit as well as courts in other circuits have held that § 1322(c)(2) applies to balloon payments that matured prepetition. See In re Eason, 207 B.R. 238 (N.D. Ala. 1996); In re Miller, 191 B.R. 487 (Bankr. S.D. Fla. 1995); In re Sarkese, 189 B.R. 531 (Bankr. M.D. Fla. 1995); In re Chang, 185 B.R. 50 (Bankr. N.D. Ill. 1995); In re Escue, 184 B.R. 287 (Bankr. M.D. Tenn. 1995);

The court in In re Escue ruled that § 1322(c)(2) was specifically created to deal with short term or balloon payments which matured prepetition. 184 B.R. at 292. Similarly, the court in In re Chang held that § 1322(c)(2) permits a debtor to cure a mortgage which ballooned prepetition over the life of the plan. 185 B.R. at 53. In re Miller and In re Eason were cases which involved individual creditors as opposed to mortgage companies.

In Miller, the court held that chapter 13 debtors could modify an individual creditor's claim which fully matured

[3] All cases filed after October 22, 1994, are subject to the amendments under this Act.

prepetition by paying in full over the life of the plan. 191 B.R. at 489. Although Miller did not involve a balloon payment, the court relied on the plain language of § 1322(c)(2). Id. The fact that the creditor was an individual appeared to be inconsequential to the court.

Unlike Miller, Eason did involve a balloon payment but because Eason was a pre-Reform Act case, the court held that the debtor could not pay the final balloon payment through the proposed plan. 207 B.R. at 239. The court did, however, address the amendments to § 1322 in the Reform Act and stated, "Eason, unfortunately, appears to be a victim of bad timing in the filing of her petition; nevertheless, she is unable to receive the benefit of § 1322(c) as amended." Id. at 240. Impliedly, had this been a post-Reform Act case, the court would have permitted the payment of the final balloon payment through the plan. Like Miller, the Eason court gave no particular attention to the fact that the creditor was an individual.

The court agrees with the above line of cases that § 1322(c)(2) allows debtors to provide a creditor with payment of a prepetition matured balloon over the life of the Plan. As explained in Escue and Chang, § 1322(c)(2) is designed to deal with short term mortgages and balloon payments which mature prepetition. The court disagrees with Movant and dictum in Lobue that a different outcome should result because Movant is an individual creditor who relied on the balloon payment.

In Lobue, the court was concerned about an individual lender forced to make a loan "which the lender possibly could not afford to make." 189 B.R. at 219. At the hearing, Movant testified that he relied on the balloon payment to make some investments in stock. Movant did not show that he relied on the balloon payment for basic living expenses. Therefore, the court finds that Movant did not demonstrate the kind of reliance about which the court in Lobue was concerned.

The court finds that § 1322(c)(2) is applicable in this case and Debtors may pay Movant with the balloon payment over the life of the Plan. Therefore, the court will overrule Movant's objection to confirmation.

An order in accordance with this Memorandum Opinion will be entered.

DATED this _____ day of October, 2000.

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JOHN T. LANEY, III
UNITED STATES BANKRUPTCY JUDGE