

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

In re:)	
)	
Lucious Severe Fuller,)	Case No. 07-81073
)	
Debtor.)	
_____)	

**ORDER OVERRULING OBJECTION
TO CONFIRMATION OF PLAN**

THIS MATTER came on before the Court on October 25, 2007, after due and proper notice, before the undersigned Bankruptcy Judge upon Green Tree Servicing, LLC's Objection to Confirmation of Plan. Craig S. Haskell appeared on behalf of Green Tree Servicing, LLC ("Green Tree"), Donald D. Pergerson appeared on behalf of Lucious Severe Fuller (the "Debtor"), and Benjamin E. Lovell appeared on behalf of the Chapter 13 Trustee. After consideration of the pleadings and other matters of record, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

On June 16, 2000, the Debtor purchased a 2000 Horton Mirage mobile home (the "Mobile Home") for \$40,555.00. In order to facilitate the purchase of the Mobile Home, the Debtor entered into a Retail Installment Sales Contract (the "Contract") to finance the amount of \$36,751.00 with payments of \$464.96 for 240 months and interest at the rate of 14.29%. Green Tree is the current owner and holder of the Contract. The Debtor granted Green Tree a security interest in the Mobile Home, and Green Tree perfected its security interest by placing a lien against the Mobile Home's title.

On July 30, 2007, the Debtor filed a petition under Chapter 13 of the Bankruptcy Code. The Debtor remains obligated to Green Tree in the amount of \$35,181.00. According to the Notice of Proposed Plan and Order Confirming Plan dated September 14, 2007 (the “Proposed Plan”), the Debtor proposes to bifurcate the claim of Green Tree by treating its claim as secured in the amount of \$15,815.25 with interest thereon at the rate of 9.50% per annum, and the balance of the claim to be treated as unsecured. The Debtor’s income is below the median, and the Proposed Plan requires a minimum dividend of 0% to general unsecured creditors.

On October 9, 2007, Green Tree filed a timely Objection to Confirmation of Plan asserting that 11 U.S.C. § 1322(b)(2) and 11 U.S.C. § 101(13A) prohibits the Debtor from attempting to bifurcate its claim based upon the value of the Mobile Home.

CONCLUSIONS OF LAW

The only issue before the court is whether the debt owed to Green Tree by the Debtor, which is secured by a perfected security interest in the Mobile Home but not by the real property upon which the Mobile Home is located, is protected from modification under § 1322(b)(2) of the Bankruptcy Code.

Section 1322(b)(2) generally provides that the rights of a holder of a secured claim can be modified by a Chapter 13 plan; however, § 1322(b)(2) also prohibits modification if a claim is “secured only by a security interest in real property that is the debtor’s principal residence....” 11 U.S.C. § 1322(b). With the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), the Bankruptcy Code now provides for a definition of the term “debtor’s principal residence” as follows:

(A) means a residential structure, including incidental property, without

regard to whether that structure is attached to real property; and

(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer.

11 U.S.C. § 101(13A). Green Tree contends that the addition of § 101(13A) expands the reach of the anti-modification provision of § 1322(b) to include mobile homes that are a debtor's principal residence.

This court disagrees. Section 1322(b) specifically applies to "real property that is the debtor's principal residence." In North Carolina, real property is defined by N.C. Gen. Stat. § 105-273(13) as follows:

"Real property," "real estate," and "land" mean not only the land itself, but also buildings, structures, improvements, and permanent fixtures on the land, and all rights and privileges belonging or in any way appertaining to the property. These terms also mean a manufactured home as defined in G.S. 143-143.9(6) if it is a residential structure; has the moving hitch, wheels, and axles removed; and is placed upon a permanent foundation either on land owned by the owner of the manufactured home...

N.C. Gen. Stat. § 105-273 (13). Green Tree has not argued that the Mobile Home in this case should be considered real property pursuant to the above definition. Rather, Green Tree contends that the anti-modification provision of §1322(b)(2) applies because the Mobile Home is the Debtor's principal residence, irregardless of whether the Mobile Home is in fact "real property." If the amendments contained in BAPCPA had deleted the words "real property" from § 1322(b), in addition to defining a debtor's principal residence to include mobile homes, then Green Tree's argument would be persuasive; however, no such changes were made to the language of § 1322(b).

The court concludes that pursuant to the clear and unambiguous language of § 1322(b), its provisions apply only to "real property." The court notes that the majority of courts addressing this issue have also found that the anti-modification provision of § 1322(b)(2) continues to be limited to

security interests in real property. *See Herrin v. Greentree-Al, LLC*, ___ B.R. ___ 2007 WL 2791603, at *4 (S.D. Ala. Sept. 24, 2007); *Moss v. Greentree-Al, LLC*, 2007 WL 2807355, at *4 (S.D. Ala. Sept. 24, 2007); *In re Oliviera*, 2007 WL 3001654, at *3 (Bankr. E.D. Tex. Oct. 11, 2007); *In re Bartolome*, 2007 WL 2774467, at *3 (Bankr. M.D. Ala. Sept. 21, 2007); *In re McLain*, ___ B.R. ___ 2007 WL 3033938, at *3 (Bankr. D.S.C. August 30, 2007); *In re Coleman*, 373 B.R. 907, 911 (Bankr. W.D. Mo. 2007); *In re Manning*, 2007 WL 2220454, at *5 (Bankr. N.D. Ala. Aug. 2, 2007); *In re Cox*, 2007 WL 1888186, at *2 (Bankr. S.D. Tex. June 29, 2007). *Contra In re Fells*, 2007 WL 3120113, at *5 (Bankr. W.D. La. Oct. 23, 2007); *In re Shepherd*, 354 B.R. 505, 512 (Bankr. E.D. Tenn. 2006).

Based upon the foregoing, Green Tree's objection to confirmation is overruled, and the Debtor's plan may be confirmed.

SERVICE LIST

Lucious Severe Fuller
P. O. Box 2241
Henderson, NC 27536

Donald D. Pergerson
P. O. Box 2289
Henderson, NC 27536

Craig S. Haskell
Suite 416
5540 Centerview Drive
Raleigh, NC 27606

Richard M. Hutson
P. O. Box 3613
Durham, NC 27702

Michael D. West
P. O. Box 1828
Greensboro, NC 27402