



**SO ORDERED,**

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: July 6, 2015**

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

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**FREDERICK M. WASHINGTON AND  
ANNA M. WASHINGTON,**

**CASE NO. 14-03588-NPO**

**DEBTORS.**

**CHAPTER 13**

**SECOND ORDER REGARDING AMENDED  
OBJECTION OF 21<sup>ST</sup> MORTGAGE TO CHAPTER 13 PLAN  
AND OBJECTION TO SECURED CLAIMS AND OTHER RELIEF**

This matter came before the Court on the Consent Order (the "Revised Consent Order") signed by 21<sup>st</sup> Mortgage Corporation ("21<sup>st</sup> Mortgage"), the debtors, Frederick M. Washington ("Mr. Washington"), Anna M. Washington (together with Mr. Washington, the "Debtors"), and the chapter 13 standing trustee (the "Trustee"), which, *inter alia*, reflects the agreement of the parties to allow the confirmation of the Debtors' amended chapter 13 plan (the "Plan") (Dkt. 40) notwithstanding the Amended Objection of 21<sup>st</sup> Mortgage to Chapter 13 Plan ("21<sup>st</sup> Mortgage's Amended Objection") (Dkt. 28) filed by 21<sup>st</sup> Mortgage; the Brief in Support of Objection of 21<sup>st</sup> Mortgage to Chapter 13 Plan ("21<sup>st</sup> Mortgage's Brief") (Dkt. 27) filed by 21<sup>st</sup> Mortgage; the Debtors' Brief in Opposition to the Objection of 21<sup>st</sup> Mortgage to Chapter 13 Plan (the "Debtors' Brief") (Dkt. 38) filed by the Debtors; the Objection to Secured Claims and Other Relief (the

“Debtors’ Objection”) (Dkt. 13) filed by the Debtors; and the Response to Debtor’s [sic] Objection to Secured Claim and Other Relief (Dkt. 23) filed by 21<sup>st</sup> Mortgage in the above-referenced bankruptcy case (the “Bankruptcy Case”). For purposes of confirmation, the Revised Consent Order sets the value of 21<sup>st</sup> Mortgage’s secured claim at \$16,142.00 and the rate of interest at 5% per year but contemplates that 21<sup>st</sup> Mortgage will receive a higher rate of interest on its secured claim if so ordered by the Court during the pendency of the Plan. Having considered the matter, the Court approves of these provisions of the Revised Consent Order. The parties, however, also stipulate in the Revised Consent Order that “Tim Williams, CEO of 21<sup>st</sup> Mortgage, is a witness qualified as an expert . . . and that the opinions expressed in his report filed herein are admissible evidence.” For the reasons that follow, the Court declines to approve the stipulation in the Revised Consent Order and finds that the interest rate issue should be determined at an evidentiary hearing to be set by a separate notice.

### **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. § 157(b)(2)(A) and (L). Notice of 21<sup>st</sup> Mortgage’s Amended Objection and Debtors’ Objection was proper under the circumstances.

### **Facts**

1. Mr. Washington signed a Consumer Loan Note, Security Agreement and Disclosure Statement (the “Note”) (Dkt. 28-1) on June 7, 2011 in connection with the purchase of a used 1996 Fleetwood manufactured home (the “Manufactured Home”). Under the Note, Mr. Washington agreed to pay \$41,176.60 over 180 months at an annual interest rate of 13.99%. 21<sup>st</sup> Mortgage is the current owner, holder, and obligee of the Note.

2. The Debtors filed a joint petition for relief (the “Petition”) (Dkt. 1) under chapter 13 of the Bankruptcy Code on November 5, 2014.

3. When the Petition was filed, Mr. Washington owed \$39,607.00 on the Note. (21<sup>st</sup> Mortg. Br. at 2).

4. In the Plan, the Debtors propose to pay 21<sup>st</sup> Mortgage the value of the Manufactured Home at \$15,684.92 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.

5. 21<sup>st</sup> Mortgage objected to its treatment under the Plan. (Dkt. 28). 21<sup>st</sup> Mortgage argued that the value of the Manufactured Home was \$19,890.77 and the proposed interest rate of 5% was insufficient to provide 21<sup>st</sup> Mortgage with the present value of its allowed secured claim.<sup>1</sup> (21<sup>st</sup> Mortg. Br. at 2).

