IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

IN RE:	**HEATH HAGER and AMANDA HAGER**	**4:03-bk-14025 E CHAPTER 13**

ORDER DENYING MOTION FOR A NEW TRIAL AND FOR STAY OF EXECUTION OF JUDGMENT

Now before the Court is the Motion for a New Trial and for Stay of Execution of Judgment ("**Motion for a New Trial**") filed by EMC Mortgage Corporation ("**EMC**") on August 15, 2003, and the Response filed by Debtors on August 26, 2003. For the reasons set forth below, the Court denies EMC's Motion for a New Trial.

BACKGROUND

A summary of the facts, procedural posture of this case, and prior rulings is helpful in understanding the Court's decision on this Motion for a New Trial. According to the files and records in this case,[1] Debtors filed a petition and plan under Chapter 13 of the Bankruptcy Code on April 4, 2003. On April 10, 2003, the Notice of Chapter 13 Bankruptcy, Meeting of Creditors and Deadlines ("**Notice of Chapter 13 Bankruptcy**") was served by first class mail on EMC. The Notice of Chapter 13 Bankruptcy indicated that the § 341(a) Meeting of Creditors was to be held on May 7, 2003, and stated, "[o]bjections to confirmation must be filed with the Court and served on the Trustee and Debtor on or before the tenth

[1] The Court takes judicial notice of all documents filed in the current case. *See* Fed.R.Evid. 201; *In re Henderson*, 197 B.R. 147, 156 (Bankr. N.D. Ala. 1996) (citations omitted) ("The court may take judicial notice of its own orders and of records in a case before the court, and of documents filed in another court.") (citations omitted); *see also In re Penny*, 243 B.R. 720, 723 n.2 (Bankr. W.D. Ark. 2000).

(10th) day after the meeting of creditors is concluded." This 10-day deadline derives from General Order 20, a local order of the Bankruptcy Court for the Eastern and Western Districts of Arkansas. General Order 20 provides, in part, that

> [o]bjections to confirmation of the debtor's plan in chapter 13 bankruptcy cases must be filed with the Clerk of the Bankruptcy Court and served on the Chapter 13 Trustee and the debtor on or before the tenth (10th) day after the 341(a) meeting of creditors is concluded. . . . If no objections to confirmation are filed within the time fixed in the 341(a) hearing notice, the plan will be confirmed without further notice or a hearing.

EMC filed a Notice of Appearance on May 2, 2003, and the § 341(a) Meeting of Creditors was, in fact, held and concluded on May 7, 2003, as stated in the Notice of Chapter 13 Bankruptcy. Therefore, objections to confirmation were required to be filed no later than May 17, 2003.

EMC holds a partially secured second mortgage on the primary residence of Debtors. In Debtors' plan, the debt to EMC is listed as $23,844.54. Debtors' plan states that the value of the residence is $80,000.00, and the first lien mortgage balance is $76,624.55, thus leaving $3,375.45 as security for EMC's mortgage. Debtors' plan proposes that the remainder of EMC's claim be treated as a nonpriority unsecured claim. On May 9, 2003, two other creditors (GMAC and Compass Bank) filed objections to confirmation of the Debtors' plan, and a hearing on these objections was set for June 3, 2003.[2] Even though the deadline for filing objections was May 17, 2003, EMC filed its Objection to Confirmation on May 30, 2003. In its Objection, EMC contends that the plan's treatment of its mortgage is prohibited under 11 U.S.C. § 1322(b)(2).

The Court heard EMC's Objection to Confirmation of Plan and the Response filed by Debtors on

[2] The June 3, 2003 hearing was not held, since those objections settled.

