



**SO ORDERED,**

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: June 27, 2017**

**The Order of the Court is set forth below. The docket reflects the date entered.**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**PATRICIA J. WASHINGTON,**

**CASE NO. 17-00048-NPO**

**DEBTOR.**

**CHAPTER 13**

**ORDER OVERRULING OBJECTION TO CONFIRMATION**

This matter came before the Court for hearing on June 5, 2017 (the "Hearing"), on the Objection to Confirmation (the "Objection") (Dkt. 42) filed by U.S. Bank National Association ("U.S. Bank"), and the Debtor's Answer to the Objection to Confirmation Plan Filed Herein by U.S. Bank National Association Docket#42 (the "Response") (Dkt. 43) filed by the debtor, Patricia J. Washington (the "Debtor"), in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Karen A. Maxcy ("Maxcy") represented U.S. Bank, L. Jackson Lazarus represented the Debtor, and Justin B. Jones appeared on behalf of Harold J. Barkley, Jr., the standing chapter 13 panel trustee. After fully considering the matter and being fully advised in the premises, the Court overruled the Objection from the bench. This Order memorializes and supplements the Court's bench ruling.

## **Jurisdiction**

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). Notice was proper under the circumstances.

## **Facts**

1. The Debtor filed a voluntary petition for relief pursuant to chapter 13 of the bankruptcy code (Dkt. 1) and her Chapter 13 Plan (Dkt. 2) on January 5, 2017. The Debtor also filed her schedules (Dkt. 4) on January 5, 2017. On Schedule A/B: Property (“Schedule A/B”) (Dkt. 4 at 3-8), the Debtor listed her address as 21 Edna Rose Lane in Natchez, Mississippi, and indicated that it is a mobile home (the “Mobile Home”) (Schedule A/B at 1). According to Schedule A/B, the Mobile Home has a value of \$31,000.00. On Schedule I: Your Income (“Schedule I”) (Dkt. 4 at 18-19), the Debtor indicated that she is employed at Fruit of the Loom and has a gross monthly income of \$2,154.41. (Schedule I at 1).

2. U.S. Bank filed the Proof of Claim (the “POC”) (Bankr. Cl. 2-1) on March 21, 2017, indicating that it had a claim in the amount of \$62,058.15, secured by the Mobile Home. (POC at 2).

3. The Debtor filed a Modified Chapter 13 Plan (Dkt. 30) on March 28, 2017, and another Modified Chapter 13 Plan (the “Plan”) (Dkt. 55) on May 23, 2017. In the Plan, the Debtor proposed to make bi-weekly payments in the amount of \$421.11 for sixty (60) months. (Plan at 1). She indicated in the Plan that U.S. Bank holds a mortgage on the Mobile Home, and she proposed to make monthly payments to U.S. Bank through the Plan in the amount of \$524.82. (*Id.*).

4. U.S. Bank filed the Objection on April 12, 2017, arguing that the Debtor proposed the Plan in bad faith and the Plan is not feasible. U.S. Bank asked the Court to deny confirmation of the Plan and award it “reasonable attorney’s fees.” (*Id.* at 3).

5. According to U.S. Bank, as to the issue of good faith, the Plan “improperly attempts to cure a default of [U.S. Bank’s] claim against the [Mobile Home]. The [Mobile Home] is not property of the estate since a judgment of possession was entered prior to the filing of the [Bankruptcy Case].” (Obj. at 1). U.S. Bank also argued in the Objection that the proposed treatment of its claim is “impermissible under Section 1322(b)(3) of the U.S. Bankruptcy Code.” (*Id.*).

6. As to the issue of feasibility, U.S. Bank pointed out that Schedule I does not indicate how long the Debtor has been employed by Fruit of the Loom and “according to questions Four (4) and Five (5) of the Debtor’s Statement of Financial Affairs, she had no income from any source this year or the previous two calendar years.” (*Id.* at 2). Because the Debtor signed the Statement of Financial Affairs for Individuals Filing for Bankruptcy (the “Statement”) (Dkt. 4 at 23-29) under penalty of perjury, U.S. Bank contended that the Statement must be true and, thus, the Debtor “has failed to satisfy her burden of proving the plan is feasible and that all plan payments will be made.” (*Id.*).

7. In the Response, the Debtor generally denied the allegations raised by U.S. Bank in the Objection. Additionally, the Debtor asserted in the Response that: (1) the Plan is feasible; (2) if there is any deficiency in Schedule I or the Statement, “the [D]ebtor will amend to cure”; (3) she proposed a “fair value for U.S. Bank’s collateral”; (4) she filed the Plan in good faith; and (5) U.S. Bank is not entitled to attorney’s fees. (Obj. at 1-2).

