SO ORDERED.

SIGNED this 23rd day of January, 2015.

Catharine R Aron

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:	)	
	)	
Daniel T. Martin and	)	**Case No. 14-10947**
Delores D. Martin	)	
	)	
	)	
Debtors.	)	
	)	

ORDER GRANTING MOTION FOR RELIEF

THIS MATTER came on for hearing on January 6, 2015, after due and proper notice on Greater Piedmont Credit Union's (the "Creditor") Motion for Relief from Order Confirming Chapter 13 Plan Per FRCP 60(b)(1) and for Amendment of Claim Treatment. Koury Hicks appeared on behalf of Daniel and Delores Martin (the "Debtors"), Franklin Drake appeared on behalf of the Creditor, and Jennifer Harris appeared as Attorney for the Chapter 13 Trustee.

FACTS

On February 13, 2006, the Debtors purchased from the Creditor residential real estate known as 3204 Rockcliffe Road, Whitsett, NC 27377 (the "Property"). At the time of the

purchase, the Property had permanently affixed to it a 1985 mobile home. The Debtors currently reside in the home on the Property. Prior to the Debtors' purchase of the Property, the North Carolina Division of Motor Vehicles (the "NC DMV") title to the mobile home had been canceled to the land, effective May 14, 1999. The Creditor initially financed the Debtors' purchase of the Property and took a note and deed of trust to secure payment. On August 2, 2013, the Debtors refinanced the loan with the Creditor in order to make repairs on the home. The Debtors executed and delivered a "Note and Disclosure Statement" (the "new note") and a new deed of trust to the Creditor in the amount of $59,000 at an interest rate of 6.25%. The Creditor duly filed the deed of trust with the Register of Deeds of Guilford County, NC, on August 9, 2013. The new deed of trust conveyed to the Creditor an interest in the Property "with all privileges and appurtenances thereunto belonging."

Approximately a year after refinancing, the Debtors filed a Chapter 13 petition with this Court on August 15, 2014. On Schedule A - Real Property, they listed the combined value of the land and mobile home at $31,526.76, with a secured claim of $57,858.14. The Notice of Proposed Plan and Order Confirming Plan was sent out on September 30, 2014. Under the terms of the Plan, the Debtors proposed to reduce the amount of Creditor's secured claim as follows: "[t]he real property located at 3204 Rockcliffe Road, Whitsett, NC, is found to have a value not to exceed $25,000.00 and the 1985 mobile home is found to have a value not to exceed $6,526.00." The Debtors proposed to pay the Creditor $640.00 per month at an interest rate of 5.25% such that the debt would be paid over the life of the plan. The Debtors' plan was confirmed without objection on November 4, 2014.

On November 20, 2014, after confirmation and within the claims bar date, the Creditor filed a Proof of Claim evidencing a secured interest in the home and the Property of $57,408.14

at an interest rate of 6.25%. After the Creditor obtained counsel, it amended its claim on December 2, 2014, to reflect cancelation of the mobile home's title to the land prior to the Debtors' purchase of it. On December 4, 2014, thirty days after confirmation of the Debtors' plan, the Creditor filed the Motion for Relief from Order Confirming Chapter 13 Plan Per FRCP 60(b)(1) and for Amendment of Claim Treatment. In its motion, the Creditor argued that the Debtors' confirmed plan vitiates 11 U.S.C. § 1322(b)(2) by "cramming down" its secured claim to the value of the Property and the home. The Creditor asserted that the Debtors' mistake of fact warranted relief under Rule 60(b)(1) of the Federal Rules of Civil Procedure. During the hearing, counsel for the Debtors stated that the plan was proposed under a "good faith belief" that the mobile home was considered personal property. Debtors' counsel admitted that he no longer thinks the home qualifies as personal property and that, given the new facts, he would have submitted a plan that complied with the provisions of § 1322(b)(2).

If the Order Confirming Chapter 13 Plan is binding, the Debtors will be permitted to repay the Creditor $31,526.00 at 5.25% interest. The Creditor will have an unsecured claim of approximately $25,882.00. At this time, the dividend to unsecured creditors is estimated at 0%. Conversely, if the Court finds that the Motion for Relief from Order Confirming Chapter 13 Plan and for Amendment of Claim Treatment is appropriate, then the Debtors will not be permitted to modify the terms of the loan secured by real estate that is the Debtors' principal residence, and the Creditor will be entitled to long-term non-dischargeable debt in the amount of $57,408.14 at 6.25% interest.

