



SO ORDERED,

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

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

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

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

IN RE:

JAMES W. RUSHING,

CASE NO. 15-01559-NPO

DEBTOR.

CHAPTER 13

**ORDER OVERRULING IN PART AND SUSTAINING IN PART
OBJECTION TO SECURED CLAIM(S) AND OTHER RELIEF**

This matter came before the Court for hearing on August 3, 2015 (the "Hearing") on the Objection to Secured Claim(s) and Other Relief (the "Objection") (Dkt. 24) filed by the debtor, James W. Rushing (the "Debtor"), and Renasant Bank's Response to Debtors' *[sic]* Objection to Secured Claim and Other Relief (the "Response") (Dkt. 26) filed by Renasant Bank, successor in interest by merger to Merchants & Farmers Bank ("Renasant") in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Douglas J. Graham represented the Debtor, James P. Wilson, Jr. represented Renasant, and Samuel J. Duncan represented J.C. Bell, the chapter 13 standing trustee.

Jurisdiction

This Court has jurisdiction over the subject matter of and the parties to this proceeding pursuant to 28 U.S.C. §1334(b). This matter is a core proceeding arising under 28 U.S.C. § 157(b)(2)(A), (B), (L), and (O).

Facts

1. On or about July 23, 2012, the Debtor, d/b/a James Rushing Repair, signed a Commercial Promissory Note (the "Note") (Dkt. 26, Ex. 1) in the principal amount of \$32,028.00, payable to Renasant in fifty-nine (59) monthly installments of \$649.98 beginning on August 25, 2012 and continuing thereafter until the final payment of \$649.65 is made on July 25, 2017. Pursuant to the Note, Debtor agreed to pay a fixed annual interest rate of 7.9%.

2. To secure repayment of the Note, the Debtor and A.V. Rushing (who is not a debtor in the Bankruptcy Case) signed a Commercial Real Estate Deed of Trust (the "Deed of Trust") in favor of Renasant that encumbered the Debtor's residence located at 10151 County Road 2810, Philadelphia, Mississippi, along with forty (40) acres of land (the "Real Property"). (Dkt. 26, Ex. 2).

3. On May 13, 2015, the Debtor filed a voluntary petition for relief (the "Petition") (Dkt. 1) under chapter 13 of the Bankruptcy Code.

4. On June 17, 2015 the Debtor filed a chapter 13 plan (the "Plan") (Dkt. 16) in which he proposed to pay Renasant \$22,000.00, the balance owed under the Note, over the sixty (60)-month term of the Plan at an annual interest rate of 5%.

5. In Schedule A-Real Property (Dkt. 14), the Debtor listed the current value of his interest in the Real Property as \$60,000.00.

6. On June 19, 2015, Renasant filed a proof of claim (the "Original POC") (POC 5-1) in the amount of \$24,576.21, reflecting the balance owed as of the date of the Petition, including late fees, attorney's fees, and an appraisal fee. The Original POC did not include the Mortgage Proof of Claim Attachment form required by Rule 3001 of the Federal Rules of Bankruptcy Procedure ("Rule 3001").

7. On June 23, 2015, the Debtor filed the Objection seeking to pay Renasant “the alleged amount owed of \$22,000.00 plus 5% interest over the life of the Chapter 13 plan; or, in the event a timely filed and/or allowed Proof of Claim is filed by or on behalf of this creditor evidencing a different amount **owing before** the petition filing, pay the amount owed as set forth in such claim plus 5% interest over the life of the Chapter 13 Plan.” (Obj. at 1).

8. On July 9, 2015, Renasant filed an amended proof of claim (POC 5-2), which differed from the Original POC only by including the Mortgage Proof of Claim Attachment form required by Rule 3001. Renasant’s total claim of \$24,576.21 consists of the following:

Principal	\$20,601.12
Interest (10/20/2014 to 05/13/2015)	\$921.26
Late Fees (07/23/2012 to 05/13/2015)	\$338.00
Attorney’s Fees & Foreclosure Expenses	\$2,240.83
Appraisal Fee	\$475.00
TOTAL	\$24,576.21

(POC 5-2).

9. The parties agree that Renasant is oversecured and entitled to \$24,576.21 pursuant to the terms of the Note. They dispute the extent to which Renasant is entitled to post-petition interest on its claim.