6. In its initial objection filed on December 4, 2014, 21<sup>st</sup> Mortgage relied mostly on case law from the Eighth Circuit Court of Appeals. (Dkt. 24). At the Court’s insistence, 21<sup>st</sup> Mortgage amended its objection to address binding precedent in the Fifth Circuit Court of Appeals. (Dkt. 28). The Court entered a Scheduling Order (Dkt. 31) on December 30, 2014 instructing the parties to submit briefs on the interest rate issue.

7. In 21<sup>st</sup> Mortgage’s Brief, 21<sup>st</sup> Mortgage asked the Court to increase the interest rate either to: (1) a prime-plus formula interest rate of 12.67%; (2) a presumptive plan interest rate higher than 5% applicable to all loans secured by manufactured homes; or (3) a presumptive

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<sup>1</sup> 21<sup>st</sup> Mortgage did 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”).

contract rate of 13.99%. In support of its argument, 21<sup>st</sup> Mortgage designated its chief executive officer, Tim Williams (“Williams”), as its expert on interest rates. (Dkt. 36). Williams submitted his findings in a lengthy report attached to his affidavit (the “Williams Report”) (Dkt. 36-1). In the Debtors’ Brief, the Debtors reserved their right to challenge Williams’ qualifications as an expert witness and to object to the admissibility of his opinions at an evidentiary hearing on 21<sup>st</sup> Mortgage’s Amended Objection.

8. On March 18, 2015, the Court entered the Order Regarding Amended Objection of 21<sup>st</sup> Mortgage to Chapter 13 Plan and Objection to Secured Claims and Other Relief (the “First Order”) (Dkt. 50) setting forth the proper approach for determining the rate of interest to be paid an objecting secured creditor whose claim is paid in installments over time in a chapter 13 plan. *See Till v. SCS Credit Corp.*, 541 U.S. 465 (2004); *Drive Fin. Servs., L.P. v. Jordan*, 521 F.3d 343, 350 (5th Cir. 2008). 21<sup>st</sup> Mortgage had filed nearly identical objections to cram down interest rates in numerous other chapter 13 cases in this Court and in other bankruptcy courts in Mississippi, and the Court found the interest rate issue to be of greater economic consequence than just the facts of this Bankruptcy Case. For that reason, the Court found it necessary to provide the parties some direction before holding an evidentiary hearing on 21<sup>st</sup> Mortgage’s Amended Objection and the Debtors’ Objection.

9. In the First Order, the Court explained that it found the Williams Report to be mostly irrelevant and unhelpful because it consisted largely of a market-influenced analysis of manufactured home loans rather than an application of the formula method as required by the U.S. Supreme Court in *Till*. The Court informed 21<sup>st</sup> Mortgage to request an evidentiary hearing within fourteen (14) days if it wished to pursue prosecution of 21<sup>st</sup> Mortgage’s Amended

Objection within the definitive guidelines laid out in the First Order or the Court would enter a separate order finding that the appropriate interest rate for its secured claim is the prime rate, as of the effective date of the Plan, plus a risk adjustment of 1.75%.

10. On March 31, 2015, 21<sup>st</sup> Mortgage filed a Motion Requesting Hearing (Dkt. 52) in which 21<sup>st</sup> Mortgage requested a hearing on both the valuation of the Manufactured Home and the appropriate interest rate on its secured claim.

11. A telephonic status conference was held on April 10, 2015 during which the parties agreed in theory that the Trustee could proceed with confirmation of the Plan using the Debtors' valuation of the Manufactured Home and an interest rate of 5% until further order of the Court. An order was entered setting May 22, 2015 as the date for an evidentiary hearing. (Dkt. 56).

12. On or about April 30, 2015, the parties submitted a Consent Order (the "Initial Consent Order") (Dkt. 58) that provided that the Trustee could recommend confirmation of the Plan with payment of interest at 5% "pending further order of the Court" but did not include a value for 21<sup>st</sup> Mortgage's secured claim. Instead, the Initial Consent Order provided that the Manufactured Home should have a value "as subsequently determined, either by agreement or Order of this Court." (*Id.*).