DISCUSSION

An order confirming a Chapter 13 plan is treated as a "final judgment." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 268 (2010). Rule 60 of the Federal Rules of Civil

Procedure, incorporated in bankruptcy proceedings by Bankruptcy Rule 9024, provides an "exception to finality." *Gonzalez v. Crosby*, 545 U.S. 524, 529 (2005). Pursuant to Rule 60(b)(1), a party may seek relief from a final judgment, order, or proceeding for "mistake, inadvertence, surprise, or excusable neglect." Rule 60(b)(1) is "the appropriate vehicle for amending an order to correct any inequities resulting from reliance on mistaken facts." *In re Caldwell/VSR, Inc.*, 353 B.R. 130, 136 (Bankr. E.D. Va. 2005). To obtain relief under Rule 60(b)(1), the moving party must show that the underlying motion was filed within one year of the date of entry of the judgment from which relief is sought, that he has a meritorious defense, and that the opposing party will not be unfairly prejudiced by having the judgment set aside. *Park Corp. v. Lexington Ins. Co.*, 812 F.2d 894, 896 (4th Cir. 1987). The party must also show the existence of mistake, inadvertence, surprise, or excusable neglect as a ground for relief. *Id.*

This Court finds that the Creditor has met its burden under Rule 60(b)(1). The motion, filed only thirty days after the Debtors' plan was confirmed, was timely filed within one year of the date of entry of the judgment. The Creditor has a valid meritorious defense in that the Debtors' treatment of its claim in their Chapter 13 plan clearly contravenes § 1322(b)(2). *See In re Beatty*, 2012 WL 3835855, at *1 (Bankr. W.D.N.C. Aug. 29, 2012) (finding creditor's argument that debtors' Chapter 13 plan violated § 1322(b)(2) to be a valid meritorious defense under Rule 60(b)). Section 1322(b)(2) provides, in relevant part, that a Chapter 13 plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence." Since purchasing the Property, the Debtors have used the home as their principal place of residence. Because the NC DMV title to the mobile home had been canceled prior to the Debtors' purchase of the Property, the home cannot be considered personal property, and §1322(b)(2) prohibits the Debtors from "cramming

down" the Creditor's secured claim to the value of the collateral. The Debtors did not produce any evidence indicating they would be prejudiced from having the confirmation order set aside to amend the Creditor's secured status. By granting relief to amend the Creditor's claim, this Court is ensuring that the Creditor's secured claim is treated in accordance with the terms of the new note and deed of trust. Furthermore, by treating the claim as a long-term non-dischargeable debt, the monthly payment to the Creditor will be reduced from $640.00 per month to approximately $432.00 per month.

This Court finds that the Creditor has demonstrated the existence of a mistake for purposes of Rule 60(b)(1). A "mistake" includes "an error, misconception, or misunderstanding." *Black's Law Dictionary* (9th ed. 2009). In the facts before the Court, Debtors' counsel was under the erroneous assumption that the mobile home was personal property such that the real estate and mobile home could be "crammed down." "A mistake exists when a person, under some erroneous conviction of law or fact, does, or omits to do, some act which, but for the erroneous conviction, he would not have done or omitted." *Black's Law Dictionary* (5th ed.1979). Counsel for the Debtors readily admits that if he had known that the mobile home was not personal property, he would have provided plan treatment that complied with § 1322(b)(2).

The present case is factually distinguishable from *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). In *Espinosa*, the creditor waited ten years before filing a motion to set aside the Chapter 13 confirmation order. Here, the Creditor filed its motion thirty days after entry of the order confirming the Chapter 13 plan. Given this very brief lapse in time, the ruling in *Espinosa* does not prevent this Court from granting relief to the Creditor. Chapter 13 plans in this district are confirmed prior to the claims bar date. It is this Court's policy to

confirm plans quickly to facilitate payment to the creditors. This policy can work "only if the confirmation can be reviewed and the order vacated when the claims actually filed alter the assumptions on which the confirmation was granted." *In re Carr*, 318 B.R. 517, 521 (Bankr. W.D. Wis. 2004).

CONCLUSION

Based on the foregoing, it is ORDERED and ADJUDGED that the Creditor's Motion for Relief from Order Confirming Chapter 13 Plan Per FRCP 60(b)(1) and for Amendment of Claim Treatment is hereby GRANTED.

END OF DOCUMENT

SERVICE LIST

Daniel T. Martin
Delores D. Martin
Debtors

John T. Orcutt
Koury Hicks
Attorney for Debtors

Franklin Drake
Attorney for Creditor

Anita Jo Kinlaw Troxler
Trustee

William P. Miller
Bankruptcy Administrator