July 8, 2003. During that hearing, the only reason given for EMC's untimely objection was EMC's Counsel's statement that the failure to object in a timely manner was due to "an office procedural error." The Court received evidence on the merits of the objection without prejudice to a determination as to the effect, if any, of EMC's untimely filing under General Order 20. Debtors' Counsel requested an opportunity to submit briefs on the merits and his request was granted. Following the filing of briefs by both parties on the merits, the Court considered the arguments and entered an Order Overruling EMC's Objection to Confirmation on August 8, 2003. In that Order, the Court adopted the reasoning in *In re Dorn*, 295 B.R. 872 (Bankr. E.D. Ark. 2003) a recent opinion issued by Judge Richard Taylor, where a creditor's objection to confirmation was overruled due to its untimely filing under General Order 20. EMC filed the Motion for a New Trial, which is the subject of this Order, on August 15, 2003.

DISCUSSION

EMC, in its Motion for a New Trial, does not challenge the validity of General Order 20, nor does it contest the fact that its objection was untimely under that General Order. Rather, EMC primarily contends that the Court erred as a matter of law in relying on *Dorn*, arguing that *Dorn* is distinguishable for the reasons set forth later in this Order.[3] EMC also urges that this Court adopt the reasoning in *In re*

[3] EMC also raises additional arguments which are irrelevant to the untimely filing of its objection. EMC contends that the alleged intent of Debtor-Husband not to "cram-down" EMC's loan means that the result of the Court's rulings is contrary to the evidence presented on the merits of the case. However Debtor-Husband's intent to "cram-down" or not to "cram-down" EMC's loan has no bearing on the impact of EMC's untimely objection under General Order 20. Moreover, although EMC raises the issue of the possible reversal of *Dorn* based solely on the fact that it has been appealed, the Court will not engage in speculation regarding the prospects of *Dorn* on appeal or the potential effect, if any, of its reversal on this case. As of this writing, *Dorn* is good law, and this Court has found, and still finds, its reasoning to be sound.

Cook, 253 B.R. 249 (Bankr. E.D. Ark. 2000), and alleges that this Court did not give the proper weight and consideration to that case.

I. Analysis of *In re Cook*

To the extent that EMC cites *Cook* for the proposition that a court should hear and decide objections which are untimely under General Order 20 simply because they may have merit, EMC's reliance on that case is misplaced. The *Cook* court began its analysis with the proposition that the deadlines contained in the Court's General Orders should be followed and enforced. *Id.* at 251. In ultimately deciding to hear the untimely objection to confirmation, *Cook* relied heavily on the fact that there was also a pending motion for relief from stay which raised identical issues as the objection and had merit. *Id.* The *Cook* court noted that "[i]f the Court grants the motion for relief from stay on the merits but denies the objection to confirmation on procedural grounds, the substantive issues in the case become a morass of confusion." *Id*. Accordingly, *Cook*'s consideration of the objection on its merits represents an exception to the general rule. The instant case is distinguishable, since there is no motion for relief pending, and no "morass of confusion" is caused by overruling EMC's untimely objection. Moreover, as the Court explains below, in this situation, to disregard General Order 20's deadline because of the potential merits of EMC's objection would create a "morass" of uncertainty in the confirmation process.

II. Analysis of *In re Dorn*

Turning to its arguments distinguishing *Dorn* from this case, EMC contends that the rationale in *Dorn* is inapposite for a number of reasons stated later in this Order. In *Dorn*, the creditor filed an untimely

objection to confirmation under General Order 20, one day prior to the entry of an Order Confirming Chapter 13 Plan. *Dorn*, 295 B.R. at 874. The creditor argued that General Order 20 does not reduce the objection period, but instead constitutes a "safe period" within which the creditor can be secure a confirmation order will not be entered. *Id.* at 874-75. Alternatively, that creditor argued that General Order 20 was invalid since it conflicted with Rule 3015(f).[4] *Id*. at 875. *Dorn* rejected the creditor's arguments and found that the purpose of General Order 20 is "specifically and expressly to set a definite deadline for objections" under Rule 3015(f) and that General Order 20 is consistent with Rules 9006 and 9014. *Id.*