13. A telephonic status conference was held on May 13, 2015 to discuss the Initial Consent Order. When the Court pointed out that an agreement as to the appropriate interest rate was meaningless without a corresponding agreement as to the amount of 21<sup>st</sup> Mortgage's secured claim, the parties agreed to submit a revised consent order to include a valuation of the Manufactured Home.

14. On May 18, 2015, counsel for 21<sup>st</sup> Mortgage informed a staff member of the Clerk

of the Bankruptcy Court by telephone that the entire matter had “settled.” The evidentiary hearing set on May 22, 2015 was cancelled based upon his representation that a settlement had occurred.

15. 21<sup>st</sup> Mortgage filed a Motion for Status Conference (Dkt. 63) on May 27, 2015 “so that the parties may fully advise the Court in the premises.” The second status conference was held on June 8, 2015, where it was revealed to the Court that the matter had not fully settled.<sup>2</sup> Although the parties had apparently agreed to the value of 21<sup>st</sup> Mortgage’s secured claim, they could not agree to an applicable interest rate. With respect to that issue, 21<sup>st</sup> Mortgage did not wish to proceed with the evidentiary hearing on May 22, 2015 because it had no evidence supporting its position that the Debtors should pay a higher rate of interest other than the Williams Report and wished to present its market-influenced analysis, as set forth in the Williams Report, to the District Court on appeal. 21<sup>st</sup> Mortgage expressed its intent to submit a stipulation for approval by the Court that would reserve the interest rate issue for appeal but would allow the Plan to be confirmed during the pendency of that appeal. The Court did not rule on the matter at the status conference because it did not have the so-called stipulation to review, and the content of the stipulation was not made clear to the Court at that time.

16. On June 18, 2015, 21<sup>st</sup> Mortgage submitted for the Court’s approval the Revised Consent Order signed by counsel for 21<sup>st</sup> Mortgage, the Debtors, and the Trustee.

### **Discussion**

Stipulations regarding the admission of evidence increase the efficiency of litigation, while decreasing costs. The ability to stipulate to the admissibility of evidence, however, is not unfettered. Here, the Revised Consent Order stipulates that Williams is properly qualified to

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<sup>2</sup> A settlement is defined as an “agreement ending a dispute or lawsuit.” BLACK’S LAW DICTIONARY 1581-82 (10th ed. 2014).

testify as an expert in the field of interest rates and that the Williams Report is admissible evidence. But no hearing has ever been held on 21<sup>st</sup> Mortgage's Amended Objection or Debtors' Objection. The First Order was entered in anticipation of an evidentiary hearing, and 21<sup>st</sup> Mortgage's announcement of a settlement resulted in the cancellation of the evidentiary hearing scheduled to take place on May 22, 2015. Accordingly, the Court finds that at this juncture approving a stipulation as to the expert qualifications of Williams and the admissibility of the Williams Report would be placing the proverbial cart before the horse. "Even with the assent of all parties, judges still have the obligation to reject stipulations that are not factually true." *In re Deepwater Horizon*, 753 F.3d 516 (5th Cir. 2014) (Clement, J., dissenting) (citation omitted). Thus, this Court declines to approve the stipulation. The parties, however, may submit the same stipulation for the Court's consideration at the evidentiary hearing on the interest rate issue.

### **Conclusion**

For the reasons set forth above, the Court finds that for purposes of confirmation of the Plan, the value of 21<sup>st</sup> Mortgage's secured claim should be \$16,142.00 which should be paid with interest at a rate of 5% per year pending further order of the Court. The Court further finds that the interest rate issue should be set for an evidentiary hearing by a separate notice.

IT IS, THEREFORE, ORDERED that for purposes of confirmation of the Plan, the value of 21<sup>st</sup> Mortgage's secured claim shall be \$16,142.00 with an interest rate of 5% per year but that 21<sup>st</sup> Mortgage shall receive a higher rate of interest on its secured claim if so ordered by the Court during the pendency of the Plan.

IT IS FURTHER ORDERED that an evidentiary hearing regarding the interest rate shall be set by a separate notice.

##END OF ORDER##