




SO ORDERED,


Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: July 13, 2020

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:

EDWIN EARL HOLMES,

CASE NO. 20-00484-NPO

DEBTOR.

CHAPTER 13

ORDER DENYING MOTION TO LIFT STAY

This matter came before the Court for telephonic hearing on June 15, 2020 (the “Hearing”) on the Motion to Lift Stay (the “Motion”) (Dkt. 31) filed by Reverse Mortgage Solutions, Inc. as attorney in fact for Bank of America, N.A. (the “Bank”) and the Response to Creditor’s Motion to Lift Stay (the “Response”) (Dkt. 40) filed by the debtor, Edwin Earl Holmes (the “Debtor”), in the above-referenced bankruptcy case. At the Hearing, Gregory J. Walsh represented the Bank, Robert Rex McRaney, Jr. represented the Debtor, and Tylvester Goss represented James L. Henley, Jr., the chapter 13 trustee. The Court, being fully advised in the premises, finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). Notice of the Motion was proper under the circumstances.

Facts

1. On January 15, 2010, the Debtor's mother, Thelma J. Holmes ("Thelma Holmes"), signed a Fixed Rate Home Equity Conversion Note (the "Note") (Dkt. 31 at 6-8) in the maximum principal amount of \$75,000.00 payable to One Reverse Mortgage, LLC ("Reverse Mortgage"). Thelma Holmes is the only borrower on the Note. The Note is secured by the Home Equity Conversion Deed of Trust (the "Mortgage") (Dkt. 31 at 11-21) on her home located at 3880 Cox's Ferry Road in Bolton, Mississippi (the "Property"). The Note and Mortgage subsequently were assigned to the Bank. (Dkt. 31 at 9-10, 22-27).

2. Thelma Holmes died on February 8, 2020, and the Debtor and his two sisters inherited the Property. Under the terms of the Note and Mortgage, full payment of the debt became due immediately upon the death of the borrower, Thelma Holmes, since "the Property is not the principal residence of at least one surviving [b]orrower." (Dkt. 31 at 6).

3. On February 11, 2020, the Debtor filed a petition for relief (the "Petition") (Dkt. 1) under chapter 13 of the U.S. Bankruptcy Code. In the Petition, the Debtor lists the Property as his principal residence. In his bankruptcy schedules, he identifies Reverse Mortgage as a creditor holding a claim in the amount of \$53,000.00 secured by the Property, which he values at \$60,000.00. (Dkt. 10 at 11).

4. The Bank seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) on the ground its interest in the Property is not adequately protected. The Bank asserts that as of February 14, 2020, Thelma Holmes owed \$51,790.98 in principal, interest, and fees and that the current value of the Property is \$62,448.00. (Dkt. 31 at 31-32, 34). In addition, the Bank seeks relief from the automatic stay under 11 U.S.C. § 362(d)(2) on the ground that the Property is unnecessary for the effective reorganization of the Debtor's assets.

5. In his Response, the Debtor opposes the relief requested by the Bank. He proposes to pay the entire amount owed on the Note and Mortgage through his chapter 13 plan over sixty (60) months. (Dkt. 40).

6. At the Hearing, counsel for the Bank argued that the Debtor may not include the Mortgage in his proposed plan because the debt had been accelerated by the death of Thelma Holmes and the Debtor is not a “surviving borrower” on the Note.

Discussion

Unlike traditional mortgage lenders, reverse mortgage lenders advance funds to borrowers in monthly payments, and the amount of the loan increases over time. 12 U.S.C. § 1715z-20(d)(3); see Tara Twomey, *Crossing Paths: The Intersection of Reverse Mortgages and Bankruptcy*, 89 AM. BANKR. L.J. 363, 369 (2015). The entire loan balance becomes due at maturity, which occurs when the borrower dies, sells the property, or fails to occupy the property for at least one year. 12 U.S.C. § 1715z-20(j). The borrower, however, will never owe more than the loan balance or the value of the property, whichever is less. 12 U.S.C. § 1715z-20(d)(7).

The Bank maintains that the Debtor may not include the Note and Mortgage in his chapter 13 plan because there is no privity of contract between the Debtor and the Bank. This precise issue was addressed recently by the bankruptcy court in *In re Winstead*, No. 19-503017-KMS, 2019 WL 3491653 (Bankr. S.D. Miss. July 31, 2019). There, the debtor’s mother entered into a reverse mortgage on her home, and a few weeks before she died, quitclaimed her interest in the property to the debtor. The debtor filed a petition for relief under chapter 13 of the U.S. Bankruptcy Code. Under the note, the lender could demand immediate payment in full upon the borrower’s death if the property was not occupied by at least one surviving borrower. The property was the debtor’s primary residence, but he was not a borrower under the note. In his chapter 13 plan, the Debtor

proposed to refinance the property into his own name and pay the lender \$76,040.00, the value of the property. Meanwhile, the debtor would maintain insurance on the property and make *Till*-rate interest-only adequate protection payments of \$428.00 per month.

The lender in *Winstead* asserted that it held a fully secured claim in the amount of \$100,793.32 and asked the bankruptcy court to terminate the automatic stay on the ground that the death of the debtor's mother constituted cause for relief. The bankruptcy court found that the debtor could include the mortgage in his plan pursuant to *Johnson v. Home State Bank*, 501 U.S. 78 (1991), where the U.S. Supreme Court ruled that "a creditor who . . . has a claim enforceable only against the debtor's property nonetheless has a 'claim against the debtor' for purposes of the [U.S. Bankruptcy] Code." *Id.* at 85. The bankruptcy court also found that 11 U.S.C. § 1322(c)(2) allowed the debtor to modify the mortgage because the last payment on the mortgage was due before the last payment on the plan. *In re Winstead*, 2019 WL 3491653, at *2.

At the Hearing, counsel for the Bank conceded that the holding in *In re Winstead*, if adopted by this Court, would result in the denial of the Motion but points out that the decision is not binding on this Court. Even so, the Court finds the holding in *In re Winstead* from the other bankruptcy court in the Southern District of Mississippi persuasive. Other bankruptcy courts similarly have held that the debtor-heir of a reverse mortgage borrower may pay the mortgage through his chapter 13 plan even though he has no personal liability. *See In re Domingue*, No. 11-40437, 2012 WL 3961212 (Bankr. S.D. Tex. Sept. 10, 2012); *In re Evans*, No. 11-80123, 2011 WL 1420887 (Bankr. M.D.N.C. Apr. 11, 2011); *In re Brown*, 428 B.R. 672, 677 (Bankr. D.S.C. 2010); *In re Carter*, No. 09-35587, 2009 WL 5215399 (Bankr. S.D. Tex. Dec. 28, 2009). Accordingly, the Court concludes that the Debtor may pay the Note and Mortgage through his chapter 13 plan pursuant to 11 U.S.C. § 1322(c) for the reasons discussed in *In re Winstead*.

Moreover, the Court finds that the Bank's interest in the Property is adequately protected because the Debtor proposes to pay the Note and Mortgage in full, plus interest, through the chapter 13 plan and thus provides assurance of periodic payments to the Bank. The parties do not dispute that there is equity in the Property and that the Property is the Debtor's principal residence. The Bank presented no evidence at the Hearing that the Property was not necessary for the Debtor's reorganization. For the above reasons, the Court finds that the Bank is not entitled to relief from the automatic stay under either 11 U.S.C. § 362(d)(1) or 11 U.S.C. § 362(d)(2).

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

##END OF ORDER##