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: 03:31 PM February 5, 2019

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CHAPTER 13
	)	
TERRY L. MILLER,	)	CASE NO. 18-41588
	)	
Debtor.	)	JUDGE RUSS KENDIG
	)	
IN RE:	)	CHAPTER 13
	)	
RICHARD A. NITSO, JR.,	)	CASE NO. 18-41633
	)	
Debtor.	)	JUDGE RUSS KENDIG
	)	
	)	
	)	**MEMORANDUM OF OPINION**
	)	**(NOT FOR PUBLICATION)**

Now before the court is chapter 13 trustee Michael A. Gallo's ("Trustee") objection to confirmation in each of the above cases. The court held hearings on October 18, 2018, attended by Trustee, Dionis E. Blauser, Debtor's attorney in the Miller case, and Robert P. Safos, Debtor's attorney in the Nitso case. The court issued a briefing schedule in each case. Trustee filed a brief in support of his objection to confirmation on November 1, 2018.

The court has subject matter jurisdiction of these cases under 28 U.S.C. § 1334 and the

general order of reference entered by The United States District Court for the Northern District of Ohio on April 4, 2012. Gen. Order 2012-7. The court has authority to issue final orders in these matters. Pursuant to 11 U.S.C. § 1409, venue in this court is proper. The following constitutes the court's findings of fact and conclusions of law under Bankruptcy Rule 7052.

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

Terry L. Miller filed a chapter 13 case on July 27, 2018. He owes a secured debt on a 2013 Toyota Tundra to OneMain Financial ("OneMain"). The debt was included in Part 3.2 of the national form plan. He estimated the total claim was $24,051.00 and valued the Tundra at $26,337.00. He proposed to pay the OneMain claim as a fully secured claim at 7.00% interest, the Till[1] interest rate. Gen. Order 17-2 (Bankr. N.D. Ohio Oct. 31, 2017) OneMain a proof of claim for $25,229.26 with interest at 21.24%. Trustee objected to confirmation because OneMain would receive a higher interest rate than it was entitled to receive, thereby reducing the distribution available to unsecured creditors.

Richard A. Nitso, Jr. filed his case on August 3, 2018. He owed Wells Fargo Financial ("Wells Fargo") for a 2004 Nissan Titan. He included the debt in Part 3.3 of the plan, proposing to pay Wells Fargo $9,431.00 in full at 6.50% interest.[2] Wells Fargo filed a claim for $10,012.04 at 15.99% interest. Trustee objected to confirmation, arguing that paying the higher interest rate in the proof of claim resulted in a lower distribution to the unsecured creditors. He contended Debtor needed to reduce interest to the Till rate. Debtor later objected to the Wells Fargo proof of claim and obtained an order reducing the Till interest rate of 6.50%.[3]

DISCUSSION

The primary question in both cases focuses on the interest rate reduction under the national form plan. The question presented is whether the interest rate listed by a debtor in the national form plan controls the amount of interest paid on the claim through the chapter 13 plan? When the plan controls, it means that confirmation of the plan would establish the proper interest rate to be paid on the claim. If the plan does not control, the interest rate is governed by the proof of claim and an objection to the claim is required to adjust the interest rate.

I. Overview of Part 3 of the national form plan

Part 3 of the national form plan addresses the treatment of secured claims. In brief

1 Till v. SCS Credit Corp, 541 U.S. 465 (2004).
2 The published prime rate as of June 14, 2018 was 5.00%. See http://www.fedprimerate.com/wall_street_journal_prime_rate_history.htm
3 The court now recognizes this interest rate does not reflect the prime rate plus 2%. The prime rate was 5.00% and this claim should be paid with 7.00% interest. The court will issue an amended order reflecting the proper Till interest rate.

overview, section 3.1 is dedicated to the maintenance of payments on long-term debt and cure of the defaults. Typically, mortgages are included in this section.

Section 3.2, the section utilized by Debtor Miller, pertains to secured debts that are to be valued, paid as fully secured claims, or crammed down. 11 U.S.C. § 506 is the foundation for valuing claims in this section. For nongovernmental secured claims, the secured value set forth in the plan is binding upon confirmation. Fed.R.Bankr.Pro. 3015(g)(1). Further, the language in section 3.2 provides that for "each listed claim, the value of the secured claim will be paid in full with interest at the rate stated below."

