IT IS SO ORDERED.

Dated: September 26, 2011
04:07:15 PM

Kay Woods
Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	**CASE NUMBER 11-41523**
AARON I. COLEMAN,	*	**CHAPTER 13**
Debtor.	*	**HONORABLE KAY WOODS**

****

ORDER OVERRULING OBJECTION OF GREEN TREE SERVICING LLC TO CONFIRMATION

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This cause is before the Court on Objection to Confirmation (Doc. # 14) filed by Green Tree Servicing LLC ("Green Tree") on July 7, 2011. Debtor Aaron I. Coleman filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code on May 19, 2011. On that same day, the Debtor filed Chapter 13 Plan (Doc. # 2), which provided for the secured claim of Green Tree to be bifurcated. The Plan stated that the value of Green Tree's collateral was $40,000.00 and the amount of the unsecured claim was $36,201.77. (*See* Sec. 2F., Plan.)

Green Tree objected to confirmation of the Debtor's Plan because "the Debtor proposes to cram down the value of Green Tree's security interest to $40,000.00." (Obj. to Conf. ¶ 4.) In addition, Green Tree objected to the proposed interest rate of 5.25%, alleging that Green Tree "is entitled [to] 10.49%." (*Id*. ¶ 5.)

The Court held a hearing on the Objection to Confirmation on September 15, 2011, at which appeared counsel for the Debtor; however, counsel for Green Tree did not appear. At the hearing, the Court noted that the only issue appeared to be whether the manufactured home, which the Debtor used as his residence, constituted real or personal property. This factual issue would determine if the claim of Green Tree could be bifurcated and crammed down. Accordingly, the Court requested counsel for the Debtor to brief the issue.

As a consequence, the Debtor filed Response to Objection to Confirmation of Plan ("Response") (Doc. # 24) on September 22, 2011, which states: (i) the manufactured home is not affixed to the real property that secures Green Tree's loan; and (ii) the Debtor has not surrendered title to the manufactured home to the clerk of courts. Both of these actions are required for a manufactured home to be deemed to be real property pursuant to Ohio Revised Code § 5701.02(B)(2). In addition, the Manufactured Home Retail Installment Contract and Security Agreement, which was attached to both the Objection to Confirmation and the Response explicitly

prohibits the Debtor from attaching the manufactured home to any real estate absent the written consent of Green Tree. There is no indication that such consent was ever requested or given.

Section 1322 of the Bankruptcy Code permits a debtor's plan to "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) (West 2010) (emphasis added). In the present case, the Debtor's residence consists of real property and a manufactured home, which is personal property. As a consequence, 11 U.S.C. § 1322(b)(2) does not prohibit the Debtor from cramming down Green Tree's claim to the value of the real property.

Pursuant to *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), the Supreme Court rejected the "coerced loan, presumptive contract rate, and the cost of funds approaches[]" to determine the present value of a secured claim in a chapter 13 plan. *Id*. at 477. Instead, the Supreme Court opted for the "formula approach," starting with the national prime rate and adjusting for risk. *Id.* at 478-79. This Court has previously held that, generally, the appropriate interest rate to use to determine the present value of chapter 13 claims is the prime rate plus a risk factor of 2%. *See In re Riley*, 428 B.R. 757 (Bankr. N.D. Ohio, Feb. 3, 2010). The interest rate in the Debtor's chapter 13 plan is consistent with this approach. Accordingly, Green Tree's Objection to Confirmation on the basis of the interest rate is also overruled.

Green Tree's Objection to Confirmation is overruled in its entirety.

IT IS SO ORDERED.

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