The *Dorn* court cited with approval the case of *In re Duncan*, 245 B.R. 538 (Bankr. E.D. Tenn. 2000). *Dorn*, 295 B.R. at 875-76. In *Duncan*, the court also addressed the issue of whether an objection is timely if it has been filed prior to confirmation, but outside the time specified by a local rule. *Duncan*, 245 B.R. at 538-39. The *Duncan* court found a literal interpretation of the first sentence of Rule 3015(f) "that any objection to confirmation may be considered so long as it is filed prior to confirmation of the plan, would . . . lead to an absurd result." *Id*. at 541 (citations omitted). The *Duncan* court reasoned that under such an interpretation, "[c]arried to extremes, the confirmation process could go on *ad infinitum* - as soon as one objection is resolved, but before the court actually signs [and enters] the confirmation order, another

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[4] All references to rules in this Order pertain to the Federal Rules of Bankruptcy Procedure unless otherwise noted. Rule 3015(f) states as follows:

> [a]n objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, before confirmation of the plan. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

objection could be filed, and so forth." *Id. See also Dorn*, 295 B.R. at 875-76.

EMC argues that since the plan had already been confirmed when the hearing was held on the objection in *Dorn*, while Debtors' plan in this case had yet to be confirmed at the time of this hearing, the logic in *Dorn* does not apply. However, this argument fails because the fact that the hearing in *Dorn* occurred after the confirmation order was entered does not render *Dorn*'s rational any less applicable to the case at bar. Both in the instant case and in *Dorn*, the creditors' objections were filed *prior to confirmation*, but were untimely under General Order 20. *See Dorn*, 295 B.R. at 874 (objection to confirmation filed one day prior to entering of confirmation order). This is the salient point in both cases, not whether a plan has been confirmed at the time a hearing is finally held on the late-filed objection to confirmation. Accordingly, the rationale in *Dorn* on this point is applicable to this case. Additionally, as the Court explains further, to allow the ministerial timing of the entry of a confirmation order to control the deadline for filing objections, while disregarding the deadline in General Order 20, would lead to chaos in the confirmation process.

This Court believes that the *Duncan* and *Dorn* courts correctly recognize the problems that would be caused by disregarding local rules and orders setting deadlines for the filing of objections to confirmation. General Order 20's function is not to remove EMC's opportunity to object to plan confirmation. In fact, EMC had ample opportunity to object to Debtors' plan. A review of the records indicates that the Notice of Chapter 13 Bankruptcy was served by first class mail on EMC on April 10, 2003. Regardless of when the Notice was actually received, EMC had from its receipt up to and including May 17, 2003 to object to the plan.

General Order 20 "simply conditions [a creditor's right to object] by setting time limits." *In re*

Gaona, 290 B.R. 381, 385 (Bankr. S.D. Cal. 2003) (footnote omitted). If General Order 20 does not "specifically and expressly" set a definite deadline for objections, as stated in *Dorn*, then the Court is faced with the possibility that the confirmation process could continue *ad infinitum*, a result that the *Duncan* court characterized as absurd. Such a result would certainly cause disorder in the confirmation process, and courts specifically set and enforce such time limits to prevent that outcome. *See Dorn*, 295 B.R. at 875-76; *Duncan*, 245 B.R. at 542. Moreover, courts have enforced time limits regarding objections to confirmation contained in local rules, even when confronted with allegations of debtor misconduct. *See Gaona*, 290 B.R. at 386-87 (finding that objection was untimely under local rule, despite allegations that debtor hid assets and failed to report income); *In re Harris*, 275 B.R. 850 (Bankr. S.D. Ohio 2002) (overruling objection as untimely under 30-day deadline established in clerk's notice, despite allegation of inadequate debtor disclosures); *In re Carbone*, 254 B.R. 1 (Bankr. D. Mass. 2000) (overruling objection as untimely under local rule without reaching underlying merits, despite allegations, *inter alia*, of debtor bad faith and fraudulent transfer of assets).

