

So Ordered.

Dated: December 23, 2021



Katherine M. Perhach

Katherine Maloney Perhach
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:
Raina Louise Gregory and
Kim Gregory,
Debtors.

Chapter 13
Case No. 21-20607-kmp

**ORDER SUSTAINING AMENDED OBJECTION TO CONFIRMATION
FILED BY HSBC BANK USA, N.A.**

HSBC Bank USA, National Association, as Trustee for Carrington Mortgage Loan Trust, Series 2007-HE1 Asset-Backed Pass-Through Certificates (“HSBC”) has objected to confirmation of the Debtors’ Chapter 13 plan, asserting that the plan was not filed in good faith and the Debtors’ proposed cramdown of its secured claim to the alleged value of the property located at 3509 N. 41st Street, Milwaukee, Wisconsin (the “Property”) is impermissible. After considering the evidence presented at the evidentiary hearing, which demonstrated that the Property was the Debtors’ principal residence at the time they filed their bankruptcy case, the Court finds that the Debtors cannot cramdown the value of the property and sustains HSBC’s objection.

The Debtors, Raina and Kim Gregory, filed this bankruptcy case on February 8, 2021. In their petition, the Debtors stated that they lived at 4023 N. 24th Street, Milwaukee, Wisconsin, not at the Property. They categorized the Property in their schedules as “rental real estate” and stated that Ms. Gregory “has an undivided one-half interest with Patricia Mitchell,” her mother, as a joint tenant. Docket No. 26 at 3. On Schedule A/B, the Debtors asserted the value of the Property to be \$38,000. *Id.*

The Debtors proposed a Chapter 13 plan providing for cramdown of the debt owed to HSBC which is secured by a mortgage on the Property. Section 1322(b)(2) of the Bankruptcy Code allows debtors to “modify the rights of holders of secured claims,” but not on the debtor’s principal residence. The Debtors maintained this provision permitted them to “cramdown” HSBC’s secured claim to the alleged value of the Property because the Property was rental real estate and not their principal residence.

The Debtors estimated in their plan that \$224,142 is owed to HSBC, asserted that the value of the Property securing the claim was \$38,000, and further asserted that the City of Milwaukee held a senior lien against the Property in the amount of \$2,806. Pursuant to § 506, the Debtors sought a determination that HSBC had a secured claim in the amount of \$35,194 and that the remainder of its claim was unsecured. Their Chapter 13 plan proposed to pay HSBC the \$35,194 secured claim with interest at the rate of 5.25% and \$0 on the unsecured portion of HSBC's claim.

HSBC filed a proof of claim stating that the amount of its secured claim is \$230,674.22. Claim No. 9-1. The proof of claim also showed that the amount necessary to cure any default as of the date of the petition was \$135,048.25.

HSBC objected to its treatment under the plan, asserting among other things that the plan was not filed in good faith as § 1325(a)(3) requires and that the value of the Property was greater than \$38,000.¹ The parties agreed to have the Court hear the good faith issue before the valuation issue to potentially avoid the costs associated with obtaining appraisals of the Property. At the hearing, the evidence presented related to HSBC's good faith objection focused on two main issues: (1) whether the various transfers of the Property back and forth between and amongst Ms. Gregory and her mother amidst various bankruptcy filings by each of them showed a lack of good faith; and (2) whether the Property was the Debtors' principal residence at the time of the filing of this case such that the Debtors could not cramdown HSBC's secured claim to the alleged value of the Property under § 1322(b)(2).

With regard to the first issue, after considering Ms. Gregory's testimony at the hearing, the Court finds that the various transfers between and amongst Ms. Gregory and her mother amidst various bankruptcy filings were not intended as a scheme to hinder HSBC's ability to enforce its rights in the Property and do not establish that the Chapter 13 plan was not filed in good faith. The testimony established that Ms. Gregory initially purchased the Property from the Department of Housing and Urban Development. HSBC Ex. 1. She later sold the Property to her mother. HSBC Ex. 2, 4. That sale resulted in the satisfaction of the mortgage granted by Ms. Gregory on the Property and a payment to Ms. Gregory. It also resulted in Ms. Gregory's mother taking out a new mortgage on the Property to make the purchase. Ms. Gregory credibly explained that she conveyed the Property to her mother because she was experiencing legal trouble and wanted her mother to have all of her assets to be able to take care of Ms. Gregory's two children if Ms. Gregory went to prison. Once Ms. Gregory's legal trouble was resolved, her mother attempted to deed the Property back to her because Ms. Gregory was living there, Ms. Gregory was taking care of everything at the property, and the house and its maintenance and the payments on the mortgage loan were her responsibility. HSBC Ex. 5. Based upon the testimony, it did not appear that this conveyance was done out of fraud or malice but purely because Ms. Gregory was making all of the payments on the mortgage loan and resuming her responsibilities related to the Property once her legal difficulties were resolved. Ms. Gregory credibly testified that she suspects she received "poor advice" related to the conveyance of the

