Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: March 18, 2015

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

MICHAEL CORNISH AND TASHA CORNISH, **CASE NO. 14-14126-NPO**

DEBTORS. **CHAPTER 13**

ORDER REGARDING AMENDED OBJECTION OF 21ST MORTGAGE TO CHAPTER 13 PLAN

There came before the Court the Amended Objection of 21st Mortgage to Chapter 13 Plan ("21st Mortgage's Objection") (Dkt. 41) filed by 21st Mortgage Corporation ("21st Mortgage"), the Brief in Support of Objection of 21st Mortgage to Amended Chapter 13 Plan ("21st Mortgage's Brief") (Dkt. 47) filed by 21st Mortgage, and the Response Brief Filed by the Debtors (Dkt. 49) filed by Michael Cornish and Tasha Cornish (the "Debtors") in the above-referenced bankruptcy case (the "Bankruptcy Case").

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 158(b)(2)(A) and (L). Notice of the 21st Mortgage's Objection was proper under the circumstances.

Facts

1. The Debtors signed a Consumer Loan Note and Security Agreement (the "Note") (Dkt. 41-1) on October 4, 2004 in connection with the purchase of a used 2002 Belmont 16447 manufactured home (the "Manufactured Home"). Under the Note, the Debtors agreed to pay $25,958.00 over 180 months at an annual interest rate of 9.99%. 21st Mortgage is the current owner, holder, and obligee of the Note.

2. The Debtors filed a petition for relief (the "Petition") (Dkt. 1) under chapter 13 of the U.S. Bankruptcy Code on November 4, 2014.

3. When the Petition was filed, the Debtors owed $14,364.34 on the Note, and the value of the Manufactured Home is $15,583.67 according to 21st Mortgage. (21st Mortg. Br. at 2).

4. In the amended chapter 13 plan (the "Plan") (Dkt. 8), the Debtors propose to pay the outstanding debt owed 21st Mortgage over sixty (60) months and "cram down" the interest rate to 5%, the presumptive interest rate set by the Standing Order Designating Presumptive 11 U.S.C. § 1325(a)(5)(B) Interest Rate (the "Standing Order").

5. The Debtors propose to pay their unsecured creditors in full.

6. 21st Mortgage objects to confirmation of the Plan because it contends that the proposed interest rate of 5% is insufficient to provide 21st Mortgage with the present value of its allowed secured claim.

Discussion

21st Mortgage asks the Court to deny confirmation of the Plan unless the interest rate is increased either to: (1) a prime-plus formula interest rate of 13.09%; (2) a presumptive plan interest rate higher than 5% applicable to all loans secured by manufactured housing; or (3) a

presumptive contract rate of 9.99%. 21st Mortgage does not dispute that the Manufactured Home is personal property and, accordingly, that the original terms of the Note are subject to modification by the Court. 11 U.S.C. § 1322(b)(2) (authorizing modification of secured creditor's rights in anything other than "real property that is the debtor's principal residence"). For their part, the Debtors do not dispute that they owe 21st Mortgage the amount that it alleges remains due under the Note and some amount of interest to account for the present value of its secured claim. The focus of the dispute between the parties is the proper "cram down"[1] interest rate.

Before reaching the substantive arguments of the parties, the Court makes two preliminary observations. First, the Court notes that 21st Mortgage has filed nearly identical objections to cram down interest rates in other chapter 13 cases before this judge[2] and in other bankruptcy

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[1] The term "cram down" does not appear in the Bankruptcy Code but refers to the confirmation of a plan that modifies the rights of a secured creditor over the secured creditor's objection. *In re Stringer*, 508 B.R. 668, 672 (Bankr. N.D. Miss. 2014).

