

**This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.**

**IT IS SO ORDERED.**



*Beth A. Buchanan*  
Beth A. Buchanan  
United States Bankruptcy Judge

**Dated: March 23, 2012**

---

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**In Re** )  
 )  
**Harold Lee Blankenship, Jr.** ) **Case No. 10-14097**  
**Jeremy R. Blankenship** ) **Case No. 10-14244**  
**Harold Lee Blankenship, III** ) **Case No. 10-14390**  
 )  
**Debtors** ) **Chapter 12**  
 ) **Judge Buchanan**

**ORDER DENYING MOTION TO MODIFY PLAN AS RELATES  
TO EQUIPMENT SECURED CLAIM**

The Chapter 12 debtors seek to modify their confirmed Chapter 12 plan to provide for the surrender of specific equipment with an estimated value less than the amount of the creditor's secured claim set forth in the confirmed plan and to reclassify any deficiency resulting from the sale of the surrendered equipment as an unsecured claim. The debtors contend that the equipment the debtors propose to surrender is the full extent of the equipment against which the creditor has a perfected lien and that the creditor is not entitled to any other equipment. The debtors' request to modify the treatment of the creditor's secured equipment claim as provided for in their confirmed plan is denied. The confirmed plan is binding as to all

matters that could or should have been decided at the confirmation hearing such that the debtors may not raise issues pertaining to the validity of the creditor's secured equipment claim provided for in the confirmed plan. Moreover, while 11 U.S.C. § 1229(a) provides that the debtors may modify the amount or timing of specific payments under their confirmed plan, it does not authorize the debtors to alter, reduce or reclassify a secured claim allowed by their confirmed plan.

**I. Background**

Each Debtor filed a petition for relief under Chapter 12 of the Bankruptcy Code<sup>1</sup> on June 27, 2010. Debtor Harold Lee Blankenship, Jr. and his two sons, Debtor Harold Lee Blankenship, III and Debtor Jeremy R. Blankenship, run a family farming operation under the names "Blankenship Logging" and "Blankenship Logging LLC." The Debtors' farming business consists of harvesting and processing timber. The Debtors each proposed identical plans to reorganize their family farming business as a whole (collectively, the "Proposed Plan").<sup>2</sup>

The Debtors list the following pre-petition secured obligations owed to CNB in Article 1 of the Proposed Plan:

1. Mortgage/Note dated March 30, 2006 (Loan No. 7181) the terms of which require monthly payments of \$7,270.02 for 84 months. This obligation is secured by the 0.539 acre residence of Harold Lee Blankenship Jr. and his spouse, 63 acres titled to Jeremy R. Blankenship and his spouse and various vehicles titled to Blankenship Logging LLC. CNB alleges balance due at the time of the filing of the Chapter 12 petition was \$278,507.34.
2. Mortgage/Note dated April 4, 2007 (Loan No. 7783) the terms of which require monthly payments of \$278.11 for 180 months. This obligation is secured by the 0.539 acre residence of Harold Lee

---

<sup>1</sup> References to the "Bankruptcy Code" are to Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8.

<sup>2</sup> Case No. 10-14097, Docket No. 32; Case No. 10-14390, Docket No. 25; Case No. 10-14244, Docket No. 28.

Blankenship Jr. and his spouse. CNB alleges balance due at the time of the filing of the Chapter 12 petition was \$27,167.98.

3. Mortgage/Note dated October 31, 2008 (Loan No. 8700) the terms of which require monthly payments of \$3,305.46 for 48 months. This obligation is secured by the 0.539 acre residence of Harold Lee Blankenship Jr. and his spouse and 63 acres titled to Jeremy R. Blankenship and his spouse. CNB alleges balance due at the time of the filing of the Chapter 12 petition was \$128,934.39.

Proposed Plan, Article 1.2.D.