Discussion

Initially, Renasant asserted in its Response that it is entitled to interest on its claim at the contract rate of 7.9% as of May 13, 2015, the date of the Petition. Moreover, Renasant argued that the Debtor may not modify the contract interest rate of 7.9% because the Real Property constitutes the Debtor’s principal residence and “[c]hapter 13 expressly authorizes a bankruptcy court to modify the rights of any creditor whose claim is secured by an interest **in anything other than real property that is the debtor’s principal residence.**” (Resp. at 4) (quoting *Till*

v. SCS Credit Corp., 541 U.S. 465, 474 (2004)). Renasant’s argument rests on § 1322(b)(2),¹ which limits a debtor’s power to use the “cram down” option under § 1325(a)(5).² Section 1322(b)(2), known as the “anti-modification provision,” prohibits any fundamental alteration in a debtor’s obligations, such as a reduction in the interest rate, if the “claim [is] secured only by a security interest in real property that is the debtor’s principal residence.” 11 U.S.C. § 1322(b)(2).

At the Hearing, Renasant revised its position by conceding that an exception to the anti-modification provision applies pursuant to § 1322(c)(2), which provides:

Notwithstanding [§ 1322(b)(2)] and applicable nonbankruptcy law . . . in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor’s principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

11 U.S.C. § 1322(c)(2). Therefore, because the last payment on the Note becomes due on July 25, 2017, which is before the end of the sixty (60)-month Plan, Renasant’s claim is subject to “cram down” under § 1322(c)(2). For this reason, Renasant announced at the Hearing that it no longer challenged the Debtor’s payment of post-confirmation interest at the “*Till* rate” of 5%.³ Renasant, however, maintained that it is also entitled to post-petition, pre-confirmation interest, commonly known as pendency interest, at the contract rate of 7.9%.

¹ 11 U.S.C. § 1322(b)(2). All section references are to title 11 of the U.S. Code (the “Code”).

² Under the “cram down” provision in § 1325(a)(5)(B)(ii), a secured creditor must receive “the value, as of the effective date of the plan of property to be distributed under the plan on account of such claim [that] is not less than the allowed amount of such claim.” 11 U.S.C. § 1325(a)(5)(B)(ii).

³ The “*Till* rate” of 5% is the presumptive interest rate applicable to chapter 13 cases filed in this judicial district on or after August 1, 2014. *See* Standing Order Designating Presumptive 11 U.S.C. § 1325(a)(5)(B) Interest Rate (July 8, 2014); *Till*, 541 U.S. at 479-80.

In *Stringer*, 508 B.R. 668 (Bankr. N.D. Miss. 2014), our sister bankruptcy court discussed the different statutes that govern the applicable rate of interest during the two periods in a chapter 13 case when an oversecured creditor is entitled to interest: (1) § 506(b), which applies post-petition, but pre-confirmation, and (2) § 1325(a)(5)(B), which applies post-confirmation. *Id.* at 671. The issue before the Court concerns the interest rate applicable after the filing of the chapter 13 petition but before confirmation of a plan, which is governed by § 506(b).

Section 506(b) of the Code provides that “[t]o the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement.” 11 U.S.C. § 506(b). Thus, oversecured creditors are entitled to post-petition interest “to the extent that such interest, when added to the principal amount of the claim, [does] not exceed the value of the collateral.” *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 372 (1988). Section 506(b), however, does not specify the rate of interest that applies post-petition.

The Fifth Circuit Court of Appeals considered the pendency interest issue in *Bradford v. Crozier (In re Laymon)*, 958 F.2d 72, 75 (5th Cir. 1992). Noting the absence of any specific interest rate in the Code or legislative history, the Fifth Circuit in *Laymon* relied on pre-Code practice for its holding that “when an oversecured creditor’s claim arises from a contract, the contract provides the rate of post-petition interest.” *Id.* at 75. Thus, under *Laymon* and § 506(b), Renasant is entitled to interest at the contract rate of 7.9% from the date of the Petition until confirmation of the Plan. To the extent that the Debtor’s Objection may be construed as a request to apply the *Till* rate to pendency interest (and, thus, provide continuity in the rates of

interest that apply post-petition, pre-confirmation under § 506(b) and post-confirmation under § 1325(a)(5)(B)(ii)), the Court notes that it is bound by the Fifth Circuit's decision in *Laymon*, which remains the law in this Circuit under our hierarchical judicial structure. *Stringer*, 508 B.R. at 678 n.11; see *Rand Energy Co. v. Strata Directional Tech., Inc. (In re Rand Energy Co.)*, 259 B.R. 274, 276 (Bankr. N.D. Tex. 2001).

IT IS, THEREFORE, ORDERED that the Debtor's Objection is hereby overruled in part and sustained in part.

IT IS FURTHER ORDERED that the Debtor's Objection is hereby overruled to the extent that interest will accrue on Renasant's allowed, oversecured claim from the date of the Petition through the date of confirmation of the Plan at the contract rate of 7.9%.

IT IS FURTHER ORDERED that the Debtor's Objection is hereby sustained to the extent that interest will accrue on Renasant's allowed, oversecured claim after confirmation of the Plan at the rate of 5%.

##END OF ORDER##