


ORDERED.

Dated: June 04, 2019

  
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Jerry A. Funk  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

IN RE:

ROBERT TERRY MARTIN,

Debtor.

Chapter 11

Case No. 3:13-bk-6040-JAF

**ORDER DENYING MOTION FOR ORDER ESTABLISHING NEW DEADLINES FOR  
CONFIRMATION AND NEW BALLOT TABULATION**

This case is before the Court on the Motion Requesting Order Establishing New Deadlines for Confirmation and New Ballot Tabulations filed by REGIONS BANK d/b/a REGIONS MORTGAGE (“Regions”) (Doc. 387). On February 11, 2019, the Court conducted a preliminary hearing on the Motion and, in lieu of hearing oral argument, directed the parties to submit memoranda in support of their respective positions. (Docs. 400 & 401). Having reviewed the arguments, the Court finds it appropriate to deny the motion.

***Background***

In October 2013, Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code. Regions filed a proof of claim regarding a note and mortgage on certain real property owned

by Debtor (the “Property”). (Claim No. 10). On December 15, 2015, the Court confirmed Debtor’s reorganization plan. (Doc. 257) (the “Confirmation Order”); (Doc. 76) (the “Plan”). The Confirmation Order valued Regions’ secured claim at \$135,000.00.

On October 10, 2016, Debtor filed a motion to modify the confirmed plan (Doc. 291), pursuant to § 1127(e). Debtor sought to modify the confirmed plan by re-valuing the Property and secured claim to \$85,000.00. Although Regions filed an objection to the modification, it failed to appear at the November 29, 2016 hearing on the modification. On December 2, 2016, the Court granted Debtor’s motion to modify the confirmed plan and re-valued Regions’ secured claim at \$85,000.00 (the “Modification Order”). (Doc. 312). That same day, Regions filed a motion for rehearing as to the Modification Order. (Doc. 310). The motion for rehearing stated that Regions’ objection was withdrawn “due to a clerical miscommunication” and was “inadvertently not re-filed.” (Doc. 310 at 2). It is not clear why Regions did not appear at the hearing.

On April 27, 2017, the Court entered an agreed order, submitted by the parties, granting Regions’ motion for rehearing (the “Agreed Rehearing Order”). (Doc. 332). The Agreed Rehearing Order vacated the Confirmation Order “as to” Regions’ secured and unsecured claims and vacated the Modification Order in whole. The Agreed Rehearing Order provided that the parties would proceed on Debtor’s motion to re-value the Property and that Regions would not oppose Debtor’s effort to amend the Confirmation Order “based on any new valuation of” Regions’ claim. (Doc. 332 at 2).

On June 19, 2018, Debtor filed a motion to re-value Regions’ secured claim at \$90,000.00. After several continuances, a trial was held on this latest re-valuation motion. At trial, the parties stated they had reached an agreement as to re-valuation. On February 1, 2019, the Court entered

an agreed order re-valuing the Property and Regions' secured claim at \$112,500.00 (the "Agreed Re-valuation Order"). (Doc. 394).

On January 10, 2019, before the Agreed Re-valuation Order was entered, Regions filed the instant Motion Requesting Order Establishing New Deadlines for Confirmation and New Ballot Tabulations (the "Motion to Set New Deadlines"). (Doc. 387). The parties' post-hearing briefs on the Motion to Set New Deadlines were filed after entry of the Agreed Re-valuation Order. (Docs. 400 & 401).

Regions contends the Agreed Re-valuation Order materially and adversely changed the treatment of its claim under the Confirmation Order and Plan. (Doc. 401). More specifically, Regions states: "The \$225,370.00 claim filed by Regions has been materially and adversely altered by losing close to 50% of its secured status and gaining an unsecured claim of \$112,870.54." (Doc. 401 at 4). Regions further argues, "Debtor agreed to vacate the treatment of classes 4 and 14 and has not given creditor an opportunity to either object or accept the treatment of such claim." (Doc. 401 at 3). Regions asks the Court "to order Debtor to issue new voting ballots and [to] establish new voting deadlines for Confirmation of Debtor's new/amended Plan." (Doc. 401 at 5).

### *Analysis*

"[Section] 1127(e) allows the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim to seek modification of a confirmed plan[.]" In re Elec. Maint. & Constr., Inc., 2016 WL 2985025, at \*4 (Bankr. M.D. Fla. May 19, 2016). "Section 1127(e) was enacted in 2005 as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005[.]" In re Adams, 2016 WL 6783271, at \*3 (Bankr. M.D. Fla. Nov. 14, 2016). Following the addition of § 1127(e), subsection (b) of Bankruptcy Rule 3019 was added to provide the procedural

mechanism governing matters arising under § 1127(e). Fed. R. Bankr. P. 3019(b). The entirety of the prior version of Rule 3019 has now been moved to subsection (a). Fed. R. Bankr. P. 3019(a).

Regions relies on Rule 3019(b) for the proposition that it is entitled to a re-vote on the Plan. (Doc. 401). However, Bankruptcy Rule 3019(b) provides no language regarding a re-vote or acceptance of a plan, which make sense in light of the fact that subsection (b) pertains to *post*-confirmation modification. Regions' brief goes on to cite case law addressing Rule 3019 and re-votes. The problem, however, is that each of the three opinions<sup>1</sup> cited by Regions deal with *pre*-confirmation modification and re-voting. As stated above, the Plan in this case has been confirmed. (Doc. 257); (Doc. 76). Thus, Regions' case law is inapposite. Regions supplies no legal authority to order a re-vote in this confirmed Chapter 11 case.

Further, both the Agreed Rehearing Order (Doc. 332) and Agreed Re-valuation Order (Doc. 394) were entered with the consent of Regions. Any objection concerning these orders has been waived by Regions. The Confirmation Order stands as written insofar as it concerns Regions *but for* the valuations addressed in the Agreed Re-valuation Order. Regions may not now seek to undo a re-valuation to which it has consented. More to the point, however, the Court is aware of no legal authority to order a re-vote on a confirmed Chapter 11 plan.

Accordingly, it is hereby ORDERED that Regions' Motion to Set New Deadlines (Doc. 387) is DENIED.

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<sup>1</sup> In re New Power Co., 438 F.3d 1113 (11th Cir. 2006); In re Simplot, 2007 WL 2479664 (Bankr. D. Idaho Aug. 28, 2007); In re Dow Corning Corp., 237 B.R. 374 (Bankr. E.D. Mich. 1999).