

Womble Bond Dickinson (US) LLP

1221 Main Street
Suite 1600
Columbia, SC 29201

t: 803.454.6504

Bryant S. Caldwell
Associate
Direct Dial: 803-454-7735
Direct Fax: 803-381-9135
E-mail: Bryant.Caldwell@wbd-us.com

May 26, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
May 26 2020
SC Court of Appeals

Re: Wells Fargo Bank, N.A. v. Michelle Hodges
Appellate Case No.: 2019-001565

Dear Ms. Kitchings:

We represent Wells Fargo Bank in the above-captioned appeal. On November 27, 2019, this Court notified both parties that this appeal would be held in abeyance as a result of Ms. Hodges' Chapter 13 bankruptcy, filed on November 22, 2019. The purpose of this letter is to notify the Court that the United States Bankruptcy Court dismissed the bankruptcy case on May 4, 2020. (copy attached). Due to the dismissal, we respectfully request for the appeal to proceed.

If we can provide the Court with any additional materials or information, please do not hesitate to call on us.

Best regards,

Womble Bond Dickinson (US) LLP

By: /s/ Bryant S. Caldwell

cc: Michelle Hodges

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

RECEIVED

May 26 2020

SC Court of Appeals

IN RE:

C/A No. 19-05555-HB

Michelle Yvette Hodges,

Chapter 13

Debtor(s).

**ORDER DENYING CONFIRMATION
AND DISMISSING CASE**

THIS MATTER came before the Court for continued telephonic hearings on the Chapter 13 Trustee's Petition to Dismiss¹ and Objection to Exemptions² and to consider confirmation of the plan filed on March 5, 2020.³ Participating in the hearings were Christine Loftis, staff attorney for the Chapter 13 Trustee, Robert P. Davis, counsel for Wells Fargo Bank, N.A., Lawrence W. Johnson, Jr., counsel for Ally Financial, and Michelle Yvette Hodges, appearing *pro se*.

Hodges filed a petition for Chapter 13 bankruptcy relief on October 23, 2019. A confirmation hearing was initially scheduled for January 9, 2020. Due to deficiencies in Hodges' initial plan and schedules, the Trustee filed a Petition to Dismiss on December 19, 2019. Thereafter, Hodges filed amended schedules and statements,⁴ but they did not cure the issues raised in the Petition. Hodges also filed an amended proposed Chapter 13 Plan on March 5, 2020, but failed to provide proof of service of the plan on all creditors. Hodges' plan proposes monthly payments of \$150.00 for 36 months and pays less than 100% of the unsecured claims. Ally and Wells Fargo filed objections to confirmation of

¹ ECF No. 26, filed Dec. 19, 2019.

² ECF No. 109, filed Mar. 20, 2020.

³ ECF No. 90.

⁴ ECF No. 30, filed Jan. 3, 2020 (Amended Schedules A/B, C, D, E/F, G, H, I, J, and Amended Statement of Financial Affairs, Statement of Current Monthly Income); ECF No. 68, filed Feb. 11, 2020 (Amended Schedule C); ECF No. 89, filed Mar. 5, 2020 (Amended Schedules A/B, C, D, and E/F).

this plan. Ally asserts the plan fails to comply with 11 U.S.C. § 1325(a)(5) because the payments do not adequately protect its interest in a vehicle and the NADA retail value of the vehicle is \$8,575.00. Wells Fargo's objection asserts it is entitled to be treated in the plan as a secured creditor, its rights are not subject to modification pursuant to § 1322(b)(2), and the plan fails to provide treatment of its pre-petition arrears.

Ally filed a proof of claim in the amount of \$14,722.38, secured by a 2016 Kia Forte with a value of \$8,757.00, and arrears of \$1,376.80 as of the Petition Date. Hodges objected to Ally's claim, asserting the secured portion did not reflect the "true value of the car" and alleging she was entitled to damages against Ally or the dealership where she purchased the vehicle because full details about the vehicle's accident history were not disclosed to her before purchase. A hearing on the matter resulted in an order on March 6, 2020, allowing Ally's claim in the amount of \$14,722.38 secured by a lien on the vehicle, reserving any issues regarding the value of the vehicle for the plan confirmation process, and denying without prejudice any affirmative relief or damages sought by Hodges against Ally in connection with the purchase of the vehicle.⁵

Wells Fargo filed a proof of claim in the amount of \$171,389.65, secured by Hodges' residence, with \$38,602.42 in arrears as of the Petition Date. Hodges filed an objection to Wells Fargo's claim, asserting it did not have an enforceable lien on the property securing the mortgage. After a hearing in which Hodges testified, the Court entered order on March 11, 2020, overruling Hodges' objection.⁶

⁵ ECF No. 99.

⁶ ECF No. 103.

Hodges' Amended Schedule J indicates she has a monthly budget deficit of \$278.00. Her most recent Amended Schedule C claims an exemption in three settlements with Wells Fargo, Kia/Ally, and US OPM pursuant to S.C. Code Ann. § 15-41-30(12)(b), which allows a debtor to claim an exemption in the right to receive or property traceable to "payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent." The Trustee filed an Objection, asserting it is not clear whether this provision is applicable to the subject claims/settlements and requesting proof the exemptions are applicable in this case. The Trustee also objected to Hodges' claimed exemption for "all" of her tax refunds pursuant to S.C. Code Ann. § 15-41-30(a)(7) because the "wildcard" exemption is limited to a set dollar amount. Hodges' Response asserts the settlement claims with Wells Fargo, Kia/Ally, and US OPM will be removed from her Schedule C because they are property of the probate estate of her mother, in which she is the executor, and not property of the bankruptcy estate.