Section 3.3 addresses claims that are excluded from valuation under 11 U.S.C. § 506. Many of these claims are often also referred to as "910" claims. Debtor Nitso's claim is found in section 3.3. The form plan specifically states that claims listed in this section "will be paid in full under the plan with the interest at the rate stated below."

Finally, section 3.4 is the provision that allows for avoidance of liens under 11 U.S.C. § 522(f).

Two of these sections require special notice to affected creditors, sections 3.2 and 3.4. In order for the provision to be effective, a debtor must mark the appropriate box in Part 1 of the national form plan. Additionally, the affected creditors must be served in accordance with Bankruptcy Rule 7004. Fed.R.Bankr.Pro. 3012(b), 4003(d).

II. Miller: Section 3.2

Debtor Miller appropriately listed the OneMain claim on the Toyota in section 3.2 of the plan. Per the plan, the value of the Toyota is $26,337.00. He estimated the claim was $24,051.00 but the proof of claim shows it is higher, $25,229.26. Regardless, the vehicle is fully secured, leaving only the question of the proper interest rate to be paid.

Debtor proposes to pay the claim at a Till interest rate of 7.00% interest. OneMain's claim includes a 21.24% interest rate on the claim. The court must determine whether Trustee is to pay the claim at 7.00% or 21.24% interest.

Trustee is not convinced that the plan interest rate is binding. To protect the unsecured creditors from the lower distribution that would result from payment of the higher interest rate, he objected to confirmation. According to Trustee, the Bankruptcy Code provides that a filed claim is deemed allowed unless an objection is filed. He asserts that the form plan, and any accompanying rule that may suggest otherwise, impermissibly contradicts the Code. As a result, he argues that the interest rate in the claim is the appropriate rate, not that listed in the plan.

The Court does not find that the form plan or applicable rules contravene claim allowance under the Bankruptcy Code. As this Court previously stated, "an objection to proof of claim can only be properly addressed to three questions: the validity of the debt; whether the debt

falls within a finite list of reasons for which the claim may be denied[1]; or the amount due to the creditor as of the petition date." In re Diehl, Case No. 18-60608, *2 (Bankr. N.D. Ohio June 1, 2018) (unpublished) (footnote omitted) (citing In re Brown, Bankr N.D. Ind. No. 10-12845, 2015 Bankr. LEXIS 3585 (Sep. 18, 2015) at *1). OneMain's filed a claim setting forth the amount it was owed as of the petition date. Its claim is an allowed claim and Debtor does not contest the validity, seek denial, or challenge the amount due on the claim *as of the petition date*.

Section 1322(b)(2) empowers a debtor to "modify the rights of holders of secured claims" in a chapter 13 plan. Cramdowns of value are permissible under 11 U.S.C. § 506, while cramdowns of interest rates are permissible per § 1325(a)(5)(B)(ii) and the Till case. Through his plan, Debtor is providing for treatment of the claim in accordance with applicable Bankruptcy Code and Rule provisions. How the claim is treated under the chapter 13 plan is a matter for confirmation. *Accord* In re Khalfani, Case No. 18-50112, *7 (Bankr. N.D. Ohio July 20, 2018) (unpublished); 11 U.S.C. § 1325(a)(5). The court therefore rejects Trustee's argument and determines that the interest rate set forth in the plan may be conclusive.

The national form plan states that "[f]or each listed claim, the value of the secured claim will be paid in full with interest at the rate stated [in section 3.2]." Debtor identifies the OneMain as a fully secured claim with 7.00% interest. Pursuant to Bankruptcy Rule 3015(g)(1), "any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed." To utilize the plan for this purpose, the plan must be "served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004." Fed.R.Bankr.Pro. 3012(b). The court finds that this Rule does not encompass the interest rate.

Rule 3012 compliments 11 U.S.C. § 506(a), the provision that bifurcates a claim secured by a lien into secured and unsecured portions based on the value of the underlying collateral. The claim is "a secured claim to the extent of the value of the . . . property" and unsecured for the remaining balance. Neither Rule 3012(b) nor § 506(a) address the interest rate.

