

MAR 01 2007

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT**

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:) BAP No. HI-06-1301-BKMo
)
 LEONORA RELLIN REAVIS,) Bk. No. 01-04646
)
 Debtor.)
)
 COUNTRYWIDE HOME LOANS,)
)
 Appellant,)
)
 v.) **MEMORANDUM**¹
)
 UNITED STATES TRUSTEE;)
 CITY AND COUNTY OF HONOLULU;)
 HOWARD M.S. HU,)
 Trustee; LEONORA RELLIN)
 REAVIS,)
)
 Appellees.)

Argued and Submitted on January 19, 2007
at Honolulu, Hawaii

Filed - March 1, 2007

Appeal from the United States Bankruptcy Court
for the District of Hawaii

Honorable Robert J. Faris, Chief Bankruptcy Judge, Presiding

Before: BRANDT, KLEIN, and MONTALI, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 The bankruptcy court denied the objection of Countrywide Home Loans
2 ("Countrywide") to the standing chapter 13² trustee's final report and
3 account. Countrywide appealed. We AFFIRM.

4
5 **I. FACTS**

6 Leonora Reavis ("Debtor") filed an individual chapter 13 petition
7 on 29 November 2001. Appellee Howard Hu ("Trustee"), the standing
8 chapter 13 trustee for the District of Hawai'i, was appointed trustee.

9 Reavis scheduled her fee simple interest in property located in
10 Waianae, Hawai'i (the "Property"), which she valued at \$209,000. She
11 also scheduled two mortgages against the Property, both held by LLP
12 Mortgage Ltd.: an undisputed first mortgage in the amount of \$80,478.99,
13 and a disputed second mortgage in the amount of \$312,000. Beal Bank was
14 apparently the original lender, and Countrywide is servicing agent on
15 both; for convenience we will refer to the creditor as "Countrywide."

16 On the petition date, Reavis also filed a plan which provided for
17 monthly payment of \$2779.32 to the Trustee for 60 months ("Plan"). It
18 proposed to pay the first mortgage outside the plan, but the second
19 mortgage, listed as a class 2 secured claim of \$312,000 with collateral
20 having a market value of \$125,261.16, was to be paid under the Plan.
21 Section V, paragraph H.1. provided in part: "LLP'S CLASS 2 CLAIM SHALL
22 BE TREATED AS A SECURED CLAIM FOR \$125,261.16"

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24
25 ² Absent contrary indication, all "Code," chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 prior to
27 its amendment by the Bankruptcy Abuse Prevention and Consumer
28 Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23, as the case from
which this appeal arises was filed before its effective date
(generally 17 October 2005). All "Rule" references are to the Federal
Rules of Bankruptcy Procedure, all "FRCP" references are to the
Federal Rules of Civil Procedure.

1 The last sentence of Section II, paragraph G of the plan provided:

2 **Order of Distribution . . . Unless a claim objection is**
3 **. . . distributions on account of claims** in Classes 1, 2, 5,
4 **6 and 7 will be based upon the classification and amount**
5 **stated in each claim holder's proof of claim rather than any**
6 **classification or amount stated in this plan.**

7 (Emphasis added). Section II, paragraph B, provided for distributions
8 to secured creditors whose claims are modified by the plan:

9 They will be paid the full amount of their claims as stated on
10 the creditor's timely filed proof of claim, **or** the market
11 value of their collateral, **whichever is less . . .**

12 (Emphasis added).

13 The Plan was accompanied by Reavis' motion to value the collateral
14 at \$209,000. On 1 February, LLP filed objections to plan confirmation
15 and to the valuation motion. On 6 February 2002, before the
16 confirmation and valuation hearing, Countrywide filed a proof of claim
17 on the second mortgage for \$100,500, appending copies of a note and
18 security documents. It also filed a proof of claim for the first
19 mortgage, which is not at issue in this appeal.

20 One day before the valuation hearing, Countrywide withdrew both
21 objections. The bankruptcy court found the collateral's value to be
22 \$214,500, Transcript, 21 March 2002, and confirmed the plan in a single
23 order (the "Confirmation Order"). Neither LLP nor Countrywide filed an
24 amended proof of claim.

25 On 8 June 2006, more than four years later, the Trustee filed and
26 served his final report and account under § 1302(b)(1) and Rule 5009,
27 reflecting that he had paid \$100,500 principal and \$8,258.43 interest on
28 the second mortgage, and that the estate had been fully administered.
The debtor's discharge was issued on the same day.

1 Countrywide objected to the Trustee's final report, arguing that
2 the payout amount on the second mortgage should have been determined by
3 the confirmed Plan, not the amount indicated on its proof of claim.
4 Thus, it argued, full payment of its claim should have been \$125,261.16,³
5 not \$100,500. It sought resolution of the issue before Trustee's
6 discharge from his duties.

7 The Trustee defended his final report, asserting that he properly
8 relied on the proof of claim, as this claim was deemed allowed under
9 § 502(a), and that the confirmation order should be given preclusive
10 effect. Reavis did not file anything, but her counsel appeared at the
11 hearing to support the Trustee's position, noting that the debtor had
12 been discharged.

13 After hearing argument, the bankruptcy court denied Countrywide's
14 objection and approved the final report, holding:

15 [T]he trustee is entitled to rely on the amount stated in the
16 face of the proof of claim. Perhaps unless that amount is
17 left blank or somehow facially absurd So I think the
trustee did the appropriate thing in paying based on the proof
of claim.

18 The language of paragraph G . . . has to be read in
19 harmony with the other provision dealing specifically with
20 secured claims. **The language in paragraph G . . . means that
21 if there's a motion to strip down a lien, the claim is the
22 stripped down value, not a higher amount reflected in a proof
of claim. On the other hand, if . . . the claimed amount is
23 lower than the value of the collateral, then the other
24 provision of the plan says it's the claim amount.**

25 . . .

26 ³ Countrywide's calculations appear to be based on a market
27 value of \$209,000: deducting the first mortgage and payment on the tax
28 lien, yields \$125,261.16. The combined total for the first and the
second secured claims listed in paragraph 2 of the Confirmation Order
is \$214,500; subtracting the first (\$80,478.99), less the statutory
lien for city and county real property taxes (\$3259.85), would yield
\$130,761.16.

1 I should also add that we're at the back end of the case
2 here. The plan has [been] fully performed and everybody has
3 relied on the proof of claim in executing the plan. I think
it'd be inappropriate to make a change at this point.

4 Transcript, 20 July 2006 at 7-8 (emphasis added).

5 In addition to approving the final account, the order on appeal
6 directed that:

7 1. A final decree be entered discharging the Trustee,
8 releasing the Trustee and the Trustee's surety from any and
all liability on account of this case . . . [and]

9 2. The Trustee is discharged and relieved of his trust and
10 all further duties as the Trustee.

11 Order Approving Standing Trustee's Final Account in Estate Paid in Full,
12 Denying Objection thereto filed by Countrywide Home Loans . . . and
13 Directing Entry of Final Decree Discharging Standing Trustee, Cancelling
14 Surety Bond, and Closing Case, 15 August 2006 (the "Final Order").

15 Countrywide appealed, seeking that we reverse the Final Order.
16

17 **II. JURISDICTION**

18 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334(b) and
19 § 157(b) (1) and (2) (A) and (B). We have jurisdiction over this appeal
20 under 28 U.S.C. § 158(a) (1) and (c).
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22 **III. ISSUE**

23 Whether the bankruptcy court properly overruled Countrywide's
24 objection to Trustee's final report concerning the payment amount of
25 Countrywide's secured claim.
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1 **IV. STANDARDS OF REVIEW**

2 A. We review de novo conclusions of law and questions of statutory
3 interpretation, including construction of the Code, and findings of fact
4 for clear error. Rule 8013; In re Mednet, 251 B.R. 103, 106 (9th Cir.
5 BAP 2000).

6 B. Whether a contract is ambiguous is a matter of law, In re Miller,
7 253 B.R. 455, 458 (Bankr. N.D. Cal. 2000), aff'd, 284 B.R. 121 (N.D.
8 Cal. 2002), which we review de novo.

9 C. Interpretation of the contractual terms of a Chapter 13 plan is
10 generally a factual issue which we review for clear error. In re
11 Brawders, 325 B.R. 405, 410 (9th Cir. BAP 2005); In re Yett, 306 B.R.
12 287, 290 (9th Cir. BAP 2004).

13 D. Whether compliance with a given statute or rule has been
14 established is generally a question of fact which we review for clear
15 error. In re Heath, 331 B.R. 424, 428-429 (9th Cir. BAP 2005).

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17 **V. DISCUSSION**

18 Under § 1327(a), "the provisions of a confirmed plan bind the
19 debtor and each creditor, whether or not the claim of such creditor has
20 objected to, has accepted, or has rejected the plan." A chapter 13 plan
21 confirmation order binds creditors and debtor, and has preclusive
22 effect. In re Pardee, 193 F.3d 1083, 1087 (9th Cir. 1999); In re
23 Summerville, ____ B.R. ____, 2007 WL 601230 (9th Cir. BAP February 7,
24 2007).

25 The issue presented here is one of plan interpretation. The first
26 step in Trustee's reasoning is that § 502(a) applies, which provides:

27 [a] claim or interest, proof of which is filed under section
28 501 of this title, is deemed allowed, unless a party in
interest . . . objects.

1 Thus, absent an objection, Countrywide's proof of claim for \$100,500 was
2 deemed allowed. There was no objection.

3 Next, the Trustee argues that this figure prevails in the
4 distribution scheme under the Plan. He argues that where the court has
5 granted a motion to value collateral, as here, the last sentence in
6 section V, paragraph G of the Plan, quoted above, provides that class 2
7 claimants get the full amount of their claims, as determined by their
8 proofs of claim, or the market value of the collateral, whichever is
9 less. Thus, here, the lower claim amount of \$100,500 controls.

10 He also argues that his notice of claims and intent to make
11 distributions filed 8 July 2002 showed the allowed claim as \$100,500,
12 but that notice was served only on the debtor and her attorney.

13 Countrywide counters that section II, paragraph H.1 of the plan
14 expressly states that the claim amount is \$125,261.16. It advocates
15 what it considers a literal reading of section II, paragraph G, quoted
16 above. Apparently focusing on the clause, "[u]nless a claim objection
17 is sustained or a motion to value collateral . . . is granted," its
18 position is that because the court granted the motion to value
19 collateral, the distribution should be based on the amount in the Plan,
20 not by reference to the proof of claim.

21 Countrywide does not explain why the bankruptcy court's
22 interpretation, that the proof of claim amount governs where the claimed
23 amount is lower than the value of the collateral, is erroneous, and it
24 ignores provisions of section II, paragraph B for class 2 secured
25 claims, which states that they will be paid the lesser of the amount
26 stated on the proof of claim or the market value of the collateral.

27 Countrywide's argument would be stronger if the Confirmation Order
28 stated that its claim was allowed in the amount stated, rather than that

1 its claim would be "treated as a secured claim in the amount of
2 \$125,261.16 . . ." (emphasis added). Conversely, the issue likely would
3 never have arisen if the form plan (and thus the Plan) explicitly
4 provided in paragraph G of Section II, as it does in the class 2
5 provision of paragraph B, that secured creditors get "whichever is
6 less," claim amount or collateral value, or if it explicitly referred to
7 paragraph B. Countrywide simply reiterates that plan terms prevail,
8 which begs the question here, and it never articulates how the
9 collateral's value becomes the claim amount when the claim states a
10 lesser amount, or why it should. Nor does Countrywide address the
11 effect of § 502(a), which provides that a "claim . . . is deemed
12 allowed . . . unless a party in interest . . . objects," except to
13 assert that the proof of claim was "superceded" by the plan confirmation
14 order. Nor has it explained why it did not file an amended proof of
15 claim to coincide with the Plan.

16 Finally, Countrywide provides no argument or authority for the
17 proposition, necessary to sustain its argument, that the trustee may
18 properly pay a creditor more than that creditor's allowed claim plus
19 interest.

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VI. CONCLUSION

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The bankruptcy court did not clearly err in interpreting the
Plan. We AFFIRM.

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