IT IS ORDERED as set forth below:

Date: June 5, 2015

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBER**
	:	
BRANDON MURRAY ROOP,	:	14-11658-WHD
	:	
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE

ORDER

Before the Court are the Objection to the Claim of JPMorgan Chase, N.A. (hereinafter "Chase"), filed by Brandon Roop (hereinafter the “Debtor”), and the Motion to Dismiss or Modify Plan, filed by Adam M. Goodman (hereinafter the “Trustee”). These matters constitute core proceedings, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2)(B), (L); 1334.

FINDINGS OF FACT AND PROCEDURAL HISTORY

On July 21, 2014, the Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code. The Debtor proposed a Chapter 13 plan that provided for the surrender to Chase of real property known as 217 Independence Lane, Peachtree City, Georgia (hereinafter the "Property"), and a 100% dividend to unsecured creditors. The Court confirmed the Debtor's proposed plan on December 11, 2014 (hereinafter the "Plan").

Section 6 of the Plan provides as follows with regard to the Property:

> Debtor will surrender the following collateral no later than thirty (30) days from the filing of the petition unless specified otherwise in the Plan. Any claim filed by a secured lien holder whose collateral is surrendered will be treated as unsecured. Any involuntary repossession/foreclosure prior to confirmation of this Plan must be obtained by a filed motion and Court order, unless the automatic stay no longer applies under § 362(c). Upon Plan confirmation, the automatic stay will be deemed lifted for the collateral identified below for surrender and the creditor need not file a Motion to Lift the Stay in order to repossess, foreclose upon or sell the collateral.

Plan, § 6. Further, under section 3 of the Plan, "[o]bjections to claims may be filed before or after confirmation." *Id.* § 3.

The bar date for filing non-government proofs of claim was December 8, 2014. Chase filed a proof of claim on December 30, 2014, in which it asserted a claim secured by the Property in the amount of $339,972.05.

On February 9, 2015, the Trustee filed a Notice of Payment of Late-File Claim, in

which the Trustee stated that he would pay Chase's late claim unless the Debtor objected to the claim within twenty days. On February 18, 2015, the Trustee filed a motion to dismiss the Debtor's case on the basis that it would take the Debtor longer than the sixty-month term provided for in the Plan to pay all unsecured claims in full. The Trustee later amended his motion to dismiss to seek modification of the Plan as an alternative to dismissal of the case (hereinafter the "Amended Motion").

The Amended Motion asserts that, although the Plan provided for the surrender of the Property, Chase had not exercised its right to foreclose on the Property; the Debtor still owned the Property; a tenant, Ms. Haas, has been residing in the Property since some time prior to the filing of the Debtor's bankruptcy case; Ms. Haas has tendered to the Debtor $1,800 per month in rent for the months of January through March 2015; and the Trustee currently holds those funds. Consequently, the Trustee seeks to modify the Plan to increase the payment by the additional income being generated by the Property. On April 7, 2015, the Debtor objected to Chase's claim on the basis that the claim was filed late.

At the hearing held on both matters, Chase opposed disallowance of its claim, arguing that the Debtor should be estopped from objecting to its claim because the Debtor waived his right to object to "procedural aspects" of the claim by failing to object to the claim within twenty days of the Trustee's notice of intent to pay the claim and because he

has taken certain actions that are inconsistent with his objection to Chase's claim. Specifically, the Debtor now wishes to retain the Property as his residence and has sought a loan modification from Chase.

Chase also asserts that, even if its claim is disallowed, the Plan, which all parties recognize is binding on the Debtor and the Trustee, provides for its claim to be treated as an unsecured claim, even if the claim is untimely. In support of its argument, Chase submits that the Plan language providing that "[a]ny claim filed by a secured lien holder whose collateral is surrendered will be treated as unsecured," demonstrates an intent to treat all such claims, timely or untimely, allowed or not, as unsecured claims (*i.e.*, eligible for payment in full).

Finally, at the hearing, relying upon an assignment of rents clause within the deed to secure debt, Chase asserted its entitlement to the $1,800 per month in rent paid to the Debtor's estate by Ms. Haas. The Trustee also seeks guidance from the Court as to whether the funds should be distributed to unsecured creditors or disbursed to Chase.

CONCLUSIONS OF LAW

A. Debtor's Objection to Chase's Claim

First, the Court finds that Chase's claim is late and should be disallowed on that basis. Section 501 of the Code provides that a "creditor . . . may file a proof of claim." 11 U.S.C. § 501(a). Pursuant to section 502(a) of the Code, "[a] claim or interest, proof

of which is filed under section 501 . . . , is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Upon objection to a claim, "the court, after notice and a hearing, shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that . . . proof of such claim is not timely filed." 11 U.S.C. § 502(b). In a Chapter 13 case, "a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors." FED. R. BANKR. P. 3002(c). Although Rule 9006(b) permits the Court to extend certain deadlines established by the Federal Rules of Bankruptcy Procedure after their expiration upon a showing of "excusable neglect," it does "not permit allowance of a late-filed claim in a Chapter 13 case, even where the facts would otherwise support a finding of 'excusable neglect.'" *In re Matthews*, 313 B.R. 489, 493 (Bankr. M.D. Fla. 2004) (citing *Matter of Jones*, 154 B.R. 816 (Bankr. M.D. Ga. 1993)).

It is undisputed that Chase filed its claim after the bar date, and no party suggests that this Court has the power to enlarge the time for filing the claim due to excusable neglect. Rather, Chase asserts that the Debtor should be estopped from objecting to the claim because he waited too long to do so and took actions that are consistent with his current intent to keep the Property, such as listing the debt owed to Chase in his schedules as undisputed.

As to the first argument, the Plan provides that objections to claims may be made

before or after confirmation. Despite Chase's arguments, nothing in the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the confirmation order required the Debtor to object to the claim within twenty days of receiving the Trustee's notice of intent to pay the late claim.

As to the second argument, the Court finds no basis to estop the Debtor from objecting to Chase's claim. The fact that the Debtor readily admitted that he owed a debt to Chase is irrelevant, as the Debtor is not now arguing that he does not owe a valid debt to Chase. Rather, the Debtor is simply asserting Chase's failure to file a timely proof of claim as a defense to what would otherwise be an enforceable claim.

Further, it does not appear that the Debtor's conduct in proposing to surrender the Property, but later changing his mind and attempting to work something out with Chase caused Chase to fail to file a timely proof of claim. Throughout the case, Chase could have protected its rights by either foreclosing on the Property and filing a timely claim for any deficiency or by filing an unliquidated, unsecured claim prior to the bar date, even if it was not yet certain of the amount of its deficiency claim, to preserve its right to be paid for any deficiency following a foreclosure. Chase chose to do neither, with no apparent reliance on anything the Debtor did or did not do. That choice, rather than the Debtor's conduct, caused the disallowance of Chase's claim. Any harm from the disallowance of the claim is also ameliorated by the fact that Chase retains its lien on the Property and is

free to recover the debt owed to it through exercising its state law rights. Accordingly, the claim shall be disallowed pursuant to section 502(b)(9) and Rule 3002.

Second, whether Chase is entitled to have its debt paid through the Plan, notwithstanding the disallowance of its claim, requires an interpretation of the language of the Plan. The Plan states that "[a]ny claim filed by a secured lien holder whose collateral is surrendered will be treated as unsecured." Plan, § 6C. Section 7, however, describes the treatment afforded to an unsecured claim. That section specifically provides that the "Trustee will pay to the creditors with *allowed* general unsecured claims a pro rata share of $0.00 or 100%, whichever is greater." *Id*. § 7 (emphasis added). Accordingly, because Chase is a "secured lien holder whose collateral is surrendered," its filed claim will be "treated as unsecured" and paid in full only if the claim is allowed. Consequently, the Plan does not provide for payment of Chase's disallowed claim.

B. *Trustee's Motion to Dismiss or Modify the Plan*

The disallowance of Chase's claim will cure the term problem that prompted the Trustee to seek dismissal of the Debtor's case. Accordingly, the original request for relief is now moot.

As to the alternative relief, there appears to be no dispute that the rent received by the Debtor from Ms. Haas either belongs to Chase or constitutes Chase's cash collateral, pursuant to an assignment of rents clause in the security deed. Accordingly, even if the

rents are Chase's cash collateral, rather than Chase's property, the Debtor's receipt of such income would not justify an increase in the Debtor's plan payment, as the Debtor cannot use such funds to pay creditors other than Chase without Chase's consent or a determination by the Court that Chase's interest in the funds would be adequately protected. 11 U.S.C. § 363(c). Based upon its position at the hearing, the Court assumes that Chase would not consent to such a use of its cash collateral. Further, the Court has no basis to conclude that Chase's interest in the cash collateral would be adequately protected. It appears that the Property is worth approximately $335,000, while the amount owed to Chase exceeds $339,972. Consequently, any cash generated by the Property should be applied to Chase's debt to ensure that it receives payment of its debt to the extent of the full value of its collateral. For this reason, the Court finds no basis to require the Debtor to modify the Plan to increase the plan payment.

CONCLUSION

For the reasons stated above, the Debtor's objection to the claim of JPMorgan Chase, N.A. (Claim Number 19-1) is **SUSTAINED**. The Claim is hereby **DISALLOWED** in its entirety.

IT IS FURTHER ORDERED that the Trustee's Motion to Dismiss or Modify Plan (Docket Number 32), is **DENIED**.

The Clerk is **DIRECTED** to serve a copy of this Order on the Trustee, counsel for

Chase, the Debtor, and the Debtor's counsel.

END OF DOCUMENT