8. At the Hearing, Maxcy did not argue feasibility or bad faith. Instead, she argued that the Plan should not be confirmed because U.S. Bank obtained a “judgment for possession” on December 12, 2016, prior to the commencement of the Bankruptcy Case.<sup>1</sup> For that reason, Maxcy argued that the Mobile Home is not property of the estate.

### **Discussion**

The primary issue raised by U.S. Bank at the Hearing is whether the Mobile Home is property of the estate. Subject to certain limitations, property of the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). In support of U.S. Bank’s position that the Mobile Home is not property of the estate, Maxcy cited this Court’s decision in *In re Tatum*, Case No. 14-03676-NPO, 2015 WL 1061673 (Bankr. S.D. Miss. Mar. 6, 2015).

In *In re Tatum*, the debtors entered into a rental purchase agreement in which they agreed to purchase land and a manufactured home from the creditor. *Id.*, at \*1. After the debtors became delinquent in their rent payments, the creditor obtained a judgment in state court requiring the debtors to vacate the home (the “State Court Judgment”). *Id.* Twenty-eight days later, the debtors filed a chapter 13 petition for relief. *Id.*

Upon the filing of the bankruptcy petition, the automatic stay under § 362(a)<sup>2</sup> operates as a temporary injunction preventing creditors from pursuing collection efforts while a bankruptcy case is pending. *Id.* (citing *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348, 354-55 (5th Cir. 2008)). When the automatic stay is in effect, a creditor may not, among other things, attempt to obtain possession of the debtor’s property or property of the estate. There are numerous

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<sup>1</sup> A copy of the judgment for possession was not introduced into evidence at the Hearing.

<sup>2</sup> Hereinafter, all code sections refer to the Bankruptcy Code found at title 11 of the United States code unless indicated otherwise.

exceptions, however, to the protections of the automatic stay. 11 U.S.C. § 362(b). Given the broad scope of the automatic stay, the exceptions are narrowly construed. *Stewart v. Hampton Co. Nat'l Surety, LLC (In re Stewart)*, 544 B.R. 859, 866 (Bankr. N.D. Miss. 2015).

In *In re Tatum*, the creditor argued that the automatic stay never took effect as to the debtors' home because of the exception to the stay in § 362(b)(22). *Id.*, at \*1-2. Under § 362(b)(22), the filing of a petition does not invoke the automatic stay with respect to:

[T]he continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a *judgment for possession* of such property against the debtor.

11 U.S.C. § 362(b)(22)<sup>3</sup> (emphasis added). The issue in *In re Tatum* turned on whether the State Court Judgment constituted a “judgment for possession” within the meaning of § 362(b)(22). *Id.*, at \*2. The Court ruled that it did not because the State Court Judgment was subject to an appeal under Mississippi law at the time the debtors commenced their bankruptcy case. *Id.*, at \*3.

The facts in the Bankruptcy Case are distinguishable from those in *In re Tatum*. Here, the Debtor holds title to the Mobile Home; she does not occupy the Mobile Home under a lease or rental agreement with U.S. Bank. Section 362(b)(22), upon which *In re Tatum* was decided, “applies only if the prepetition judgment for possession relates to rental property in which the debtor resides under a lease or rental agreement. It does not apply, for example, to an eviction judgment obtained by a purchaser of property at foreclosure who does not have a lease or rental agreement with a debtor occupying the property.” 3 COLLIER ON BANKRUPTCY ¶ 362.05[20] (16th ed. 2016). U.S. Bank's reliance on § 362(b)(22), therefore, is misplaced.

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<sup>3</sup> By satisfying the provisions of § 362(l), a tenant may negate the effect of § 362(b)(22).

It is undisputed that the Debtor remains in possession of the Mobile Home. Her possessory interest in the Mobile Home is a sufficient interest to constitute property of the estate under § 541. *In re McCants*, No. 12 B 14406 (ALG) 2012 WL 6093496, at \*1 (Bankr. S.D.N.Y. Dec. 7, 2012); *Farmers Bank & Trust Co. v. Wells (In re Wells)*, 536 B.R. 264, 270 (Bankr. E.D. Ark. 2015). Accordingly, the Court finds that the Objection should be overruled and the Response should be sustained.

IT IS, THEREFORE, ORDERED that the Objection is hereby overruled.

IT IS FURTHER ORDERED that the Response is hereby sustained.

##END OF ORDER##