

**UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF KENTUCKY**

IN RE:)
)
 LINDA J. LANE) Case No. 17-32237(1)(13)
)
 Debtor(s))

MEMORANDUM-OPINION

This matter is before the Court on the Motion to Dismiss Debtor’s Confirmed Chapter 13 Plan With Prejudice filed by Creditors, Kevin and Sarah Dean (“the Deans”). The Court considered the Deans’ Motion to Dismiss, the Objection to the Motion to Dismiss filed by Debtor Linda J. Lane (“Debtor”), and the comments of counsel for both parties at the hearing held on the matter. For the following reasons, the Court will **DENY** the Deans’ Motion to Dismiss.

PROCEDURAL AND FACTUAL BACKGROUND

On July 14, 2017, Debtor filed her Voluntary Petition seeking relief under Chapter 13 of the United States Bankruptcy Code.

On Schedule D: Creditors Who Have Claims Secured by Property, Debtor listed the Deans as holding a secured claim in the amount of \$128,895.57 secured by Debtor’s home. The claim is over secured as the property is valued at \$180,000. On Schedule E/F: Creditors Who Have Unsecured Claims, Debtor listed the Deans as having a contingent, unliquidated disputed claim.

On July 14, 2017, Debtor filed her Chapter 13 Plan which proposed to pay general non-priority unsecured claimants .98 on the dollar and that the judgment lien held by the Deans would be avoided under 11 U.S.C. § 522.

On August 28, 2017, the Deans, who were represented by counsel, filed their Objection to Confirmation of the Debtor's Chapter 13 Plan. The Debtor's response stated that the Deans' claim which is based on a judgment they obtained against Debtor in Bullitt Circuit Court, was not subject to lien avoidance under 11 U.S.C. § 522(a)(1) because the Plan did not impair any exemption raised by the Debtor. Additionally, the Deans claimed that since their claim was over secured, they were entitled to post-petition interest. The Deans also disputed the rate of interest on the claim.

On September 20, 2017, the Debtor filed her Response to the Deans' Objection to the Plan stating that Debtor was permitted to modify the Deans' claim under 11 U.S.C. § 1322(b) since the lien filed by the Deans was not a consensual lien. Debtor also argued that as of June 29, 2017, the statutory rate of interest in Kentucky is 6% per KRS 360.040 and that under *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), the Debtor may cramdown the interest rate on the claim to 4.25%, the prime rate.

On September 27, 2017, the Deans' attorney filed a Motion to Withdraw from representing them in the case.

Also, on September 27, 2017, the Court held a hearing on creditors' Objection to the Chapter 13 Plan. The creditors' lawyer appeared at the hearing on behalf of the Deans. Counsel for both parties at the hearing stipulated that the only unresolved issue before the Court was the rate of interest on the Deans' claim. The Court heard arguments and then took the matter under submission. At the conclusion of the hearing the Court granted the Deans' counsel's Motion to Withdraw.

On October 11, 2017, the Court entered an Order overruling the Deans' Objection to the Plan and setting the appropriate rate of interest on the Deans' claim at 4.25% pursuant to *Till*.

On October 16, 2017, the Court entered an Order confirming the Debtor's Chapter 13 Plan.

On November 2, 2017, the Deans, *pro se*, filed their Motion to Dismiss Debtor's Confirmed Chapter 13 Plan With Prejudice.

On November 30, 2017, Debtor filed her Schedule of Allowed Claims which showed two claims. The first is a claim owed to Citibank, NA in the amount of \$348.71 and the second is the Deans' claim which was listed in the amount of \$130,608.57.

On December 11, 2017, Debtor moved to Amend the Order of Confirmation to increase the monthly Plan payment to make the total payout 100%, a Motion that was granted by the Court on January 3, 2018.

On December 12, 2017, Debtor filed her Objection to the Deans' Motion to Dismiss her case.

LEGAL ANALYSIS

The Deans, post-confirmation, moved to dismiss Debtor's Chapter 13 case with prejudice. The Deans' Objection raises many of the same issues that were set forth in their Objection to Confirmation of the Chapter 13 Plan filed on August 28, 2017. The Objection also contains arguments relating to the feasibility of the Plan, as well as nondischargeability claims asserted under 11 U.S.C. § 523.¹ The Objection also claims that the Chapter 13 Plan was not filed in good faith and that the Plan does not provide for full payment of their claim.

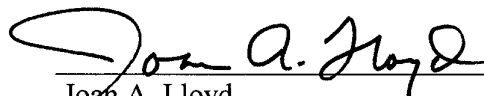
The Order of Confirmation was not appealed by the Deans and is now a final Order. The issue of feasibility and good faith were issues that could have been raised by the Deans and their counsel when they objected to confirmation of the Plan. Those issues were not raised and are now waived. *See, In re Rogers*, 180 B.R. 504, 505 (Bankr. E.D. Tenn. 1995).

¹On October 13, 2017, the Deans initiated an adversary proceeding against Debtor, AP No. 17-03062, seeking a judgment that the debt owed to them by Debtor is nondischargeable.

The Order confirming the Plan and overruling the Deans' Objection to the Plan was entered on October 16, 2017. As Debtor stated in her Response to the Motion to Dismiss, "It is well established that the provisions of a confirmed Plan bind the Debtor as well as creditors and all other parties, and operates as *res judicata* of all justiciable issues, which were or could have been decided at the confirmation hearing." *In re Parker*, 391 B.R. 411, 414 (Bankr. S.D. Ohio 2008). The issues raised by the Deans as to whether the Plan should have been confirmed have now been waived. The creditors as well as the Debtor are bound by the terms of the confirmed Plan. Accordingly, the Motion to Dismiss has no merit and must be denied.

CONCLUSION

For all of the above reasons, the Motion to Dismiss Debtor's Confirmed Chapter 13 With Prejudice, is **DENIED**. An Order incorporating the findings herein accompanies this Memorandum-Opinion.



Joan A. Lloyd

United States Bankruptcy Judge

Dated: February 5, 2018

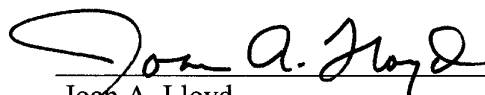
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ORDER

Pursuant to the Memorandum-Opinion entered this date and incorporated herein by reference,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss Debtor's Confirmed Chapter 13 Plan With Prejudice filed by Creditors Kevin and Sarah Dean, be and hereby is, **DENIED**.



Joan A. Lloyd
United States Bankruptcy Judge

Dated: February 5, 2018