

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Maurice Karl Buchanan,

Debtor.

Case No. 14-27937-GMH

Chapter 13

ORDER

Chapter 13 debtor Maurice Karl Buchanan owes the City of Milwaukee back taxes on his principal residence. His plan proposes to modify the City's claim by paying it the value of the residence, which Buchanan contends is less than the tax bill. The City objects, arguing that Buchanan is not entitled to this "cram down" of its claim.

Section 1322(b)(2) authorizes chapter 13 plans to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence". 11 U.S.C. §1322(b)(2). The City's tax claim is not a claim secured by a "security interest" in the debtor's residence. A "security interest" is a "lien created by an agreement." 11 U.S.C. §101(51). The City's tax lien arises by operation of law. See Wis. Stat. §§74.57, 75.521. Thus, §1322(b)(2)'s "antimodification" clause is inapplicable to the City's secured claim. *In re LaMont*, 740 F.3d 397, 409 (7th Cir. 2014).

Because Buchanan's plan provides for the City's secured claim, the plan must also comply with 11 U.S.C. §1325(a)(5). That section generally requires that, unless the secured creditor accepts the plan, the plan must provide either for payment of the allowed amount of the secured claim or surrender of the property securing the claim. §1325(a)(5). When the value of the property securing the claim is less than the amount

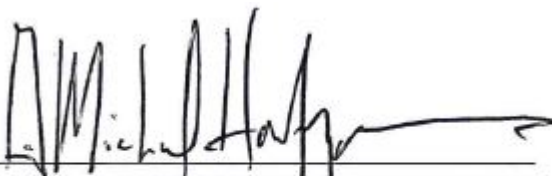
the debtor owes the creditor under non-bankruptcy law, the “allowed amount of the secured claim” is equal to the value of the debtor’s interest in the property that is subject to the creditor’s lien. See 11 U.S.C. §506(a); see also *Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 328–29 (1993).

Buchanan’s plan is generous. It provides that the debtor will pay the City the replacement value of the property, which it states is \$33,422, at 12% interest over the 60-month plan term, for an estimated total payment of \$45,522. Section 1325(a)(5) only requires payments to the City equal to the present value of the City’s allowed secured claim. See *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Twelve percent exceeds the applicable discount rate.

In all events, the City’s objection to the plan—that it fails to pay the full amount of the overdue taxes—is misplaced. The objection is overruled.

So ordered.

May 22, 2015



G. Michael Halfenger
United States Bankruptcy Judge