[2] *In re Shameka Wells,* No. 14-02982-NPO (Bankr. S.D. Miss. Dec. 19, 2014) (Dkt. 59); *In re Frederick M. Washington & Anna M. Washington*, No. 14-03588-NPO (Bankr. S.D. Miss. Dec. 19, 2014) (Dkt. 28); *In re Undrie L. Thomas & Sharon E. Thomas*, No. 14-03128-NPO (Bankr. S.D. Miss. Dec. 19, 2014) (Dkt. 45); *In re Anthony Leon Hollingsworth*, No. 14-04058-NPO (Bankr. S.D. Miss. Feb. 12, 2015) (Dkt. 22); *In re Kristen Michelle Smith*, No. 14-03718-NPO (Bankr. S.D. Miss. Feb. 12, 2015) (Dkt. 19).

courts in Mississippi.[3] The difference in the discount rates urged by 21st Mortgage and the Debtors does not result in a relatively large amount in dispute in this Bankruptcy Case when calculated over the length of the Plan. But 21st Mortgage is no stranger to the bankruptcy landscape (as evidenced by the cases listed in footnotes 2 and 3), and the interest rate that is applied in this Bankruptcy Case no doubt will impact all present and future cram down cases before this Court in which 21st Mortgage is a secured creditor. For 21st Mortgage, therefore, the interest rate issue is of greater economic consequence than the facts of this Bankruptcy Case otherwise would suggest. Conversely, the interest rate issue also will impact other chapter 13 debtors. An interest rate that is "so high as to doom [a chapter 13] plan" could deny the "fresh start" that bankruptcy offers the honest but unfortunate debtor. *See Till v. SCS Credit Corp.*, 541 U.S. 465 (2004); *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991) (citation omitted).

Second, the Court notes that in this Bankruptcy Case and in some of the other chapter 13 cases in which it has challenged the 5% presumptive interest rate, 21st Mortgage initially filed an objection that relied mostly on Eighth Circuit case law. (Dkt. 26). At the Court's insistence, 21st Mortgage supplemented the objection to address binding precedent in the Fifth Circuit Court of

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[3] *In re Mary L. Gillie*, No. 14-51292-KMS (Bankr. S.D. Miss. Sept. 19, 2014) (Dkt. 14); *In re Benton Lucas Seymour & Laura Anne Seymour*, No. 14-51287-KMS (S.D. Miss. Sept. 24, 2014) (Dkt. 19); *In re Edrick Quinn*, No. 14-51344-KMS (Bankr. S.D. Miss. Sept. 24, 2014) (Dkt. 33); *In re Sebrina Allen*, No. 14-51321-KMS (Bankr. S.D. Miss. Sept. 30, 2014) (Dkt. 24); *In re Latrina Dynell Gamble*, No. 14-51317-KMS (Bankr. S.D. Miss. Sept. 30, 2014) (Dkt. 15); *In re Jimmie G. Anderson, Jr. & Sheila A. Anderson*, No. 14-51469-KMS (Bankr. S.D. Miss. Oct. 23, 2014) (Dkt. 17); *In re Angela H. Marsalis & Curtis Marsalis, III*, No. 14-03257-KMS (Bankr. S.D. Miss. Dec. 2, 2014) (Dkt. 31); *In re Lakesha A. Harris*, No. 14-13835-JDW (Bankr. N.D. Miss. Dec. 18, 2014) (Dkt. 25); *In re Richard Louie Robbins*, No. 14-51610-KMS (Bankr. S.D. Miss. Jan. 19, 2015) (Dkt. 31); *In re Benjamin Eric Watts & Amy Nicole Watts*, No. 14-14565-JDW (Bankr. N.D. Miss. Feb. 6, 2015) (Dkt. 24); *In re Beverly Ann Burney*, No. 14-51909-KMS (Bankr. S.D. Miss. Feb. 23, 2015) (Dkt. 19).

Appeals. (Dkt. 41). Even so, the arguments in 21st Mortgage's Objection and 21st Mortgage's Brief appear to be "copied and pasted." The views of the courts in the Eighth Circuit provide no instructive guidance to this Court to the extent they conflict with the Fifth Circuit or the U.S. Supreme Court.

Turning to the merits of the dispute, a chapter 13 plan that proposes to retain collateral over the objection of a secured creditor and pay a deferred stream of future payments over the length of the plan must satisfy the cram down requirements of 11 U.S.C. § 1325(a)(5)(B)(ii).[4] Under that statute, the payments must have a total "value, as of the effective date of the plan, . . . not less than the allowed amount of such claim." 11 U.S.C. § 1325(a)(5)(B)(ii).

