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UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re: Teresa L. Tamelleo
Debtor

BK No. 16-11437
Chapter 7

MEMORANDUM AND ORDER
ON CONTINUING LOSS MITIGATION

In accordance with this Court's Order entered on October 7, 2016, debtor Teresa Tamelleo and Ocwen Loan Servicing, LLC ("Ocwen"), as servicer for U.S. Bank, N.A., as Trustee for Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-7 ("US Bank," together with Ocwen the "Creditor"), have engaged in court-supervised mediation of Ms. Tamelleo's request for a loan modification regarding the loan, promissory note, and mortgage held by US Bank against her residence located at 9 Lee Ann Drive, Johnston, Rhode Island pursuant to the Court's Eighth Amended Loss Mitigation Program and Procedures, R.I. LBR Appendix VII.

The parties filed multiple status reports during the mediation process, and the Court ordered that by December 12, 2016 the Creditor conduct a final review of the information submitted by Ms. Tamelleo for consideration of a loan modification. (Doc. #43.) A status hearing was held on December 14, 2016. The day prior, the parties filed a status report in which the Creditor stated Ms. Tamelleo "must complete the assumption of mortgage process before being reviewed for a loan modification as she is not obligated on the promissory note but was given all rights to the property under the divorce agreement with Albert Aglione who was the sole signatory to the promissory note." (Doc. #46.)

In essence, the Creditor's position is that Ms. Tamelleo, as a non-borrower, is required to assume the obligations under the loan documents to gain the necessary privity to seek to modify the loan terms. Its position is incorrect. It is also unreasonable as it puts the cart before the horse,

requiring Ms. Tamelleo to take on personal liability of the mortgage debt without any indication from the Creditor that she is eligible for a loan modification if she were to assume the mortgage.

Such loan modifications are often reviewed under HAMP,¹ one of the main United States Treasury programs for financially strapped homeowners instituted in response to the mortgage foreclosure crisis stemming from what is commonly referred to as the Great Recession. The Court has no information to indicate that the Creditor's review is not under HAMP. That program contemplates loan modifications for a non-borrower homeowner who occupies the home and obtained rights to the home through a divorce proceeding. *See Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages*, Version 5.1, dated May 26, 2016 ("HAMP Guidelines"). Section 8.8 of the HAMP Guidelines (at page 131), entitled "Consideration of Non-Borrowers Following Death and Divorce," states in pertinent part:

Non-borrowers who inherit or are awarded sole title to a property may be considered for HAMP even if the borrower who previously owned the property was not already in a TPP [trial period plan]. Such titleholders may be considered for HAMP if they meet all applicable eligibility criteria, including submission, on or before December 30, 2016, of an Initial Package (with respect to HAMP Tier 1 or Tier 2) or at least one component of a Loss Mitigation Application (with respect to Streamline HAMP Offers after December 30, 2016). In this case, servicers should collect an Initial Package from the non-borrower who now owns the property and evaluate the request as if he or she was the borrower. The servicer should process the assumption and loan modification contemporaneously if the titleholder is eligible for HAMP and investor guidelines and applicable law permit an assumption of the loan. . . .

This Court's loss mitigation program merely requires creditors holding a mortgage against the principal residence of a debtor to participate in good faith negotiations regarding the possible modification of the loan to terms that are more affordable for a debtor. And, to a degree, the Creditor has, up to this point, participated in such negotiations in good faith. However, its most recent statement that it cannot conduct a final review of Ms. Tamelleo's initial eligibility

¹ HAMP is the acronym for the Home Affordable Modification Program.

for a loan modification simply because she has not assumed the mortgage brings into question whether it is continuing to act in good faith. The Court will give the Creditor the benefit of the doubt and assume that this erroneous position is a result of lack of knowledge of the applicable HAMP guidelines for this type of situation.

At the hearing, counsel for the Creditor also advised the Court that the Creditor had just issued a letter to Ms. Tamelleo denying her the right to assume the mortgage debt because she is a debtor in a chapter 7 case. Such outright denial of consideration for possible loan modification is contrary to the intent of HAMP, as evidenced by the HAMP Guidelines applicable to non-borrower remaining occupants of the home who acquire sole title to the real estate by virtue of a divorce proceeding. Nor has the Creditor provided the Court with any statutory or regulatory grounds authorizing such denial merely because of the pendency of a chapter 7 case.

In short, Ms. Tamelleo may be eligible for a loan modification if she meets the various eligibility criteria, with the assumption of the mortgage debt to be contemporaneous with the loan modification. Accordingly, by December 28, 2016, the Creditor must (1) complete its final review of all the documents submitted by Ms. Tamelleo for consideration of a loan modification; and (2) advise Ms. Tamelleo's counsel of any additional documents it requires, including any documents previously submitted which require, or will require, updating in the next 30 days. A continued status hearing on loss mitigation will be held at 10:00 a.m. on January 4, 2017.

Date: December 16, 2016

By the Court,



Diane Finkle
United States Bankruptcy Judge