

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

DOUGLAS & SHANNA DAVIS

Debtors,
and

FIRST COMMUNITY BANK, N.A.,

Creditor.

In Proceedings
Under Chapter 13

Case No. 03-40699

OPINION

This matter is before the Court on a motion for relief from stay filed by First Community Bank, N.A. ("Bank"). The Bank holds a first mortgage on the debtors' residence and asserts that it is entitled to relief from stay because the mortgage, by its terms, matured prior to the debtors' Chapter 13 filing.

The debtors object, noting that their amended plan proposes to pay the Bank's claim in full over the life of the plan. The debtors assert that under 11 U.S.C. § 1322(c)(2), they are allowed to modify the Bank's rights in this way even though the Bank's mortgage matured and became fully due prior to filing. Accordingly, the debtors maintain that the Bank's motion should be denied.

Section 1322(c)(2) provides an exception to the rule against

modifying a claim secured only by a mortgage on the debtor's principle residence.¹ See 11 U.S.C. § 1322(b)(2). While the statutory language is not a model of clarity with respect to mortgages that matured prior to filing, it is consistently construed as allowing such mortgages to be paid in full through the plan. See, e.g., In re Escue, 184 B.R. 287 (Bankr. M.D. Tenn. 1995); In re Chang, 185 B.R. 50 (Bankr. N.D. Ill. 1995); In re Miller, 191 B.R. 487 (Bankr. S.D. Fla. 1995); In re Haman, 190 B.R. 358 (Bankr. E.D. Mo. 1995); In re Ibarra, 235 B.R. 204 (Bankr. D. Puerto Rico 1999). The Escue court explained as follows:

Subsection (c)(2) appears to contemplate mortgages which mature post-petition, but the Congressional intent of this statute[,] when considered in light of

¹ Section 1322(c)(2) states in pertinent part:

(c) Notwithstanding subsection (b)(2) . . .

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

11 U.S.C. § 1322(c)(2).

the other provisions of Chapter 13 . . . and the overall objectives of bankruptcy, suggest that Congress also intended for debtors to be able to cure defaults on short-term mortgages which mature or balloon prior to the petition date.

184 B.R. at 292.

This Court, upon review of § 1322(c)(2) and the case law interpreting it, agrees with the rule of these cases. Thus, the Court hereby adopts the rationale of the above-cited cases as its own and holds that the debtors in the present case may provide for payment of the Bank's mortgage in full over the life of their plan. The Court, accordingly, finds that the Bank's motion for relief from stay should be denied.²

SEE WRITTEN ORDER.

ENTERED: August 7, 2003

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE

² The debtors have filed an amended plan that proposes to pay the Bank's claim in full over the life of their plan. Any objections the Bank may have to that plan shall be taken up as part of the plan confirmation process.