Citizens National Bank (“CNB”) filed two proofs of claim in each of the Debtors’ bankruptcy cases (collectively, the “CNB Claims”). The first proof of claim was filed in the amount of \$302,198.25 (relating to loan ending in 7181) and states that it is secured by sixty-three acres of vacant land titled in the name of Debtor Jeremy Blankenship and his spouse (the “Vacant Land”), the residential property of Debtor Harold Lee Blankenship, Jr. (the “Residential Property”), and all the business assets of the Debtors.<sup>3</sup> The second proof of claim was filed in the amount of \$136,863.86 (relating to loan ending in 8700) and states that it secured by the Vacant Land, the Residential Property, and all equipment of the Debtors.<sup>4</sup>

The Debtors objected to the amount and validity of the CNB Claims (the “CNB Claim Objections”).<sup>5</sup> Specifically, the Debtors alleged that CNB’s security interest in the Debtors’ personal property was not properly perfected because the UCC financing statements did not give a reasonably prudent lender sufficient notice of a pre-existing security interest. The Debtors further disputed the amount of the asserted claims and CNB’s valuation of the collateral. CNB generally denied the allegations in the CNB Claim Objections, contending that it was a properly secured creditor in the amounts set forth in the CNB Claims.<sup>6</sup>

---

<sup>3</sup> Case No. 10-14097, Claim No. 13; Case No. 10-14390, Claim No. 12; Case No. 10-14244, Claim No. 6.

<sup>4</sup> Case No. 10-14097, Claim No. 12; Case No. 10-14390, Claim No. 13; Case No. 10-14244, Claim No. 7

<sup>5</sup> Case No. 10-14097, Docket No. 53; Case No. 10-14244, Docket No. 47; Case No. 10-14390, Docket No. 38.

<sup>6</sup> Case No. 10-14097, Docket No. 65; Case No. 10-14244, Docket No. 49; Case No. 10-14390, Docket No. 52.

Debtor Harold Lee Blankenship, Jr. also filed a motion to avoid CNB's second and third mortgages on the Residential Property and Debtor Jeremy Blankenship filed a motion to avoid CNB's second mortgage on the Vacant Land (the "Motions to Avoid").<sup>7</sup> The Debtors alleged that there was no equity in the Residential Property and Vacant Land to which CNB's junior mortgages attached after taking into account the amount of the first mortgages. CNB objected to the characterization of its junior mortgages as unsecured.<sup>8</sup>

The Court held a hearing on confirmation of the Proposed Plan on December 13, 2010.<sup>9</sup> The Court also held initial hearings on the CNB Claim Objections and the Motions to Avoid on the same date. While other creditors objected to the Proposed Plan (the "Plan Objections"), CNB did not object to the Proposed Plan and did not appear at the hearings. At the conclusion of the confirmation hearing, the Court indicated that it would confirm the Proposed Plan provided that the Proposed Plan was amended to incorporate the resolutions of the Plan Objections reported at the confirmation hearing. The Debtors amended the Proposed Plan<sup>10</sup> and an order (the "Confirmation Order")<sup>11</sup> was entered on January 21, 2011 confirming the amended Proposed Plan (the "Confirmed Plan").

The Court subsequently issued an order granting the Motions to Avoid and denying the CNB Claim Objections (the "CNB Claim Order").<sup>12</sup> The Court found that CNB's junior mortgages against the Residential Property and Vacant Land were avoidable regardless of whether the Court valued the properties at the amounts asserted by either the Debtors or CNB because the first mortgages against the respective properties exceeded the amount of either

---

<sup>7</sup> Case No. 10-14097, Docket No. 55; Case No. 10-14244, Docket No. 42.

<sup>8</sup> Case No. 10-14097, Docket No. 64; Case No. 10-14244, Docket No. 48.

<sup>9</sup> At this time, these cases were assigned to the Honorable J. Vincent Aug, Jr.

<sup>10</sup> Case No. 10-14097, Docket No. 75; Case No. 10-14244, Docket No. 55; Case No. 10-14390, Docket No. 61.

<sup>11</sup> Case No. 10-14097, Docket No. 81; Case No. 10-14244, Docket No. 63; Case No. 10-14390, Docket No. 66.

<sup>12</sup> Case No. 10-14097, Docket No. 94; Case No. 10-14244, Docket No. 71; Case No. 10-14390, Docket No. 77.

valuation. With respect to the value of the Residential Property, however, the Court noted that the Debtors inexplicably changed the value of the Residential Property from \$65,000 in the Proposed Plan to \$30,000 in the Confirmed Plan. The Court found that this change was a mistake and that confirmation of the Confirmed Plan did not prevent the Court from using its equitable powers to correct a mistake. Accordingly, the Court held that the Debtors were estopped from claiming a value of this property of anything less than \$65,000 based on the original Proposed Plan. The Court further found that the CNB Claim Objections were moot based on the treatment of CNB's claims in the Confirmed Plan and the Court's granting of the Motions to Avoid Liens.

In sum, Article 3.2.E of the Confirmed Plan, as modified by the CNB Claim Order, expressly separates CNB's pre-petition claims into three separate secured claims and an unsecured deficiency claim and provides for the following treatment of such claims:

1. A \$65,000.00 mortgage given by Harold Lee Blankenship Jr. and his spouse on their residence for 30 years at 4.25% fixed rate interest (\$319.76 per month) to be paid directly by debtor to CNB [the "Residential Property Secured Claim"];
2. A \$25,000.00 mortgage given by Jeremy R. Blankenship and his spouse on 63 acres of vacant land for 30 years at 4.25% fixed rate interest (\$122.98 per month) to be paid directly by debtor to CNB;
3. A \$30,865.00 security interest in certain equipment previously secured by CNB and used in the business to be paid at 4.25% interest over a term of 8 years (\$379.82 per month) by the business operation [the "Equipment Secured Claim"]; and
4. The remaining balance of CNB's claims filed in the Debtors' cases shall be treated as unsecured claims and shall be paid accordingly.

On May 12, 2011, the Debtors filed a motion to suspend payments under the Confirmed Plan (the "Motion to Suspend").<sup>13</sup> Shortly thereafter, the Debtors filed a motion to modify the

---

<sup>13</sup> Case No. 10-14097 Docket No. 98; Case No. 10-14244 Docket No. 77; Case No. 10-14390 Docket No. 79.

Confirmed Plan (the “Motion to Modify Plan”).<sup>14</sup> By these motions, the Debtors sought to suspend payments for the months of June, July and August 2011 due to unusually high rain falls in the Spring of 2011, which interfered with the Debtors’ ability to harvest timber and negatively impacted revenues. The Debtors further sought to modify the Confirmed Plan by surrendering certain collateral to CNB to improve cash flow by reducing their plan payments on CNB’s secured claims. Specifically, the Debtors proposed to surrender the Residential Property and the following equipment in full satisfaction of CNB’s Residential Property Secured Claim and Equipment Secured Claim: 2000 Pitts Trailer VIN 0154, 1983 Peterbilt model 359 VIN 9290, 1989 International model F25 VIN 1320, 2000 Chevrolet truck VIN 6940, 1988 Fruehauf trailer VIN 7603 (the “Surrendered Equipment”). The Debtors further proposed to pay any deficiency resulting from the sale of the Residential Property and Surrendered Equipment as an unsecured claim under the Confirmed Plan.

CNB objected to the Motion to Suspend and the Motion to Modify Plan and filed a motion to dismiss the Debtors’ Chapter 12 cases (the “Motion to Dismiss”).<sup>15</sup>

An evidentiary hearing was held on July 12, 2011 regarding the Motion to Suspend, the Motion to Modify Plan and the Motion to Dismiss.<sup>16</sup> For the reasons stated in this Court’s oral ruling, the Motion to Suspend was granted and the Motion to Dismiss was denied. Because CNB did not oppose the surrender of the Residential Property and proposed treatment of any resulting deficiency claim, this Court granted the Motion to Modify Plan, in part, as to the Residential Property.

---

<sup>14</sup> Case No. 10-14097 Docket No. 99; Case No. 10-14244 Docket No. 78; Case No. 10-14390 Docket No. 80.

<sup>15</sup> Case No. 10-14097 Docket No. 100; Case No. 10-14244 Docket No. 79; Case No. 10-14390 Docket No. 81.

<sup>16</sup> These cases were re-assigned to the Honorable Beth A. Buchanan upon the retirement of the Honorable J. Vincent Aug, Jr.

As to the proposed modification of the Equipment Secured Claim, CNB did not oppose the surrender of the equipment *per se* but rather opposed the Debtors' valuation of the Surrendered Equipment and corresponding request to eliminate the \$379.82 monthly plan on the Equipment Secured Claim. Pursuant to this Court's order, the parties filed supplemental briefs in support of their respective positions.

**II. Positions of the Parties**

In their supplemental brief, the Debtors set forth the following values for the Surrendered Equipment, which values are based in part on an equipment appraisal by Lyons Equipment Company, Inc. dated June 18, 2010 (the "Appraisal") and in part on the Debtors' own estimates:

<b>Surrendered Equipment</b>	<b>Value</b>	<b>Source of Value</b>
2000 Pitts Trailer VIN 0154	\$8,500	Appraisal
1983 Peterbilt model 359 VIN 9290	\$1,000	Debtors' Estimate
1989 International model F25 VIN 1320	\$1,500	Appraisal
2000 Chevrolet truck VIN 6940	\$2,000	Appraisal
1988 Fruehauf trailer VIN 7603	\$900	Appraisal
<b>Total Value</b>	<b>\$13,900</b>	

The Debtors put forth three theories as to why the Surrendered Equipment, with an estimated value of \$13,900, is sufficient to satisfy the \$30,865 Equipment Secured Claim, with any deficiency being treated as an unsecured claim. First, the Debtors assert that CNB does not have a security interest in any non-titled equipment owned by the Debtors individually because CNB's security agreement and UCC financing statement identify Blankenship Logging LLC as the borrower and party granting a security interest in equipment and not the Debtors individually.

Second, the Debtors assert that CNB's security agreement and UCC financing statement are deficient because these documents do not adequately describe the pledged collateral. Specifically, the Debtors argue that the description of "all equipment now owned or hereafter acquired" in CNB's security agreement and UCC financing statement does not reasonably identify the pledged collateral as required by Ohio Revised Code §1309.108 (UCC 9-108).<sup>17</sup> Third, the Debtors assert that the security agreement and UCC financing statement relating to loan number 7971 and submitted by CNB as evidence of its security position do not relate to either of the two proofs of claim filed by CNB and fail to prove CNB's right to assert a claim on any of the Debtors' equipment.

CNB counters that the value of the collateral securing the Equipment Secured Claim is \$140,300 based on the Appraisal and the values set forth in the Debtors' schedules. CNB argues that it is entitled to be paid \$30,865 plus interest at 4.25% on the Equipment Secured Claim as provided in the Confirmed Plan. As such, the Debtors' proposal to surrender equipment with an estimated value of \$13,900 in satisfaction of CNB's security interest is inadequate on its face. CNB further argues that its rights under the Confirmed Plan are fixed based on Section 1227(a) of the Bankruptcy Code, the Confirmation Order and the CNB Claim Order. CNB states that it was granted a \$30,865 claim at 4.25% interest with a "security interest in certain equipment" per the terms of the Confirmed Plan. CNB observes that the Court already denied the Debtors' objections to CNB's claims as moot. As such, CNB maintains that the Confirmed Plan is *res judicata* as to any issues regarding the Equipment Secured Claim. CNB does not oppose the

---

<sup>17</sup> In support of their position, the Debtors reference Ohio Revised Code § 1309.108(C), which provides that "[a] description of collateral as 'all the debtor's assets' or 'all the debtor's personal property' or using words of similar import [in a financing statement] does not reasonably identify the collateral." Ohio Rev. Code Ann. § 1309.108(C) (2011). The Debtors contend that the collateral description in CNB's security agreement and UCC financing statement is too similar to the prohibited description of collateral in Ohio Revised Code § 1309.108(C) and therefore CNB's claim upon any specific equipment is untenable.

Debtors' proposal to liquidate collateral to pay the Equipment Secured Claim provided that the claim is paid in full with interest as required by the Confirmed Plan.

### **III. Legal Analysis**

The Debtors are attempting to accomplish two objectives by modifying the treatment of CNB's Equipment Secured Claim. First, the Debtors implicitly seek a determination that the Equipment Secured Claim is not a valid secured claim to the extent provided in the Confirmed Plan. Second, the Debtors wish to alter the amount of the Equipment Secured Claim and reclassify its treatment. Neither objective is permissible under the facts of these cases.

#### **A. Section 1227(a) and Binding Effect of Confirmed Plan**

Upon confirmation, the provisions of a Chapter 12 plan bind the debtor, each creditor, equity security holder, and general partner in the debtor, whether or not the claim of such parties is provided for by the plan, and whether or not such parties objected to, accepted or rejected the plan. 11 U.S.C. § 1227(a); *see also, Wiest v. Get 'Er Done Wiest LLC (In re Ted Wiest & Sons)*, 446 B.R. 441, 445 (Bankr. D. Mont. 2011) ("The provisions of a confirmed Chapter 12 Plan bind the parties thereto."). Confirmation of a plan is "res judicata of all issues that could or should have been litigated at the confirmation hearing." *In re Miller*, 428 B.R. at 797 (quoting *Ruskin v. DaimlerChrysler Servs. N. Am. (In re Adkins)*, 425 F.3d 296, 302 (6th Cir. 2005)(internal quotations and citations omitted)). The purpose of Section 1227(a) is to give finality to a confirmation order such that all affected parties may rely on it. *See In re Miller*, 428 B.R. 791, 797 (Bankr. S.D. Ohio 2010)(construing the analogous Chapter 13 provision of Section 1327(a) of the Bankruptcy Code).

Confirmation of a plan of reorganization creates a new contractual relationship between the creditor and the debtor. *In re Gonzalez*, 2010 Bankr. LEXIS 2606 at \*3 (Bankr. S.D. Fla. 2010)(noting in the context of a Chapter 13 plan that "[t]he creditor's pre-confirmation claim is

subsumed in and replaced by the new contract created by the confirmed plan.” (quoting *In re New River Shipyard, Inc.*, 355 B.R. 894, 912 (Bankr. S.D. Fla. 2006)(interpreting a Chapter 11 plan<sup>18</sup>)); 8-1227 Collier on Bankruptcy ¶ 1227.01 (“The result of confirmation to a creditor is that the debtor’s obligation to the creditor after confirmation is adjusted in the manner set forth in the plan.”). “[O]nce a court has confirmed a Chapter 12 plan, the parties may not unilaterally depart from its terms to cure missteps they might have made prior to confirmation.” *In re Ted Wiest & Sons*, 446 B.R. at 445-46 (internal citations omitted); *see also Charlick v. Cmty. Choice Credit Union (In re Charlick)*, 444 B.R. 762, 765 (Bankr. E.D. Mich. 2011)(finding that a debtor does not get a “post-confirmation second bite at the apple” to remedy debtor’s failure to attempt to strip a lien or otherwise litigate the value of property pre-confirmation).

The Debtors’ allegations that CNB’s lien does not extend to non-titled equipment owned by the Debtors individually or that CNB’s loan documentation is deficient or that evidence provided by CNB in support of its secured position relates to a different claim are each attempts to undercut the binding provisions of the Confirmed Plan. The Debtors were the authors of the Confirmed Plan and they—like their creditors—are now obliged to follow its terms. In Article 3 of the Confirmed Plan, the Debtors valued the collateral relating to CNB’s pre-petition secured claims at \$120,865 (as modified by the CNB Claim Order) and then allocated that value between the Residential Property Secured Claim, the Equipment Secured Claim and the vacant land secured claim. The Debtors further specified the interest rate, repayment period, repayment

---

<sup>18</sup> While the effect of confirmation in Chapter 12 and 13 cases is not identical to the effect of confirmation in Chapter 11 cases since confirmation of a plan under Chapter 12 (and Chapter 13) does not result in a discharge of the debtor as is generally the case in Chapter 11, the terms of a confirmed Chapter 12 plan are nonetheless binding and permanent, absent dismissal or conversion of the case. 8-1227 Collier on Bankruptcy ¶ 1227.01 (“During the period between confirmation and discharge [in a Chapter 12 case], the rights of creditors will be governed by the plan but the effect of the plan will be subject to defeasance if the debtor fails to obtain a discharge.”).

source and the collateral for each of these claims. Upon confirmation, the treatment of CNB's claims is governed by the Confirmed Plan.

