

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :
JOSEPH T. CHRISTMAN : BK No. 09-10195
Debtor : Chapter 13

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ORDER DENYING RELIEF FROM STAY

Nationstar Mortgage, LLC ("Nationstar") moves for relief, nunc pro tunc, from the automatic stay and for leave to record a prepetition foreclosure deed on the Debtor's house.

Nowhere in this request does Nationstar address the effect of its failure to participate, until now, in any relevant proceedings in the case, i.e., notwithstanding adequate notice and hearing, Nationstar failed to question either confirmation of the Debtor's Plan in April 2009, or the amendment of the Plan in November 2009. Nationstar's sole argument is that, because on the filing date of this case the Debtor's house was not property of the estate,¹ he therefore lacks the ability to cure any default pursuant to 11 U.S.C. § 1322(b)(3).

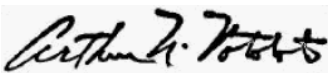
Nationstar does not contend that the notice of hearing on confirmation was deficient in any way. It just insists that it is not barred by Plan confirmation or the subsequent plan amendment, and ignores that, from the beginning, the Debtor's clear intent was to cure his pre and post-petition arrearages through his Chapter 13 Plan.

¹ See *In re Medaglia*, 402 B.R. 530 (Bankr. D.R.I. 2009).

Under 11 U.S.C. § 1327(a), the provisions of a confirmed plan "bind the debtor and each creditor...whether or not such creditor has objected to, has accepted, or has rejected the plan." In this Circuit, it is well established that plan confirmation "is a final order, with *res judicata* effect, and is imbued with the strong policy favoring finality." *In re Shepard*, 328 B.R. 601, 604-605 (B.A.P. 1st Cir. 2005) (citing *Factors Funding Co. v. Fili (In re Fili)*, 257 B.R. 370, 373 (B.A.P. 1st Cir. 2001)). In addition, "[t]he First Circuit has noted that § 1327 and § 1330 accord significant finality to confirmation orders in Chapter 13 cases." *Id.* (citing *Barbosa v. Soloman*, 235 F.3d 31 (1st Cir. 2000)). This Court is bound by and adopts said principles, which are controlling in this case. Nationstar's argument also suffers by its acceptance of plan payments received from the Chapter 13 Trustee. *See generally In re Flynn*, 402 B.R. 437 (B.A.P. 1st Cir. 2009). And, finally, because its alleged ground for relief from stay was clearly extant on the date this case was filed, Nationstar's argument fails because of laches.

For the reasons stated above, and given the sweeping *res judicata* effect of plan confirmation and the policy favoring finality in Chapter 13 cases, Nationstar's Motion is **DENIED**.

Entered as an Order of this Court, this 12th day of February, 2010.



Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on Docket: 2/12/2010