On March 20, 2020, the Trustee sent Hodges correspondence updating prior lists of various deficiencies in her case, including the need for amended schedules and statements and an adequate plan. At the hearing, Hodges' payments were \$500.00 in arrears, but she reported she transmitted a late payment of \$450.00 the day before the hearing.⁷

The Trustee's Petition to Dismiss has been continued several times.⁸ On March 31, 2020, Hodges requested a continuance due to complications from the COVID-19

⁷ The Trustee was able to verify the transmission after learning this at the hearing, but it was too soon to confirm whether the payment had finalized. For the purposes of this Order, the Court assumes the payment was made on that date.

⁸ See ECF No. 58 (continuing hearing to Mar. 5, 2020); ECF No. 85 (continuing hearing to Apr. 2, 2020).

pandemic, including participating in work telephone conferences during the evenings.⁹ The Court granted Hodges' request and continued these matters to April 30, 2020. On April 29, 2020, the Court received another motion to continue from Hodges.¹⁰ The motion again asserts Hodges has been unable to address the issues with her case due to complications arising from the COVID-19 pandemic, including making arrangements to relocate her daughter. At the April 30th hearing, Hodges explained that she works during the daytime and has been dealing with these family issues in the evenings when she would normally address her bankruptcy case. The other parties participating in the hearing objected to the continuance request. Hodges' explanation did not convince the Court that, considering the prior extensions, she was unable to address outstanding issues and move toward confirmation of a plan before the hearing. When asked about a Chapter 13 plan at the April 30th hearing, Hodges again reasserted arguments and issues already decided by the Court in the Wells Fargo and Ally claim orders.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (L) and this Court may enter a final order.

Section 1307(c) provides that a Chapter 13 case may be dismissed or converted to Chapter 7 "for cause," and provides a nonexclusive list of ten causes justifying conversion or dismissal. Among those are: "(1) unreasonable delay by the debtor that is prejudicial to creditors . . . (3) failure to file a plan timely under section 1321 of this title; [and] (4) failure to commence making timely payments under section 1326 of this title . . ." 11 U.S.C. § 1307(c).

⁹ ECF No. 113.

¹⁰ ECF Nos. 125 & 126, filed Apr. 29, 2020.

“Debtor has ‘the burden of proving by a preponderance of the evidence that [her] plan meets the confirmation requirements of § 1325(a) . . .’” *In re Martellini*, 482 B.R. 537, 541-42 (Bankr. D.S.C. 2012) (quoting *In re Bridges*, 326 B.R. 345, 349 (Bankr. D.S.C. 2005)). Section 1325(a) requires that the plan “complies with the provisions of this chapter and with the other applicable provisions of this title,” 11 U.S.C. § 1325(a)(1) and, with respect to allowed secured claims:

- (A) the holder of such claim has accepted the plan;
- (B)
 - (i) the plan provides that—
 - (I) the holder of such claim retain the lien securing such claim until the earlier of—
 - (aa) the payment of the underlying debt determined under nonbankruptcy law; or
 - (bb) discharge under section 1328; and
 - (II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;
 - (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and
 - (iii) if—
 - (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and
 - (II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or
- (C) the debtor surrenders the property securing such claim to such holder[.]

11 U.S.C. § 1325(a)(5). Pursuant to § 1325(a)(6), a Chapter 13 plan cannot be confirmed unless it is feasible. That section specifically provides the Court shall confirm a Chapter 13 plan if “the debtor will be able to make all payments under the plan and comply with the plan.” 11 U.S.C. § 1325(a)(6).

After over six months, this case still lacks complete and accurate schedules and statements, an adequate plan that meets the requirements of § 1325(a)(1), (5), and (6), all information requested by the Trustee in order to recommend confirmation should an adequate plan be filed, and proof of adequate notice to creditors. Additionally, plan payments were not timely made, and no budget filed with the Court indicates funds are consistently available to fund a plan. Although the current pandemic presents unusual circumstances, Hodges has been provided ample time and most deficiencies pre-date that situation. There is no indication this case will improve and progress toward confirmation if more time is allowed. The Court has given Hodges adequate time to pursue her case and seek confirmation of a plan that properly addresses claims. Hodges has failed to do so without just excuse, resulting in unreasonable delay that is prejudicial to creditors and there is no indication these facts will improve if more time is allowed.

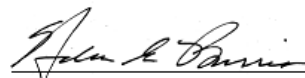
IT IS, THEREFORE, ORDERED THAT:

- (1) Hodges' request to continue these matters is denied;
- (2) confirmation of the Chapter 13 plan filed on March 5, 2020, is denied as the plan fails to meet the requirements of 11 U.S.C. § 1325(a)(1), (5), and (6);
- (3) the above-captioned case is hereby dismissed pursuant to 11 U.S.C. § 1307(c); and
- (4) the Trustee's Objection to Exemptions filed March 20, 2020, is moot.

**FILED BY THE COURT
05/04/2020**



Entered: 05/04/2020


Chief US Bankruptcy Judge
District of South Carolina

RECEIVED

May 26 2020

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Respondent Wells Fargo Bank, N.A., do hereby certify that I have served the below parties in this action with a copy of the letter and attached order sent by U.S. mail addressed to the persons hereinafter named, at the places and addresses stated below:

Michelle Hodges
6 Young Harris Drive
Simpsonville, SC 29681

Michelle Hodges
P.O. Box 95
Mauldin, SC 29662

/s/ Bryant S. Caldwell

Bryant S. Caldwell

May 26, 2020