

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

In re:

Case No. 3:11-bk-3148-PMG

MICHAEL A. MCNEAL, SR.

Chapter 13

Debtor.  
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**ORDER OVERRULING OBJECTION TO CONFIRMATION**

This Case came before the Court to consider confirmation of the Debtor's Chapter 13 Plan. At the hearing, the Debtor's sister, Wanda Harold, and brother, David McNeal, objected to confirmation. The basis for the objection is the contention that the Debtor is not entitled to cure the arrearage and make the regular monthly payments on a note secured by a mortgage on real property in which he has an ownership interest but is not personally obligated on the note and mortgage. For the reasons discussed below, the objection should be overruled.

**Background**

On April 29, 2011, the Debtor filed his petition in bankruptcy under Chapter 13 of the United States Bankruptcy Code.

On Schedule A the Debtor lists as his homestead property located at 8849 Yeoman Drive, Jacksonville, Florida 32208 (the Property), and states on the schedule that the Property is "[o]wned with Sister and 4 brothers listed on Deed. Mortgage held in Sister's name through Deutsche Bank." (Doc. 7 p. 3). The current value of the Debtor's interest in the property is listed as \$12,400.00, and the current amount of the secured claim is listed as \$14,000.00. Id.

On Schedule D the Debtor states that Deutsche Bank holds a first mortgage on the Property. The schedule indicates that the mortgage was entered in 1986, and that it is in his sister's name. (Doc. 7 p. 8).

Wanda Harold indicates that she is the person obligated on the mortgage. It appears that Wanda Harold entered the mortgage in 1986 and subsequently conveyed the Property to her mother, Catherine P. McNeal, after the mortgage was entered.<sup>1</sup>

The Debtor and his sister indicate that their mother died in 2005, and that the Property descended to her ten children.

It appears that four of the Debtor's siblings have conveyed their interests in the Property to the Debtor.<sup>2</sup> Accordingly, it appears that as of the petition date the Debtor possessed a 50% ownership interest in the Property, with the remaining 50% belonging to his five other siblings, including Wanda Harold.

The Mortgage on the Property remains in Wanda Harold's name.

The Debtor's Chapter 13 plan proposes to pay the regular monthly mortgage payments of \$384.00 and the arrearage owed to Deutsche Bank over the life of the plan. The arrearage, in the amount of \$6,000.00, is proposed to be paid in monthly installments of \$120.00 per month for months 11-60 until the arrearage is cured.

The record shows that on May 5, 2011, Deutsche Bank was sent notice of the Debtor's scheduled confirmation hearing set for July 26, 2011. (Doc. 6). On May 18, 2011, Deutsche Bank was also sent notice of the Debtor's proposed Chapter 13 plan by first class mail. (Doc. 13)

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<sup>1</sup> The Duval County Property Records show that Wanda McNeal Harold executed a Quitclaim Deed in favor of Catherine P. McNeal on February 18, 1992, and that Donald E. Harold executed a Quitclaim Deed in favor of Catherine P. McNeal on February 22, 1994.

<sup>2</sup> The Duval County Property Records show that Paul McNeal, Jerold McNeal, Debbie Bradley, and Joanna Youngblood have each conveyed their interest to the Debtor.

Deutsche Bank was not represented at the confirmation hearing and did not file an objection to the Debtor's Chapter 13 plan.

### **Discussion**

The Debtor contends that he has an ownership interest in the Property, that he resides on the Property and considers the Property to be his homestead, and he proposes to cure the arrearage owed on the Property and make the regular monthly mortgage payments through his Chapter 13 Plan.

The Debtor's sister, Wanda Harold, asserts that the Mortgage remains in her name and the Debtor is not personally obligated on the Mortgage, and therefore the Debtor is not entitled to cure the arrearage and reinstate the Mortgage in his Chapter 13 plan. David McNeal joins in Wanda Harold's objection.

The objection to confirmation made by Wanda Harold and David McNeal should be overruled.

The interest acquired by the Debtor upon his mother's death and through the Quitclaim Deeds from his four siblings gives the Debtor an ownership interest in the Property. Consequently, the Debtor may address Deutsche Bank's claim in his Chapter 13 case, even though the Debtor did not sign the Promissory Note and Mortgage that created the debt.