The Bankruptcy Code does not specify the rate of interest that will result in payment of the present value of a secured creditor's allowed claim in chapter 13 cases. The Court, however, does not write on a blank slate. The U.S. Supreme Court's decision in *Till* and the Fifth Circuit's application of *Till* in *Drive Financial Services, L.P. v. Jordan*, 521 F.3d 343, 350 (5th Cir. 2008), govern the proper approach in this judicial district for determining the rate of interest that should be paid to an objecting secured creditor whose claim is paid in installments over time in a chapter 13 plan. The Court examines *Till* and *Drive Financial* in some depth before returning to the arguments of the parties.

A. *Till*

In *Till*, the debtors owned a pick-up truck worth $4,000.00. *Till*, 541 U.S. at 469-70. They had financed the purchase of the truck with a loan of approximately $6,000.00 at a contract

[4] From this point forward, all references to code sections are to the U.S. Bankruptcy Code found at title 11 of the U.S. Code unless otherwise noted.

interest rate of 21%. When they filed their joint chapter 13 bankruptcy case, they owed $4,894.89 on the loan and had defaulted on their payments. *Id*. at 470. In their chapter 13 plan, the debtors proposed to retain the truck and pay $4,000.00 over the life of the plan with interest at the rate of 9.5%, calculated using the national prime rate of approximately 8.0% supplemented by an adjustment of 1.5% "to account for the risk of nonpayment posed by borrowers in their financial position." *Id*. at 471. The debtors presented expert testimony showing that the rate was "very reasonable given that Chapter 13 plans are supposed to be financially feasible." *Id*. at 471-72 (footnote omitted) (quoting another source). The secured creditor objected to the cram down interest rate and argued that it was entitled to receive interest at the rate of 21%, the amount it would obtain if it could foreclose on the truck and immediately reinvest the loan proceeds.

No single opinion in *Till* received the support of a majority of the Court. A plurality of four Justices framed the present-value analysis as a function of an interest rate and adopted a "prime-plus" formula method for determining the proper cram down rate. The plurality began its analysis by interpreting the reference in § 1325(a)(5)(B)(ii) to "value" as incorporating the principle of the time value of money. Payments spread out over time through a chapter 13 plan do not offer the same value as a single lump sum payment. For that reason, the plurality found that the first component of the prime-plus formula should look to the national prime rate, reported daily in the press. According to the plurality, the prime rate reflects the financial market's estimate of what a commercial bank should charge a creditworthy borrower to compensate for the opportunity costs, risk of inflation, and the relatively slight risk of default. The plurality reasoned that starting with a low risk-free prime rate would increase the chances of confirmation and completion of a chapter 13 plan.

The plurality in *Till* next concluded that in order to receive present value a secured creditor should be compensated for the risk of nonpayment by a debtor in bankruptcy. Thus, the second component of the "prime-plus" formula should consist of an upward adjustment the size of which would depend on such factors as "the circumstances of the estate, the nature of the security, and the duration and feasibility of the reorganization plan." *Id*. at 479. The *Till* plurality did not fix a risk factor for all chapter 13 cases but generally approved any adjustment of the prime rate ranging from 1% to 3%. *Id*. at 480.

The *Till* plurality found that "the formula approach entails a straightforward, familiar, and objective inquiry" that "depends only on the state of financial markets, the circumstances of the bankruptcy estate, and the characteristics of the loan, not on the creditor's circumstances or its prior interactions with the debtor." *Till*, 541 U.S. at 479. The plurality further held that in applying the formula approach, the evidentiary burden would fall on the creditor to demonstrate a particularized risk justifying a higher upward departure. In settling on the prime-plus formula approach, the plurality in *Till* expressly rejected these alternative approaches: (1) the "coerced loan" approach based on a market-based inquiry into interest rates for similar loans; (2) the presumptive contract rate approach based on the parties' pre-petition, non-default interest rate adjusted for current market factors;[5] and (3) the "cost of funds" approach based on the creditor's cost of capital.

A fifth Justice, Justice Clarence Thomas, concurred in the judgment of the plurality. *Id*. at 485. In his concurrence, Justice Thomas found no express language in § 1325(a)(5)(B)(ii)

[5] The presumptive contract rate approach is the same approach that 21st Mortgage urges the Court to adopt in this Bankruptcy Case.

requiring an upward risk adjustment and concluded that the risk of default should not be a component of the interest rate. Rather, he found that the sole factor in determining the interest rate should be the time value of money. In rejecting any risk factor, he disagreed with both the plurality and dissent. Justice Thomas nevertheless concurred in the plurality opinion because he found that the 9.5% interest rate exceeded the risk-free prime rate and thus adequately compensated the creditor.