¹ The Court previously overruled the portion of HSBC's objection asserting that the Debtors could not utilize § 1322(b)(2) to modify its claim because they did not sign the note and mortgage. *See* Docket No. 103 (audio file of hearing).

Property from her mother to her at that time. She thought that the quit claim deed was all she would need to do to reassume all responsibilities related to the Property. She stated that after receiving additional legal advice, it was her understanding that an additional quit claim deed for the Property needed to be recorded to transfer the Property from her to her and her mother as joint tenants in common with a right of survivorship. HSBC Ex. 6. Ms. Gregory's testimony related to the various transfers of the Property between her and her mother does not support a finding that the Chapter 13 plan in this case was not filed in good faith.

With regard to the second issue, after considering Ms. Gregory's testimony at the hearing, the Court finds that the Property was the Debtors' principal residence at the time of the filing of this case; therefore, the Debtors cannot cramdown the debt owed to HSBC to the alleged value of the Property under § 1322(b)(2).

The Debtors filed this bankruptcy case on February 8, 2021. Ms. Gregory signed an affidavit in support of her motion to continue the automatic stay on February 25, 2021 which stated, "I am an adult that currently resides at 3509 North 41st Street, Milwaukee, Wisconsin 53216." Docket No. 24, ¶ 1. When questioned by counsel for HSBC at the evidentiary hearing, she testified that she was living at the Property on February 25, 2021.² She testified that she did not move out of the Property until late May or early June and thought that tenants moved into the Property in June.³

Ms. Gregory further reviewed the Statement of Financial Affairs filed in this case in which she reported that she lived at the Property from February 2018 to December 2020. HSBC Ex. 17; Docket No. 26 at 33, Question No. 2. She acknowledged that this was not true and that she lived at the Property until at least May or June of 2021.⁴

Following a brief recess during which Ms. Gregory consulted with her attorney, her story completely and incredibly changed. When questioned by her attorney, she testified that when she started her bankruptcy case, she was "living between two addresses." She claimed that she was living at the address stated on her bankruptcy petition, 4023 N. 24th Street, Milwaukee, and at the Property. She explained that she and her husband were in the process of getting the Property ready to rent out and would take turns staying there overnight to deter vandalism. The house next door to the Property was vacant and had been vandalized, so the Debtors would leave personal items like a television at the Property to give the appearance that someone was living

² Q: And can you read paragraph 1?
A: It says "I am an adult that currently resides at 3509 North 41st Street, [in] Milwaukee, Wisconsin 53216."
Q: And is that where you were living on February 25, 2021?
A: Yes.

³ Q: Okay, and when did you move out?
A: Um, I think it might have been in late May, early June, sometime around that time.

⁴ Q: So it says that you lived at [the Property] from February 2018 to December 2020. But today you testified that that's not true.
A: Um – no, no I don't think that this was – no, that was not true.
Q: So you testified that you lived at [the Property] until at least May or early June of this year, is that correct?
A: Yes.

there to keep people from breaking in. When questioned about why she previously inconsistently testified that she was living at the Property until May or June of 2021, Ms. Gregory claimed she “kinda got confused by what [the attorney for HSBC] was saying to me.”

The Court finds Ms. Gregory’s initial testimony to be credible and her subsequent testimony not credible. She initially appeared forthcoming and her answers were clear and concise and without qualification. When questioned by her attorney following the recess, her story changed and became much more elaborate and unbelievable by contrast. There was nothing confusing about the questions asked by the attorney for HSBC. Based on its assessment of her credibility, the Court finds that the Property was the Debtors’ principal residence at the time the Debtors filed their bankruptcy petition. As a result, the cramdown provision of § 1322(b)(2) is unavailable to them. Accordingly,

IT IS THEREFORE ORDERED: the amended objection to confirmation is sustained.

IT IS FURTHER ORDERED: the Debtors shall file an amended Chapter 13 plan on or before **December 30, 2021**.

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