EMC also attempts to distinguish the underlying merits of this case from *Dorn* by arguing that *Dorn* involved a valuation issue regarding personalty, while this case involves a "cram-down" in alleged violation of the Bankruptcy Code. Although EMC's argument is well-taken, to accept it would vitiate General Order 20 any time the Court is faced with any nontrivial, facially valid objection and would invite uncertainty and chaos in the confirmation process. The Court's reasoning is guided by Judge Keith M. Lundin, a respected authority on Chapter 13 cases. Judge Lundin has noted the importance of adhering to deadlines for objections to confirmation. In disagreeing with cases where those deadlines have not been enforced, he states that such decisions promote "anarchy in the Chapter 13 confirmation process for no

obvious good purpose." Keith M. Lundin, *Chapter 13 Bankruptcy, 3d Ed.* § 220.1, at 220-6 (2000 & Supp. 2002). Judge Lundin reasons that:

> [t]he deadlines for objecting to confirmation have to mean something, else it is impossible for debtors and trustees to prepare for hearings on confirmation. The creditor that misses a deadline to object has only itself to blame and has no reasonable expectation that the court or any other party will save it from its neglect. That some courts only entertain untimely objections to confirmation when the objections are "not tangential or trivial" suggests (incongruously) that missing an important deadline to raise a facially valid objection to confirmation is more likely excused than failing to timely assert an objection less likely to succeed. The certainty of the confirmation process is then inversely related to the level of creditor incompetence.

Id. § 220.1, at 220-6-7 (citation and footnote omitted).

Finally, EMC argues that Debtors have "unclean hands," due to their "cram-down" of EMC's loan, followed by their protest of EMC's untimely objection. Under Arkansas law, the equitable doctrine of unclean hands "bars relief to those guilty of improper conduct in the matter as to which they seek relief." *Wilson v. Brown*, 320 Ark. 240, 247, 897 S.W.2d 546, 549 (1995) (*citing Marshall v. Marshall*, 227 Ark. 582, 300 S.W.2d 933 (1957)). "Equity will not intervene on behalf of a plaintiff whose conduct in connection with the same matter has been unconscientious or unjust." *Wilson*, 320 Ark. at 247, 897 S.W.2d at 549-550 (*citing Batesville Truck Lines, Inc. v. Martin*, 219 Ark. 603, 243 S.W.2d 729 (1951); *Merchants & Planters Bank & Trust Co. v. Massey*, 302 Ark. 421, 790 S.W.2d 889 (1990)).

Certainly, Debtors' raising the issue of EMC's untimely filing does not constitute unjust conduct under these facts. There is no allegation that Debtors engaged in any malfeasance, concealment, or any other such conduct which either impeded EMC's notice of the plan or prevented EMC from objecting to the plan. On the contrary, the records in this case indicate that EMC was provided proper notice of

Debtors' plan in a timely fashion. It was, in fact, EMC's own failure to object in a timely manner which allowed Debtors to raise this issue.

CONCLUSION

Although this Court is sensitive to the demands of the modern law practice and is cognizant of the number of deadlines imposed on attorneys and their clients, for the Court to disregard the time limitation established by General Order 20 in this situation would be an invitation to disorder. As indicated above, the Court concurs with Judge Lundin on these matters and will not disregard the dictates of General Order 20 because EMC's untimely objection raises what may be a nontrivial, facially valid objection. Following a review of the law and arguments of counsel and for the reasons articulated by Judge Lundin and stated in the *Dorn* and *Duncan* opinions, the Court finds that the enforcement of the deadline for objection to confirmation as contained in General Order 20 is appropriate under these facts.

Accordingly, for the reasons stated herein, it is hereby

ORDERED that EMC's Motion for a New Trial and for Stay of Execution of Judgment is **DENIED**.

IT IS SO ORDERED.

Audrey R Evans

HONORABLE AUDREY R. EVANS
U. S. BANKRUPTCY JUDGE

Date: October 3, 2003

cc: Paul A. Schmidt, attorney for Debtors
Waylan Cooper, attorney for EMC
Joyce Bradley Babin, Chapter 13 Trustee
U.S. Trustee