Indeed, the Court already held that “[b]ased upon the Debtors’ treatment of these claims in their confirmed plan . . . the objections to claims are denied as MOOT.” CNB Claim Order, p.

3. As such, the Court tacitly found that the terms proposed by the Debtors in the Confirmed Plan for the treatment of CNB’s claims resolved any disputes relating to such claims. Accordingly, the Debtors may not use the pretext of modifying the Confirmed Plan as a means to re-litigate issues pertaining to the validity of the Equipment Secured Claim.

**B. Post-Confirmation Modification and Reclassification of CNB’s Equipment Secured Claim**

While the binding nature of the Confirmed Plan precludes the Debtors from re-litigating issues relating to the validity of CNB’s Equipment Secured Claim, may the Debtors nonetheless modify the treatment of the Equipment Secured Claim—over the objection of CNB<sup>19</sup>—by relinquishing the Surrendered Equipment and reclassifying any shortfall from the sale of such collateral as a unsecured deficiency claim? This Court concludes that the answer is “no”.

Section 1229(a) of the Bankruptcy Code, which governs the post-confirmation modification of a Chapter 12 plan, provides that:

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, on request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments; or

---

<sup>19</sup> Since CNB consented to the surrender of the Residential Property and the proposed treatment of any resulting deficiency claim, this Court granted the Motion to Modify as relates to CNB’s Residential Property Secured Claim. As such, this Court was not called upon to address the propriety of the modified treatment of CNB’s Residential Property Secured Claim.

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

11 U.S.C. § 1229(a).

Analyzing the analogous provision under Chapter 13 of the Bankruptcy Code, the Sixth Circuit held that a debtor may not modify a confirmed plan to reclassify an allowed secured claim as an unsecured claim for the deficiency resulting from the sale of a vehicle surrendered post-confirmation. *Chrysler Fin. Corp. v. Nolan (In re Nolan)*, 232 F.3d 528, 535 (6th Cir. 2000); *see also, Ruskin v. DaimlerChrysler Servs. N. Am. (In re Adkins)*, 425 F.3d 296 (6th Cir. 2005)(extending *Nolan* to prohibit reclassifying deficiency resulting from sale of repossessed collateral stemming from a debtor's post-confirmation default as an unsecured claim). The Sixth Circuit concluded that Section 1329(a) of the Bankruptcy Code does not permit a debtor to modify a confirmed plan to "alter, reduce or reclassify a previously allowed secured claim." *Id.* at 532. Rather, "Section 1329(a) only permits modification of the amount and timing of payments, not the total amount of the claim." *Id.* at 535; *In re Charlick*, 444 B.R. at 767 (applying *Nolan* to deny motion to modify chapter 13 plan and relief requested in adversary proceeding seeking to strip a creditor's junior lien against the debtors' residence post-confirmation where the junior lienholder's claim was classified as secured in the confirmed plan); *In re Miller*, 428 B.R. at 799 (same).

Even though *Nolan* arose in the context of a Chapter 13 case, the basic principle that a debtor may not modify a confirmed plan to reclassify a secured claim as unsecured for the deficiency resulting from the post-confirmation surrender and sale of assets logically extends to a comparable proposal to modify a Chapter 12 plan under Section 1229(a) of the Bankruptcy Code. *See In re Chiapetta*, 2009 Bankr. LEXIS 2656 at \*3-4, 2009 WL 2821527 at \*1 (Bankr.

N.D. Cal. June 8, 2009)(following *Adkins* and *Nolan* and denying motion to modify confirmed Chapter 12 plan to strip mortgage and reclassify claim as wholly unsecured). Accordingly, the Debtors may not modify the Confirmed Plan to relinquish the Surrendered Equipment in satisfaction of CNB's Equipment Secured Claim and reclassify any deficiency resulting from the sale of the Surrendered Equipment as an unsecured claim under the Confirmed Plan.

**IV. Conclusion**

For the foregoing reasons, the Motion to Modify Plan as relates to CNB's Equipment Secured Claim is DENIED, without prejudice.

**IT IS SO ORDERED.**

Distribution list:

Default List  
James Cutright, Esq.

###