



IT IS ORDERED as set forth below:

Date: June 15, 2012

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:	:	
	:	Case No. 12-51191-MGD
SHERRY LYNN ANDERSON,	:	
	:	Chapter 13
Debtor.	:	
	:	Judge Diehl
	:	
AMERICA'S SERVICING COMPANY,	:	
A DIVISION OF WELLS FARGO	:	
BANK, N.A.,	:	
	:	
Movant,	:	
	:	
v.	:	Contested Matter
	:	
SHERRY LYNN ANDERSON,	:	
	:	
Respondent.	:	
	:	

**ORDER OVERRULING CREDITOR'S OBJECTION TO PLAN
CONFIRMATION**

This matter is before the court on an Objection to Plan Confirmation ("Objection"), filed by

creditor America's Servicing Company, A Division of Wells Fargo Bank, N.A. ("ASC"). (Docket No. 18). ASC argues that Debtor's plan fails to meet the § 1325 requirements for confirmation because (1) the 4.25% interest rate on its secured claim is too low and (2) the plan does not provide for the contract-required payments of private mortgage insurance ("PMI"). The hearing on confirmation of Debtor's plan was first held on April 25, 2012, at which time the Court heard oral argument from counsel for ASC and Debtor. The Court did not rule on the objection because the confirmation hearing was rescheduled for June 13, 2012. At the June 13, 2012 hearing, Mr. Albert Guthrie appeared for the Chapter 13 Trustee and Mr. John Forbes appeared for Debtor. Chambers communicated with counsel for ASC, Mr. Stephen Block, who indicated he did not need to be present for the ruling.

The Court overrules ASC's objection for the following reasons. Pursuant to 11 U.S.C. § 1322(b)(2) and §1322(d), a debtor can modify the rights of a mortgage creditor whose claim is secured by non-residential real property. The debtor must make payments through the plan, provide that the mortgage creditor will retain its lien, and pay the mortgage creditor the present value of its allowed secured claim during the term of the plan, in accordance with § 1325(a)(5). *In re Martin*, 444 B.R. 538, 543-46 (Bankr. M.D. N.C. 2011); *In re Hussain*, 250 B.R. 502, 508 (Bankr. D. N.J. 2000). Nothing more is required under § 1325(a)(5). Nor is the value of the property affected by a pre-petition contract provision requiring PMI. Because PMI protects the value real property may bring at foreclosure, it is inapplicable to determining the value of the secured claim under § 506 when a debtor proposes to retain real property. *Lomas Mtg. USA v. Wiese (In re Wiese)*, 980 F.2d 1279, 1282-83 (9th Cir. 1992). Here, Debtor proposes to retain the non-residential real property and pay the secured claim during the term of the plan. Further, Mr. Forbes informed the Court that the parties have stipulated to an interest rate of 5.25%. This provides ASC with the present value of its

claim. The requirements of § 1325 are therefore satisfied. For the foregoing reasons and the reasons stated on the record, it is

ORDERED that ASC's Objection to Plan Confirmation is **OVERRULED**.

The Clerk of Court shall serve a copy of this Order on the Chapter 13 Trustee, counsel for Debtor, Debtor, Counsel for Movant, and Movant

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