The interest rate is payable on a claim is a function of 11 U.S.C. § 1325(a)(5)(B)(ii). A creditor is entitled to interest to compensate on the payment stream because it does not receive a lump sum payment for the amount of the claim. Following the Supreme Court, this court utilizes the prime-plus rate of interest. In re Dimery, 2011 WL 2470057 (Bankr. N.D. Ohio 2011) (unpublished) (citing Till v. SCS Credit Corp., 541 U.S. 465 (2004)). Since the calculation of the interest rate is not a function of 11 U.S.C. § 506(a), Rule 3012 does not apply. Consequently, there is no requirement to serve the plan in accordance with Rule 7004 in order to adjust the interest rate. Ordinary service of the plan is sufficient notice to the creditor without the additional requirements of Rule 7004.

Using the plan to adjust the interest rate leaves the court with minimal concern. Generally, interest rate reductions will be less significant than alteration of a secured value, making the additional due process afforded by Rule 7004 unnecessary. The prime-plus interest

rate utilized is a matter of Supreme Court precedent. Consequently, the court finds no fault in permitting the interest rate to be determined through the plan provided all other procedural safeguards are met.

Debtor filed his amended plan on September 10, 2018. A certificate of service was not attached to the amended plan. Immediately after filing the amended plan, Debtor filed a document captioned Notice of Filing of Chapter 13 Plan ("Notice"). In its entirety, it states: "Now comes Debtor, Terry L. Miller, by and through undersigned Counsel, and hereby gives notice that he has filed a Chapter 13 Plan in the above-cited bankruptcy case." Debtor's counsel certifies that the "foregoing" was served on September 10, 2018. The "foregoing" is the Notice. There is no indication that the amended plan was served.[4]

Serving a Notice that states a plan was filed does not meet the requirements of Rule 3015(d) which requires service of the amended plan. The court therefore finds that the amended plan was not properly served. Without proper service to the creditor, the amended plan cannot be confirmed. Trustee's objection will be sustained by separate order.

III. Nitso: Section 3.3

Debtor Nitso's plan proposes to pay a "910" claim to Wells Fargo in full at 6.50% interest. Wells Fargo filed a claim requesting 15.99% interest. On October 30, 2018, Debtor filed a claim objection to reduce the interest to the plan's 6.50% rate. The court sustained the claim objection on December 3, 2018. Trustee withdrew his objection on December 28, 2018 and the court confirmed the plan on December 28, 2018. No justiciable controversy remains before the court. Parsons Inv. Co. v. Chase Manhattan Bank, 466 F.2d 869, 871 (6th Cir. 1972) (stating "a dispute may lose its character as a case or controversy [under Article III, Section 2 of the United States Constitution], thus rendering it moot, 'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.'") (quoting Powell v. McCormack, 395 U.S. 486, 496 (1969)). The court refrains from issuing an advisory opinion.

CONCLUSION

The national form plan permits some components of secured claims to be determined through the plan confirmation process, including secured value determinations and interest rate reductions in section 3.2. The interest rate reduction is a confirmation matter, not a claim allowance matter, and therefore can be accomplished through the plan. Although some of the actions related to secured claim adjustment under the national form plan require heightened service, the reduction of the interest rate is not one of them. Consequently, service of a plan will allow an opportunity to adjust an interest rate through confirmation of the national form plan.

Debtor Miller did not properly serve his amended plan. He served a notice stating a plan was filed. This does not comport with applicable bankruptcy rules, nor provide due process to creditors. Consequently, the court will sustain Trustee's objection to confirmation.

4 In fact, the Notice does not make reference to an *amended* plan.

Debtor Nitso sought to adjust the interest rate on a "910" claim in section 3.3 of the national form plan. After the hearing, he obtained an order reducing the interest rate. Trustee has withdrawn his objection to confirmation, leaving the court with no case or controversy to decide. The matter is moot.

Separate orders will be entered immediately effectuating this opinion.

# # #

Service List:

Dionis E. Blauser
Amourgis & Associates
3200 W. Market Street Suite 106
Akron, OH 44333

Michael A. Gallo
5048 Belmont Avenue
Youngstown, OH 44505

Robert P. Safos
585 E Market Street
Warren, OH 44481-1242