

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

JOSE JUAN TRUJILLO,

Case No. 6:10-bk-02615-ABB

Chapter 13

Debtor.

ORDER

This matter came before the Court on the Verified Motion to Cram Down Mortgage of BAC Home Loans Servicing LP (“BAC”) (Doc. No. 29) filed by the Debtor Jose Juan Trujillo and BAC’s Response thereto (Doc. No. 32). Hearings were held on August 31, 2010 and October 26, 2010 at which the Debtor, his counsel, counsel for BAC, and counsel for the Chapter 13 Trustee appeared. The Debtor’s Motion is due to be denied pursuant to 11 U.S.C. Section 1328(f)(2) for the reasons set forth herein.

Background

The Debtor filed this individual Chapter 13 case on February 22, 2010. He filed a previous Chapter 13 bankruptcy case captioned *In re Jose Juan Trujillo Gonzalez & Carmen Milagros Trujillo*, Case No. 6:09-bk-02780-ABB, on March 10, 2009. The case was converted to Chapter 7 on September 17, 2009. The Debtor received discharge on January 29, 2010 pursuant to 11 U.S.C. Section 727(a). The Chapter 7 case was closed as a no asset case on March 11, 2010.

The Debtor’s assets in the pending case include real property located at 11849 Windflower Court, Clermont, Florida 34711-6674 (“Windflower Court”) acquired by the Debtor and Carmen Trujillo in 2006. Windflower Court is encumbered by first-priority

mortgage held by BAC pursuant to a Mortgage and Note executed by the Debtor and Carmen Trujillo on March 20, 2006.

Windflower Court and its mortgage encumbrance were listed in the Debtor's previous case. The mortgage was held by Countrywide Home Loans Servicing, L.P. No objections to discharge or to the dischargeability of any debt were filed in the previous case. The Debtor did not reaffirm the mortgage debt.

Motion to Value

BAC filed in the pending case a secured claim in the amount of \$156,672.14, Claim No. 3-1, relating to Wildflower Court. The Debtor, pursuant to 11 U.S.C. Sections 506(a) and 1322(b)(2), seeks to cram down Claim No. 3-1 to \$110,000.00 and pay such amount with interest at the rate of 5.5% per annum. The Debtor proposes to pay BAC \$0.00 on the unsecured portion of its claim on the basis the underlying debt was fully discharged in the Debtor's previous bankruptcy case pursuant to 11 U.S.C. Section 727. The Debtor filed an Amended Chapter 13 Plan reflecting this intended treatment of BAC's claim (Doc. No. 33). BAC objects to such treatment (Doc. Nos. 32, 35).

This matter is governed by Section 1328(f) of the Bankruptcy Code, as enacted by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Section 1328(f) provides:

(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or
- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

11 U.S.C. §§ 1328(f)(1), (2). The filing of a petition constitutes an “order for relief” pursuant to 11 U.S.C. Section 301(b). The look-back periods of Section 1328(f) commence on the date of filing of the debtor’s prior case and end upon the filing of the Chapter 13 petition. Carroll v. Sanders (In re Sanders), 551 F.3d 397, 399-400 (6th Cir. 2008); Branigan v. Bateman (In re Bateman), 515 F.3d 272, 277-78 (4th Cir. 2008).

The Debtor filed his previous case on March 10, 2009, which commenced a Chapter 13 case pursuant to 11 U.S.C. Section 301(a). He filed the above-captioned Chapter 13 case on February 22, 2010, which is within two years of the petition date of his previous case. The Debtor is precluded from receiving a discharge in the pending case pursuant to 11 U.S.C. Section 1328(f)(2).

The Debtor requires a discharge in this current case to be able to permanently modify the claim of BAC. In re Jarvis, 390 B.R. 600, 606 (Bankr. C.D. Ill. 2008). Where a debtor is ineligible to receive a discharge in a Chapter 13, any modifications to the creditor’s rights are not permanent and have no binding effect once the plan ends. In re Lilly, 378 B.R. 232, 236 (Bankr. C.D. Ill. 2007). The Debtor is precluded from receiving a discharge in his pending Chapter 13 case. Therefore, the motion to cram down the claim of BAC is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor Jose Juan Trujillo is not eligible for a discharge in the above-captioned case pursuant to 11 U.S.C. Section 1328(f)(2); and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's Motion to cram down BAC's claim (Doc. No. 29) is hereby **DENIED**.

Dated this 10th day of November, 2010.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge