

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: THERESA L. CALDWELL

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**CIVIL ACTION
NO. 04-1515**

MEMORANDUM OPINION AND ORDER

RUFE, J.

September 14, 2004

This case comes before the Court on Appellant Theresa L. Caldwell’s appeal of a March 2, 2004 Order of the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “March Order”) granting creditor Wilshire Credit Corporation’s (“Wilshire”) Motion for Reconsideration. The March Order reversed the Bankruptcy Court’s November 25, 2003 Order reducing the amount of Wilshire’s proof of claim, and it allowed the proof of claim to stand as filed despite the fact that the amount of the proof of claim is more than the amount accounted for in the Chapter 13 Plan the Bankruptcy Court confirmed on January 6, 2004. For the following reasons, the March Order is affirmed and the appeal is denied.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Appellant is the owner of residential real estate located in Collingdale, Pennsylvania (the “Property”). On May 17, 1999, Appellant executed a mortgage on the Property for \$80,000 (the “Mortgage”). Pursuant to the Mortgage, which is now held by Wilshire, Appellant must pay her own property taxes and insurance, and she must reimburse the lender if the lender has to advance Appellant funds for such taxes or insurance.

In early 2001, Appellant defaulted on her monthly payments under the Mortgage and applied to the Pennsylvania Housing Finance Agency (“PHFA”) for assistance. As part of the approval process, PHFA sent a “Reinstatement Agreement” to Wilshire’s predecessor, Household

Finance Company (“Household”). On March 26, 2001, Household completed the Reinstatement Agreement, listing \$3,335.32 as the amount Appellant owed through the end of March 2001 to bring the Mortgage current and out of default. This amount included delinquent payments and a property inspection fee but did not include any advances for property taxes or insurance. On April 12, 2001, PHFA entered into a loan agreement with Appellant and paid to Household the \$3,335.32 Appellant owed on the Mortgage.

Two weeks later, on April 26, 2001, Household paid \$3,770.95 in property taxes that had not been paid by Appellant. On May 11, 2001, Household made an additional \$670.55 tax payment to satisfy delinquent taxes on the Property (together with the April 26, 2001 payment, the “Tax Advances”). Pursuant to its rights under the Mortgage, Household then imposed an escrow requirement on Appellant to recover the Tax Advances.

On April 25, 2003, Appellant commenced the instant Chapter 13 bankruptcy proceedings in the United States Bankruptcy Court for the Eastern District of Pennsylvania. Shortly thereafter, Appellant submitted a Chapter 13 Plan calling for her to make sixty monthly payments of \$100.00 to the Trustee. On May 28, 2003, Wilshire filed a proof of claim for a total indebtedness of \$86,192.05 with arrears of \$7,305.61, the latter amount including the \$1,893.10 Appellant still owed on the Tax Advances.¹ On September 2, 2003, Appellant filed an objection to Wilshire’s proof of claim, arguing that she was not responsible for the Tax Advances and claiming that the correct amount for the proof of claim was approximately \$2,500.00.²

¹ The arrears also included \$4,397.34 in installment payments, \$73.25 in late charges, \$8.55 in inspection fees, \$100.00 in broker’s price opinions, \$725.00 in legal fees and costs, and \$100.86 in interest on advances.

² It is unclear from the record exactly how Plaintiff arrived at this figure.

The Bankruptcy Court initially scheduled a hearing on Appellant's objection to Wilshire's proof of claim for October 7, 2003, but the hearing was continued by agreement of counsel to November 4, 2003. When counsel for Wilshire failed to appear on November 4, 2003, another hearing date was set for November 25, 2003.³ Prior to the November 25, 2003 hearing, the parties settled most of the arrears but could not agree on the \$1,893.10 Wilshire claims it is still owed from the Tax Advances.

On November 25, 2003, when counsel for Wilshire once again failed to appear at the hearing on Appellant's objection, the Bankruptcy Court entered an Order granting Appellant's objection to Wilshire's claim and allowing Wilshire's claim for arrears in the amount of \$2,500. On December 11, 2003, Wilshire filed a Motion for Reconsideration of the November 25, 2003 Order, and the Bankruptcy Court scheduled a hearing for January 13, 2004.

Wilshire never objected to Appellant's Chapter 13 Plan, and the Bankruptcy Court held a hearing and confirmed the Plan on January 6, 2004.⁴ Almost two months later and after three continuances, on March 2, 2004, the Bankruptcy Court conducted a hearing and granted Wilshire's Motion for Reconsideration, thereby allowing Wilshire's proof of claim to stand as filed with arrears of \$7,305.61. On March 12, 2004, Appellant timely filed the instant appeal.

³ According to the briefs, counsel for Wilshire had not received adequate notice of this November 4, 2003 hearing.

⁴ Under the Chapter 13 Plan, the \$6,000.00 that she is to repay over sixty months consists of two secured creditor claims totaling \$5,528.03 (\$2,500.00 to Wilshire and \$3,028.03 to the Delaware County Tax Claims Bureau), the Trustee's commission (\$428.89), and \$43.08 in excess funds.

II. DISCUSSION⁵

Appellant makes two arguments in support of her claim that this Court should reverse the March Order. First, Appellant argues that she is not liable for the Tax Advances because Household failed to include them in the Reinstatement Agreement. Second, she contends that Wilshire is bound by the confirmed Chapter 13 Plan (the “Plan”) and was not entitled to have its proof of claim stand as filed when doing so would create an inconsistency with the Plan. As explained below, neither argument has merit.

A. Appellant’s Liability for Wilshire’s Tax Advances

Appellant argues that she is not liable for the Tax Advances because Household did not include the advances in the Reinstatement Agreement. She contends that the following language from the Reinstatement Agreement absolves her from liability for any debts to Household that existed at the time but were not included on the Agreement, including the Tax Advances:

Upon payment of the sum of money set forth above, you agree to satisfy all delinquent principal, interest, late charges, real estate taxes, escrow and total escrow shortage, legal fees and costs owed by the Borrower [Appellant]. You will reinstate Borrower’s account to a current status.⁶

Therefore, according to Appellant, because the taxes Household subsequently paid on her behalf were delinquent when Household completed the Reinstatement Agreement, she should not have to

⁵ Under 28 U.S.C. § 158(a), United States District Courts have jurisdiction to hear appeals from final judgments, orders and decrees of a Bankruptcy Court. Since an Order allowing a creditor’s proof of claim is a final order, this Court has jurisdiction to hear Appellant’s appeal of the March Order. See In re Abel, 200 B.R. 816, 818 (E.D. Pa. 1996) (“Orders allowing or disallowing proofs of claim in bankruptcy are final.”) (citing In re Allegheny Int’l, Inc., 954 F.2d 167, 172 (3d Cir.1992)).

Sitting as an appellate court, this Court reviews the Bankruptcy Court’s “legal determinations de novo, its factual findings for clear error, and its exercises of discretion for abuse thereof.” See In re Prof’l Ins. Mgmt., 285 F.3d 268, 282-83 (3d Cir. 2002) (citing In re Engel, 124 F.3d 567, 571 (3d Cir.1997)). Because the facts are uncontested, and the March Order was a legal determination, the Court applies a de novo standard here.

⁶ Record on Appeal Doc. 17.

reimburse Household or Wilshire for the Tax Advances.

Appellant's argument fails because the Reinstatement Agreement did not require, and arguably would not have allowed, Household to include tax payments that it had yet to make on behalf of Appellant.⁷ In the Reinstatement Agreement, Household listed the delinquency projected through March 31, 2001. Because Household did not make the Tax Advances until April 26, 2001 and May 11, 2001, respectively, those funds were not delinquent when Household completed the Reinstatement Agreement. Accordingly, the Reinstatement Agreement accurately stated what Appellant owed Household at the time.

Appellant would have the Court infer that because Household made such a large tax payment in April 2001, that payment likely covered those taxes due in March as well and thus should have been included in the Reinstatement Agreement. However, until Household made the Tax Advances in April and May 2001, Appellant owed those taxes to the government. Wilshire seeks, therefore, reimbursement for taxes its predecessor, Household, paid on behalf of Appellant after Household had completed the Reinstatement Agreement. Household could not have included this reimbursement on the Reinstatement Agreement because in March 2001, Household had not yet

⁷ PHFA regulations state that it will pay only mortgage debts that the debtor has already incurred:

(c) If the Agency has determined that the homeowner is eligible, and if funds are available, the Agency will do the following:

(1) Pay the mortgagee an amount, negotiated between the mortgagor, the mortgagee and the Agency, sufficient to bring the mortgage current. This includes principal, interest, taxes, mortgage insurance, credit and hazard insurance, assessments, late charges, ground rents, reasonable court costs and reasonable attorney fees **already incurred** by the mortgagee.

12 Pa. Code § 31.204(c) (emphasis added).

In addition, the Reinstatement Agreement itself specifies that Appellant's "account is not to be paid ahead." Record on Appeal Doc. 17.

made any tax advances for Appellant to reimburse.

Plaintiff is not excused from reimbursing Wilshire for the Tax Advances simply because Household did not include the advances on the Reinstatement Agreement. Therefore, Appellant was responsible for reimbursing Wilshire for these advances when she filed for bankruptcy protection, and Wilshire properly included the amount remaining on this reimbursement in its proof of claim. Accordingly, the March Order was correct.

B. The Alleged Inconsistency Between Wilshire’s Proof of Claim and the Chapter 13 Plan

According to Appellant, because the March Order is inconsistent with the Bankruptcy Court’s Order confirming the Chapter 13 Plan, principles of res judicata should have prohibited the bankruptcy judge from granting Wilshire’s Motion for Reconsideration. Specifically, Appellant contends that allowing Wilshire’s proof of claim to stand as filed in an amount greater than what was accounted for in the Plan contravenes the principle of according finality to confirmed bankruptcy plans.

Appellant is correct that the importance of finality with regard to confirmed Chapter 13 plans is well-settled.⁸ However, Appellant’s argument that the March Order affects the finality of the Plan is premature. The cases upon which Appellant relies relate to a creditor’s attempts to revoke or modify a previously confirmed plan. By comparison, the March Order does not alter the Plan, and Wilshire has yet to attempt to have the Plan revoked or modified. Moreover, by its terms

⁸ See 11 U.S.C. § 1327(a) (“The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.”); In re Szostek, 886 F.2d 1405, 1406 (3d Cir. 1989) (“We further conclude that, although prior to confirmation the bankruptcy court and trustee do have a responsibility to verify that a Chapter 13 plan complies with the Bankruptcy Code provisions, after the plan is confirmed the policy favoring the finality of confirmation is stronger than the bankruptcy court’s and the trustee’s obligations to verify a plan’s compliance with the Code.”).

the Plan governs when there is a conflict between its terms and the amount of a creditor's proof of claim:

The provisions of this plan setting the amount of any creditor's allowed claim, secured, administrative, or unsecured, will govern over any conflicting amount indicated in proofs of claim filed by the creditor, unless the amount indicated in the proof of claim is lower than the amount set in the plan.⁹

Therefore, although the March Order allows Wilshire's proof of claim to stand in an amount in excess of the amount provided for in the Plan, the terms of the Plan still take precedence.

The Third Circuit has made clear that "failure to make a timely objection constitutes acceptance of the plan."¹⁰ Therefore, notwithstanding the March Order, Wilshire is deemed to have accepted the Plan by failing to object to it. The March Order does not alter any of the terms of the Plan; the amount of Appellant's payments and the way in which those payments are distributed to the creditors remains the same. As such, the amount of Wilshire's allowed claim under the Plan remains \$2,500. Accordingly, any inconsistency between the March Order and the Plan does not create an issue of res judicata and does not prevent the Court from affirming the March Order.¹¹

⁹ Record on Appeal Doc. 6.

¹⁰ Szostek, 886 F.2d 1413.

¹¹ Although the Court affirms the March Order, the Court remains perplexed by the sequence of events precipitating this appeal. The Court does not understand why the Bankruptcy Court did not resolve the issues relating to Wilshire's proof of claim before confirming the Chapter 13 Plan. On a similar note, if, as Wilshire argues, the March Order "has no effect on the confirmation itself as it stands," [Appellee's Brief at 9] why would Wilshire obtain an Order that has no practical effect? Why not simply object to confirmation of the Chapter 13 Plan? Nevertheless, having the answers to these questions would not impact the Court's finding that the March Order does not impact the finality of the confirmed Chapter 13 Plan. Additionally, this decision does not impact the propriety of an appeal by Appellant if the Bankruptcy Court subsequently modifies or revokes the Plan based upon the March Order.

III. CONCLUSION

For the foregoing reasons, the Bankruptcy Court's March 2, 2004 Order is affirmed, and the appeal is denied. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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ORDER

AND NOW, this 14th day of September, 2004, after a careful review of the record, and upon consideration of Appellant Theresa L. Caldwell's Brief in support of her appeal from March 2, 2004 Order of the Bankruptcy Court for the Eastern District of Pennsylvania [Doc. #3], Appellee Wilshire Credit Corporation's Response thereto [Doc. #4], and Appellant's Reply Brief [Doc. #5], and for the reasons stated in the attached memorandum opinion, it is hereby **ORDERED** that the Bankruptcy Court's March 2, 2004 Order is **AFFIRMED**, and the Appeal is **DENIED**. Accordingly, the Court relinquishes jurisdiction over this matter.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.