

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

ENTERED

OCT 05 2004

**U.S. BANKRUPTCY COURT
MDNC - JL**

IN RE:)	
)	
Mea L. Simmons,)	Case No. 04-51304
)	
Debtor.)	
_____)	

**ORDER OVERRULING OBJECTION OF HABITAT FOR HUMANITY
TO CONFIRMATION OF PLAN**

This matter came on before the court on September 15, 2004, for consideration of the Objection by Habitat for Humanity of Forsyth County, Inc. to Confirmation of Plan. Appearing before the court was Jenna B. Thomas, attorney for Habitat for Humanity of Forsyth County, Inc., A. Carl Penney, attorney for the Debtor, and Kathryn L. Bringle, Chapter 13 Trustee. After consideration of the record, the evidence submitted on behalf of the parties, and the arguments of counsel, the court makes the following findings of fact and conclusions of law:

The Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on May 5, 2004 ("Petition Date"). Habitat for Humanity of Forsyth County, Inc. ("Habitat") is a secured creditor in this case by virtue of two promissory notes executed by the Debtor on April 5, 2001. The first promissory note ("First Note") is in the original principal amount of \$58,500 and is secured by a First Deed of Trust against the Debtor's real property located in Winston-Salem, North Carolina (the "Real Property"). The second promissory note ("Second Note") is in the original principal amount of \$5,000 and is secured by a Third Deed of Trust on the Real Property.

The Second Note is non-interest bearing for a term of ten years and requires no ongoing

payments as long as the Debtor is in good standing under the terms of the note. However, if an event of default occurs within three years of the date of the Second Note, Habitat is entitled to declare the entire amount owed under the Second Note due and payable. After three years from the date of the Second Note, one-tenth of the principal amount owed under the note will be excused for each year, and the amount due will be equal to the number of years remaining under the note multiplied by one-tenth of the principal amount. As a result, ten years from the date of the Second Note, absent an event of default, the entire amount due under the Second Note will be forgiven.

The Second Note provides that it shall be considered an event of default if the Debtor sells, refinances, otherwise encumbers, or discontinues residing in the Real Property. In addition, the Third Deed of Trust provides that a default under the First Note constitutes an event of default under the Second Note. As of the Petition Date, the Debtor was in default under the payment terms of the First Note and Deed of Trust, and consequently, also in default under the terms of the Second Note.

The Debtor's Chapter 13 plan (the "Plan") proposes that the Trustee disburse payments on the First Note as a long term continuing debt, as well as payments to cure the arrearage on the First Note. The Plan proposes that no funds be disbursed by the Trustee on the Second Note. On August 27, 2004, Habitat filed a timely objection to the Plan. Habitat takes the position that the Plan violates § 1325 because it does not provide for the full payment of Habitat's secured debt under the Second Note and Third Deed of Trust during the life of the Plan. Habitat contends that the Debtor must pay the full amount of the Second Note because the Debtor's prepetition default accelerated payment under the note.

Under the Bankruptcy Code, Chapter 13 debtors are entitled to cure mortgage default on a principal residence. 11 U.S.C. § 1322. Section 1322(b)(3) states that a Chapter 13 plan may "provide for the curing or waiving of any default." Furthermore, § 1322(b)(5) provides that the plan may provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on a secured claim on which the last payment is due after the date on which the final payment under the plan is due. Habitat contends that, inasmuch as it accelerated the payments due under the Second Note prior to the filing of the bankruptcy petition, the Plan must provide for payment in full during the life of the Plan. Habitat's contention is contrary to the provisions of the Bankruptcy Code.

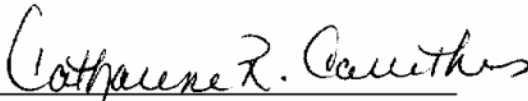
Courts are clear that a plan may provide for the curing of a default notwithstanding a prepetition acceleration of a debt. Matter of Roach, 824 F.2d 1370, 1373 (3rd Cir. 1987) In re Glenn, 760 F.2d 1428, 1442 (6th Cir. 1985); In re Grubbs, 730 F.2d 236, 240 (5th Cir. 1984); In re Clark, 738 F.2d 869, 874 (7th Cir. 1984). The cure and maintenance provision of Chapter 13 applies exclusively to those debts which, by their own terms, extend beyond the life of the plan. 11 U.S.C. § 1322(b)(5). A "cure" reinstates a debt to its pre-default position thereby returning the debtor and creditor to their respective pre-default positions. In re Litton, 330 F.3d 636, 644 (4th Cir. 2003); In re Taddeo, 685 F.2d 24, 26-27 (2d Cir. 1982) ("Curing a default commonly means taking care of the triggering event and returning to pre-default conditions. The consequences are thus nullified."). If a mortgage on a debtor's residence has been accelerated due to a debtor's prepetition default, the plan may cure the default and reinstate the original payment schedule, rather than pay the entire accelerated debt. Taddeo, 685 F.2d at 26; In re Guarnieri, 308 B.R. 122, 126 (D. Conn. 2004); In re Trapp, 260 B.R. 267, 272 (Bankr. S.C.

2001).

In this case, the event of default which triggered the contractual acceleration of the Second Note was the default on the First Note. By proposing to cure the default on the First Note, the Debtor's Plan is proposing to cure the default of the Second Note. Upon curing this default, the Debtor and Habitat will be returned to their respective pre-default positions. The Debtor's position before the default was one in which no payments were required by the terms of the Second Note. The Debtor's Plan as proposed merely reinstates the original payment schedule. Finally, upon successful completion of the Plan, the Second Note and the Third Deed of Trust will not be extinguished, but will continue in effect pursuant to their original terms.

Based upon the foregoing, the court finds that the Debtor's proposed plan complies with the applicable provisions of the Bankruptcy Code. Therefore, Habitat's objection to confirmation of the Debtor's Plan is overruled.

This the 5 day of October 2004.


Catharine R. Carruthers
United States Bankruptcy Judge