



IT IS ORDERED as set forth below:

Date: August 26, 2015

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	:	CASE NUMBER:
	:	
PAMELA YVONNE SANDERS,	:	13-52936-MGD
	:	
Debtor.	:	CHAPTER 13
	:	
PAMELA YVONNE SANDERS,	:	
	:	
Movant,	:	
	:	
v.	:	CONTESTED MATTER
	:	
NICHOLAS FINANCIAL INC.,	:	
	:	
Respondent.	:	

**ORDER DENYING APPROVAL OF DEBTOR'S POST-CONFIRMATION
MODIFICATION AND OVERRULING DEBTOR'S OBJECTION TO CLAIM 1**

A hearing was held on August 26, 2015 for two matters in this case: (1) Debtor's Post-Confirmation Modification (Doc. 71) ("Modification") and (2) Debtor's Objection to Claim 1 of Nicholas Financial Inc. (Doc. 85) ("Objection"). Ian Grady of The Semrad Law Firm, LLC

appeared for the Debtor and Andrew Gleason of Lefkoff, Rubin, Gleason & Russo, P.C. appeared for the Respondent. At the hearing, the Court denied approval of the Modification and overruled Debtor's Objection; this Order memorializes that ruling. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B), (L) and venue is proper under 28 U.S.C. § 1409(a).

Respondent's secured claim arises from a motor vehicle retail installment contract dated July 7, 2012 for the purchase of a 2003 Infinity G35 (the "Collateral") at a price of \$10,589.43. (Claim 1-1). Debtor filed a Chapter 13 petition on February 12, 2013, 220 days later. (Doc. 1). On June 4, 2013, Debtor proposed her Third Amended Chapter 13 plan which valued Respondent's secured claim at \$11,236.69 and proposed to pay Respondent's claim at 8.0% interest. (Doc. 40). Debtor's plan was confirmed on June 5, 2013.

Respondent obtained relief from the automatic stay on April 2, 2015 based on a failure of Debtor to insure the Collateral. (Docs. 64, 66). The Collateral was repossessed and sold at auction for \$1,560 (Claim 1-2 at 10). Debtor filed the Modification on April 17, 2015 which proposed, among other things, to set Respondent's claim amount to \$0.00, eliminate the interest rate, and set the monthly payment to \$0.00. Debtor likewise filed the Objection on May 25, 2015 seeking an order disallowing Respondent's claim based on Respondent's disposition of the collateral after receiving relief from stay.

Respondent opposed both of these forms of relief, advancing essentially the same argument against each: that the terms a confirmed plan bind the Debtor as to the secured status of a claim. In *re Abercrombie*, 39 B.R. 178 (Bankr. N.D.Ga. 1984). (Docs. 77, 86). Debtor pointed to an opposing line of cases embracing the use of Section 1329 to account for changes in circumstances due to surrender or repossession. FEENEY ET AL., BANKRUPTCY LAW MANUAL §

13:50 n.25 (5th ed.) (citing cases). Debtor further noted that as a policy matter the good faith requirement still protects creditors from abusive modifications.

While the Court tends to agree with the line of cases supporting Respondent's argument, it need not reach this issue. At the hearing, it was uncontested that both the Modification and Objection sought to disallow Respondent's claim entirely. Even assuming there existed cause to reclassify Respondent's claim as unsecured, there is no basis for the Court to completely disallow the claim. Accordingly, it is

ORDERED that approval of the Modification (Doc. 71) is **DENIED**.

It is **FURTHER ORDERED** that the Objection is (Doc. 85) **OVERRULED**.

The Clerk's Office is directed to serve a copy of this Order upon Debtor, Debtor's counsel, the Chapter 13 Trustee, and all creditors.

END OF DOCUMENT