The four-Justice dissent, like the plurality, interpreted § 1325(a)(5)(B)(ii) as requiring an interest rate that incorporates a risk adjustment but disagreed on the method for calculating that rate. *Id*. at 491. The dissent argued for a present-value analysis that presumptively established the contract rate as the appropriate discount rate, with the possibility that either the debtor or creditor could seek an upward or downward departure of the rate.

B. *Drive Financial*

The Fifth Circuit is the only Circuit Court of Appeals so far that has provided an analysis of the proper application of *Till* in a chapter 13 case.[6] In *Drive Financial*, the debtors proposed a chapter 13 plan in which they retained possession of their truck and paid the secured creditor the balance of its loan in installments. *Drive Fin.*, 521 F.3d at 344. The original contract rate of interest was 17.95%, but the debtors proposed paying the creditor an interest rate of only 6%. *Id.* at 344-45. The secured creditor objected to the plan, arguing that it was entitled to the contract rate of interest under § 1325(a)(5). *Id.* In its objection, the creditor maintained that *Till* did not constitute binding precedent because five Justices did not join any one opinion. *Id.* at 348-49.

[6] 21st Mortgage's initial objection included the heading "Eighth Circuit Cases Post-*Till*," but did not cite any post-*Till* cases decided by the Eighth Circuit. (Dkt. 26 at 10-11).

In addressing the precedential value of *Till*, the Fifth Circuit considered the rule established by the U.S. Supreme Court in *Marks v. United States*, 430 U.S. 188, 193 (1977) that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." The Fifth Circuit explained that the reason for the *Marks* rule "is to allow a lower court to derive a rationale from multiple opinions when none of them are joined by a majority of the justices so that the lower court can apply that rationale in future cases with *different* facts to ensure outcomes that are faithful." *Drive Fin.*, 521 F.3d at 349; *see Pedcor Mgmt. Co. Welfare Benefit Plan v. Nations Pers. of Tex., Inc.*, 343 F.3d 355 (5th Cir. 2003). But the Fifth Circuit held that the reason underlying the *Marks* rule does not exist when a future case presents the *same* facts. After examining the facts in *Till* and finding them indistinguishable from those before it, the Fifth Circuit concluded that the plurality in *Till* constituted binding precedent (and thus the *Marks* rule did not apply). As an alternative basis for its affirmance of the bankruptcy court's confirmation of the plan, the Fifth Circuit held "if we were to apply the *Marks* test, the narrowest grounds would be that the coerced loan approach or presumptive contract rate approach cannot be used if they would yield an interest rate higher than the prime-plus approach." *Id.* at 350.

C. Application of *Till* and *Drive Financial* in Mississippi

In the aftermath of *Till* and *Drive Financial*, the bankruptcy courts in Mississippi issued a Standing Order incorporating the *Till* formula into the calculation of a chapter 13 presumptive plan interest rate. In chapter 13 cases filed on or after August 1, 2014, including this Bankruptcy Case, the presumptive *Till* rate in Mississippi is 5%, which is based on the national prime rate plus a risk

factor interest premium deemed high enough to compensate the creditor "but not so high as to doom the plan." *Till*, 541 U.S. at 480. This presumptive rate is subject to review and periodic adjustment based on fluctuations in the prime interest rate. For example, the current 5% rate represents a decrease from the previous presumptive rate of 7% for chapter 13 cases filed on or after March 1, 2009 and before August 1, 2014.[7]

In addition to these periodic adjustments, the presumptive rate in the Standing Order is also subject to change based on a creditor's fact-specific challenge showing that a higher risk factor should apply. In considering such an adjustment, the following factors set forth in *Till* are relevant: (1) the circumstances of the estate; (2) the nature of the collateral; (3) the feasibility of the plan; and (4) the duration of the plan. *Till*, 541 U.S. at 579.