The Supreme Court in *Johnson* has told us that a debtor can include a claim in a Chapter 13 plan, even when the debtor is not personally liable for the underlying debt. Recall that under *Johnson*, a creditor need not hold a personal claim against a debtor for a creditor's claim to be included in the debtor's bankruptcy estate; it is sufficient that a debtor owns property against which a creditor holds a lien for that property to be included in the debtor's bankruptcy estate. Also, as *Johnson* acknowledged, the statutory language of §§101(5), 502(b)(1), and 102(2) of the Bankruptcy Code plainly indicates that a claim against property held by a debtor is sufficient to constitute a claim within a Chapter 13 setting.

In re Curinton, 300 B.R. 78, 84085 (Bankr. M.D. Fla. 2003)(citing Johnson v. Home State Bank, 501 U.S. 78 (1991))(emphasis supplied). Since a debtor "can include an *in rem* claim in a Chapter 13

plan,” the Court in Curinton denied the creditor’s motion for relief from the automatic stay. In re Curinton, 300 B.R. at 86.

This Court recently held that a debtor who possessed an ownership interest in property was allowed to deal with the lien in her Chapter 13 case, even though the Debtor did not sign the promissory note and mortgage that created the debt. In re Lozada, 446 B.R. 604 (Bankr. M.D. Fla. 2011). In Lozada, the debtor contended that she should be allowed to deal with the debt in her Chapter 13 plan because she was the owner of the property, she resided on the property, and the property was her homestead. The creditor contended that a Quitclaim Deed to the debtor constituted an unauthorized transfer of the property, and that the transfer violated the "due on sale" clause of the Mortgage. The Court held that since the debtor owned the property subject to the creditor's lien, she could deal with the claim in her bankruptcy case even if she was not personally obligated for the underlying debt, and even if the Quitclaim Deed violated a due on sale clause. See also In re Jordan, 199 B.R. 68 (Bankr. S.D. Fla. 1996)(Denying creditor's objection that only the mother as the original mortgagor had privity with the creditor and holding that the transfer of ownership from the mortgagor to the debtor resulted in the mortgagee holding a claim against the debtor's estate in bankruptcy, even though the debtor lacked privity with the creditor).

In the case of In re Trapp, 260 B.R. 267 (Bankr. S.C. 2001), the debtor received an ownership interest in the property by deed from the original mortgagors, however, the mortgage remained in the names of the original mortgagors. Id. at 268. Because the debtor lacked privity with the creditor, the creditor objected to the debtor including the mortgage in his Chapter 13 plan. The bankruptcy court held that because the debtor owned the property, the property was therefore property of the estate, and the creditor held a claim in the debtor’s Chapter 13 bankruptcy case even though the debtor lacked privity with the creditor. See also Citicorp Mortgage, Inc. v. Lumpkin, 144 B.R. 240 (Bankr.

D. Conn. 1992)(holding that the debtor could include a mortgage in his Chapter 13 plan even where there was no personal liability to the creditor regardless of the circumstances that brought about the lack of personal responsibility).

The present case has similarities to the Lozada and Trapp cases. In this case, the Debtor's sister, Wanda Harold, executed the original mortgage and later transferred her interest in the property to her mother, Catherine P. McNeal. When Catherine P. McNeal passed away, the ownership of the Property descended to her ten children. The Debtor obtained an ownership interest at his mother's death, and subsequently four of his siblings deeded their interests to him. The Mortgage remains in Wanda Harold's name.

Since the Debtor has an ownership interest in the property, he may cure the arrearage on the Mortgage, reinstate the Mortgage, and make regular payments on the Mortgage through his Chapter 13 Plan.

### **Conclusion**

The objection to confirmation of the Debtor's Chapter 13 plan should be overruled.

The record reflects that the Debtor has an ownership interest in the Property. The Debtor's interest in the property is derived from the interest he received upon his mother's death and the interests he received from his four siblings. Since the Debtor has an ownership interest in the Property that is subject to Deutsche Bank's lien, he may deal with the lien in his bankruptcy case, even though he is not personally obligated for the underlying debt.

Accordingly, it is

### **ORDERED:**

1. The Objection to Confirmation raised by Wanda Harold and David McNeal is overruled.

2. Within ten (10) days of the date of this Order, the Chapter 13 Trustee shall submit to the Court an order confirming the Debtor's Chapter 13 plan.

Dated this 1 day of September, 2011, in Jacksonville, Florida.

**BY THE COURT**

Paul M. Glenn

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Paul M. Glenn  
Chief United States Bankruptcy Judge