The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document was signed electronically at the time and date indicated, which may be materially different from its entry on the record.

Russ Kendig
United States Bankruptcy Judge

Dated: 04:33 PM January 16, 2019

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CHAPTER 13
	)	
JENNIFER J. BURNS,	)	CASE NO. 17-40845-rk
	)	
Debtor.	)	JUDGE RUSS KENDIG
	)	
	)	
	)	
	)	**MEMORANDUM OF OPINION**
	)	**(NOT FOR PUBLICATION)**
	)	
	)	
	)	
	)	

Jennifer Burns ("Debtor") filed a Chapter 13 bankruptcy petition on April 29, 2017. She filed her Chapter 13 plan on that same date. The Plan was confirmed on July 10, 2017. First Commonwealth Bank ("FCB") then filed Proof of Claim #7 on August 11, 2017, alleging that its $16,927.56 automobile loan was wholly unsecured. Nearly fifteen months after entry of the confirmation order, FCB then filed a Motion to Modify Plan Post-Confirmation.

A hearing on the motion was held on December 13, 2018, and the matter was taken under advisement. The parties were given an additional two weeks to provide supplemental briefs if they so desired, but neither FCB nor the Debtor submitted any further materials.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and the general order of reference entered in this district on July 16, 1984. This is a core proceeding under 28 U.S.C. §§ 157(b)(2), and the court has authority to issue final entries.

This opinion is not intended for publication or citation. The availability of this opinion, in electronic or printed form, is not the result of a direct submission by the Court.

FACTS

The loan at issue was originally provided to Debtor by FirstMerit Bank, to finance the purchase of a 2013 Hyundai Tucson. FirstMerit was then acquired by FCB through a merger. At the 341(a) meeting of the creditors on June 28, 2017, Debtor provided the Ch. 13 trustee with a Certificate of Title of the vehicle, which showed a lien to FirstMerit. A notation on the lien indicated that FirstMerit had cancelled the lien on October 27, 2015.

Debtor's Chapter 13 plan was confirmed on July 10, 2017. FCB was not listed as a secured creditor in the plan, which was set to pay nineteen percent to general unsecured creditors. FCB maintains that there has always been a lien on the vehicle held by either FCB or its predecessor, FirstMerit, at all relevant times. When FCB learned it was not to be treated as a secured creditor in Debtor's plan, it contacted Debtor's counsel, who then provided a copy of the Certificate of Title, including the "Lien Cancelled" notation.

After searching its records from the merger, FCB was unable to find any proof of the lien beyond a third-party vehicle lien report called a VINtek report. FCB was not sure at this point whether or not FirstMerit had actually released the lien, and due to a delay in getting relevant documents, FCB's counsel opted to submit its Proof of Claim in the amount of $16,927.56 on August 11, 2017, rather than miss the claim deadline. The claim was submitted as unsecured.

After filing the claim, FCB located the documents supporting its status as a secured creditor. FirstMerit had apparently contacted the Ohio Bureau of Motor Vehicles after the merger, and replaced its own lien with FCB's lien, cancelling the former in the process. Upon doing so, FirstMerit had notified Debtor, and sent her a copy of the Certificate of Title with the cancellation notation included. FCB's lien was noted on this replacement certificate at this time, but FCB was not provided a copy. FCB eventually obtained a replacement certificate from the Ohio Bureau of Motor Vehicles. However, as FCB was unable to timely obtain the necessary documents, it did not file an objection to confirmation of Debtor's plan by the deadline.

FCB claims that it placed Debtor's counsel on notice of these events and the continuing existence of the FirstMerit/FCB lien, and that it attempted to communicate with counsel in order to facilitate a modification of the plan, but never received a response.

DISCUSSION

The Bankruptcy Code allows that, at any time after a Chapter 13 plan is confirmed, the debtor, trustee, or holder of an unsecured claim may request that it be modified. 11 U.S.C. § 1329(a). These modifications, however, are not unlimited in scope; they must fall within a set of narrow parameters. The requested changes must:

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
(2) extend or reduce the time for such payments;
(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or
(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor . . .

11 U.S.C. §§ 1329(a)(1) – (a)(4). The modification "should be strictly limited to the enabling provisions" of that section. In re Klus, 173 B.R. 51, 59 (Bankr. D. Conn. 1994). Permission to make a modification post-confirmation is permissive, not mandatory. Id., citing In re Witkowski, 16 F.3d 739, 746 (7th Cir. 1994).

FCB's requested modification is simple: now armed with proof of its lien, it wishes to be reclassified as a secured creditor, and asks for a modification allowing for full payment of its claim. However, this request does not fall within any of the above-enumerated enabling provisions of § 1329(a). The crux of FCB's proposal is that its claim be reclassified as secured. However, "§ 1329(a) does not expressly permit . . . reclassification of claims." Warren v. PNC Bank, Inc. (In re Warren), 499 B.R. 914, 918 (Bankr. S.D. Ga. 2013), citing In re Coleman, 231 B.R. 397, 401 (Bankr. S.D. Ga. 1999).

Even if the court were to generously interpret FCB's modification as a request to merely "increase or reduce the amount of payments on claims of a particular class provided for by the plan," under § 1329(a)(1), this avenue would not serve it any better. FCB is not asking for an adjustment to the claims of an entire *class* of creditors – only to its own claim. § 1329(a)(1) does not allow for the individualized treatment of class members. In re Klus, supra, at 60, citing Sharpe v. Ford Motor Credit Co., 122 B.R. 708, 710 (Bankr. E.D. Tenn. 1991).

FCB also argues at length, as additional support for the reclassification proposal, that it is a "910 creditor" under 11 U.S.C. § 1325(a) – a creditor whose debt was secured by collateral of a motor vehicle purchased within 910 days of the filing of debtor's Chapter 13 petition. As such, FCB claims, it must be reclassified as a secured creditor. But once again, a postconfirmation

modification is an inappropriate method through which to make such a change.

As Debtor properly indicates, FCB's request has come roughly one-third of the way into the life of the plan. Though this court acknowledges that the untimely nature of this proposed change to the plan was due to a rather unfortunate and unique string of circumstances, to fundamentally change the plan at such an advanced date would cut against both the interests of the Debtor and of the other creditors. Even if such a change were permissible under the Bankruptcy Code, to allow it would prejudice virtually everyone except for FCB. As such, the court will deny the motion by separate order.

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