D. Application of *Till* and *Drive Financial* in this Bankruptcy Case

The prime rate as of the date of this Opinion is 3.25% per annum.[8] The 5% proposed plan rate, based on the Mississippi presumptive rate, includes a risk adjustment of 1.75%. 21st Mortgage argues that an interest rate of 5% provides an insufficient time value factor for claims secured by manufactured housing. 21st Mortgage asserts that the Court either should apply a higher risk factor in the *Till* prime-plus formula or should abandon the formula approach altogether in favor of the coerced loan or presumptive contract rate. The Court addresses the second argument first.

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[7] The Court is not aware of 21st Mortgage objecting to the formula approach in any bankruptcy cases in the Northern or Southern Districts of Mississippi when the presumptive interest rate in the Standing Order was set at 7%.

[8] For practical reasons, the current prime rate of 3.25% is used for the Court's analysis, but the prime rate could change before confirmation of the Plan. The prime rate in effect on the date of plan confirmation is the rate that should apply.

21st Mortgage's second argument faces an imposing and nearly insurmountable obstacle in the *Till* plurality's express rejection of the presumptive contract rate approach. The plurality rejected these approaches because each is "complicated, imposes significant evidentiary costs, and aims to make each individual creditor whole rather than to ensure the debtor's payments have the required present value." *Till,* 541 U.S. at 477. Instead, the plurality lauded the formula method approach because it "best comports with the purposes of the Bankruptcy Code." *Till,* 541 U.S. at 479-80 (footnote omitted). In light of this sweeping rejection by the plurality, 21st Mortgage must distinguish the facts here from those in *Till* and *Drive Financial* before the Court will consider applying the presumptive contract rate approach.

To determine whether 21st Mortgage has succeeded in this task, the Court turns to the well-reasoned decision of its sister bankruptcy court in *Stringer*. *See supra* note 1. There, the Honorable Jason D. Woodard noted that neither *Till* nor *Drive Financial* considered a creditor's oversecured/undersecured status to be a meaningful part of the discount rate discussion. *Stringer*, 508 B.R. at 676. Judge Woodard then noted the following factual similarities between *Till* and *Drive Financial*: (1) the debtors filed under chapter 13; (2) the debtors sought to use the cram down option over the objections of their secured creditors; (3) the secured creditors claimed they should have been paid interest at the contract rate; (4) the bankruptcy courts applied a prime-plus rate of interest; (5) the prime-plus rate was considerably lower than the contract rate; and (6) the debtors did not challenge the prime-plus interest rates on appeal. *Id.* Those factual similarities are present here except for factors (4) and (6) which clearly do not apply at this stage of the proceeding where no final decision or appeal yet has been made.

Notwithstanding *Stringer*, 21st Mortgage attempts to cast all manufactured housing as a

unique category of personal property "demonstrably distinct from automobiles" and devotes a major portion of its argument distinguishing between manufactured home loans and automobile loans. (21st Mortg. Br. at 1). The Court does not find these supposed differences sufficient to justify different treatment given *Till's* teaching that courts "should aim to treat similarly situated creditors similarly." *Till*, 541 U.S. at 477 (footnote omitted). There is no language in *Till* or *Drive Financial* that confines the prime-plus formula approach to automobiles.

Having concluded that the prime-plus approach applies here, the Court next considers whether 21st Mortgage is entitled to a risk adjustment greater than 1.75%, the difference between the national prime rate of 3.25% and the proposed plan interest rate of 5%. 21st Mortgage bears the evidentiary burden of supporting the higher interest rate of 13.09%. *Id.* at 479.

21st Mortgage largely relies on evidence that is not specific to the Manufactured Home or the Debtors' circumstances. 21st Mortgage designates its chief executive officer, Tim Williams ("Williams"), as its expert on interest rates. Williams submits his findings in a lengthy report (the "Report") (Dkt. 48-1). In his Report, Williams adds a premium of 9.84% to the prime rate of 3.25% to reach a proposed plan rate of 13.09%. (Rep. at 10). He makes three upward departures based on risk factors that he alleges fall under the following categories: (1) nature of the collateral; (2) feasibility of the plan; and (3) duration of the plan. Many of the so-called risk factors identified by Williams bear little relevance to the listed categories as applied to this Bankruptcy Case. His allocation of the percentages is summarized in the following chart:

21st Mortgage's Rate-Plus Formula	
Prime Rate	3.25%
Collateral	4.59%
Feasibility of Plan	4.37%
Duration of Plan	0.88%
***Till* Rate**	**13.09%**

(*Id.*). For all three factors, Williams posits that a manufactured home presents a set of risks, regulatory burdens, and enforcement costs greater than those associated with other personal property, namely automobiles, and, therefore, the 1% to 3% risk adjustment approved in *Till* "probably is not a sufficient risk measure." (*Id.* at 5). He attempts to distinguish manufactured housing from automobiles and provides statistics showing, for example, the difference in their loan prepayment rates. At the end of his discourse on each risk factor, he assigns a percentage rate. The sum of the prime rate and the rates he assigns each risk factor is 13.09%. The details will not be recited here but suffice it to say that the Report consists mainly of a "market-influenced" analysis of manufactured home loans rather than to any risk associated with the specific debt in this Bankruptcy Case.

The generic nature of the Report cannot be overstated. Williams has submitted a nearly identical report in several other cases before this Court in which 21st Mortgage has challenged the cram down interest rate.[9] Except for the risk factor for the nature of the collateral, his percentage

[9] *See e.g., In re Shameka Wells,* No. 14-02982-NPO (Bankr. S.D. Miss. Dec. 19, 2014) (Dkt. 65-1); *In re Frederick M. Washington & Anna M. Washington*, No. 14-03588-NPO (Bankr. S.D. Miss. Dec. 19, 2014) (Dkt. 27-1); *In re Undrie L. Thomas & Sharon E. Thomas*, No. 14-03128-NPO (Bankr. S.D. Miss. Dec. 19, 2014) (Dkt. 51-1).

rates are almost the same. And the reason for the difference in that risk factor is the difference in loan amounts, although the calculation remains the same. The Report, like 21st Mortgage's other filings in this Bankruptcy Case, are the result of "copy and paste" with no meaningful discussion of specific facts. It appears that 21st Mortgage is trying to introduce a market rate applicable to all manufactured homes through the back door of the formula method approach.

The only facts somewhat specific to the Debtors asserted by Williams in the Report are his contentions that the Debtors have had "a history of numerous and serious payment defaults since inception" and the Manufactured Home "sits on privately owned land."[10] (Rep. at 3). The Debtors do not dispute that they were delinquent on the Note when they commenced the Bankruptcy Case. This fact, however, does not warrant a higher risk adjustment than 1.75%—the debtors in *Till* and *Drive Financial* were likewise delinquent when they filed bankruptcy. More to the point, the plurality in *Till* found irrelevant any inquiry into a creditor's prior contractual relations with the debtor. Additionally, the fact that 21st Mortgage's lien encumbers the Manufactured Home but not the land on which it sits is irrelevant here given that the value of the Manufactured Home exceeds the debt.

The Court finds Williams' Report irrelevant and unhelpful in that it consists largely of a market-influenced analysis.[11] This type of analysis was rejected by the Fifth Circuit in *Wells Fargo Bank National Association v. Texas Grand Prairie Hotel Realty, LLC (In re Texas Grand*

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[10] Williams makes nearly identical contentions about debtors in other chapter 13 bankruptcy cases. *See supra* note 2.

[11] The Report presents the "coerced loan approach" as a third alternative, but 21st Mortgage notes that the coerced loan method does not provide an accurate discount rate in this Bankruptcy Case because the proposed Plan values the Manufactured Home at $15,000.00 and 21st Mortgage would not make a loan with a principal amount less than $20,000.00. (21st Mortg. Br. at 18).

Prairie Hotel Realty, LLC), 710 F.3d 324, 334-35 (5th Cir. 2013), a chapter 11 case in which the parties agreed that *Till*'s formula method should determine the cram down rate under § 1129(b) but disagreed on its proper application. At the confirmation hearing, the secured creditor presented expert testimony urging a "blended market rate" of 9.3% adjusted downward to a cram down rate of 8.8%. *Texas Grand Prairie Hotel Realty,* 710 F.3d at 334-35. The bankruptcy court rejected the opinion of the secured creditor's expert because it was "in the nature of a forced loan approach that the majority in *Till* expressly rejected." *Id*. at 335. The district court affirmed. On appeal, the Fifth Circuit agreed with the bankruptcy court that the adjusted "blended market rate" of 8.8% proposed by the secured creditor was predicated on the "sort of comparable loans analysis rejected by the *Till* plurality." *Id*. at 336. The Fifth Circuit contrasted the secured creditor's expert with the debtor's expert who rested his cram down rate determination on an uncontroversial application of the *Till* plurality's formula method. The debtor's expert considered the quality of the bankruptcy estate, the projected revenues, the value and liquidity of the collateral, and the feasibility of the plan in assessing a risk factor of 1.75% over the prime rate. *Id*. at 335.

Although *Texas Grand Prairie Hotel Realty* is a chapter 11 case, it supports the Court's view that the focus of the evidence in determining the proper cram down interest rate in this chapter 13 Bankruptcy Case should be on the unique risks associated with the Debtors' completion of plan payments. Based on the Debtors' bankruptcy schedules and other filings, it appears undisputed that the Debtors have maintained regular employment, plan payments are being deducted pursuant to an Order Upon Employer Directing Deductions from Pay (Dkt. 10), and the Debtors have sufficient net monthly income to fund the Plan as shown in Schedules I and J (Dkt. 1 at 24-28). Also, they have not filed a prior bankruptcy case in the past eight (8) years. Under

Till, 21st Mortgage may present evidence that disputes these facts or raises new facts specific to the Bankruptcy Case that support a higher risk adjustment than 1.75%, but they all must relate to (1) the circumstances of the Debtors' estate; (2) the nature of the Manufactured Home; (3) the feasibility of the Debtors' Plan; or (4) the duration of the Debtors' Plan. 21st Mortgage may request such an evidentiary hearing within fourteen (14) days of this Order. In the event 21st Mortgage does not make a timely request for an evidentiary hearing, the Court concludes from the evidence before it that the Plan interest rate of 1.75% above the prime rate sufficiently compensates 21st Mortgage for the present value of its allowed secured claim.

The Court reaches this conclusion based on the facts of the Bankruptcy Case but offers a few general observations about the position asserted by 21st Mortgage. The economic impact of the prime-plus approach was known to 21st Mortgage when it entered into the Note with the Debtor. *Till* was decided on May 17, 2004 *before* the loan was made on October 4, 2004. 21st Mortgage had an opportunity to modify its business practices to account for the risk that it now implores the Court to rescue it from in every chapter 13 case in which the debtor seeks to cram down the plan interest rate. It is not the obligation of this Court to choose an interest rate sufficient to compensate 21st Mortgage for all of its concerns about the manufactured housing market. Transaction costs and overall profits are not proper considerations in the prime-plus formula approach. *Till*, 541 U.S. at 477-78. As aptly noted by the *Stringer* Court, "[t]he purpose of interest . . . [is] not to make a creditor whole or provide it with the benefit of its pre-petition bargain." *Stringer*, 508 B.R. at 677 (citation omitted). Rather, the objective of § 1325(a)(5)(B)(ii) is to put the creditor in the same economic position it would have been in had it received the value of its allowed secured claim in the form of a lump sum payment. 21st Mortgage's mistake is that

this is a cram down plan, not a consensual plan. 21st Mortgage's discontent with the prime-plus rate is better directed at Congress for a legislative solution than bankruptcy courts for a judicial solution given the binding precedent of the U.S. Supreme Court in *Till* and the Fifth Circuit in *Drive Financial*.

Conclusion

For the reasons set forth above, the Court concludes that 21st Mortgage may request an evidentiary hearing within fourteen (14) days of the date of this Order, or the Court will enter a separate order finding that the appropriate interest rate for 21st Mortgage's secured claim is the prime rate, as of the effective date of the Plan, plus a risk adjustment of 1.75%.

IT IS, THEREFORE, ORDERED that 21st Mortgage may request an evidentiary hearing within fourteen (14) days of this Order.

IT IS FURTHER ORDERED that if 21st Mortgage does not request an evidentiary hearing within fourteen (14) days of this Order, the Court shall enter a separate order overruling 21st Mortgage's Objection.

##END OF ORDER##