

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	CHAPTER 13
	:	
THOMAS M. CAIN,	:	
	:	Case No. 18-12631 (BLS)
	:	(Re: Docket No. 101, 103, 115)
Debtors	:	

MEMORANDUM ORDER¹

Before the Court is the Motion to Vacate the Order and Stipulation to Approve Loan Modification² (the “Motion to Vacate”) filed by the JPMorgan Chase Bank, National Association (“JPMorgan”);³ the objection⁴ to the Motion to Vacate (the “Objection”) filed by Thomas M. Cain (the “Debtor); and the JPMorgan’s reply thereto.⁵ The briefing on the matter has been completed and the record, which is largely undisputed, reflects as follows:

1. On June 18, 2001, the Debtor executed and delivered to Chase Manhattan Mortgage Corporation (“Chase”) a promissory note in the amount of \$112,056, plus interest at a fixed rate of 7.75% per annum, to be paid over 30 years. To secure repayment of the Note, the Debtor also executed and delivered to Chase a mortgage dated June 18, 2001, encumbering real property located at 15 East Seagull Lane, Selbyville, DE 19975 (the “Property”).

¹ This Memorandum Order constitutes the Court’s findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure.

² D.I. 101.

³ JPMorgan filed the Motion as “JPMorgan Chase Bank, National Association, as servicer for Wells Fargo Bank, N.A. successor by merger to Wells Fargo Bank Minnesota, N.A. as Trustee for Reperforming Loan REMIC Trust 2002-2.”

⁴ D.I. 103.

⁵ D.I. 115.

2. On November 16, 2018, the Debtor filed a Chapter 13 bankruptcy petition in this Court.

3. Final Confirmation of the Debtor's Second Amended Plan was approved by the Court on November 25, 2019.

4. On February 21, 2022, the Debtor filed the Stipulation and Order to Approve Loan Modification⁶ (the "Stipulation") which provided that the Debtor and the Chapter 13 Trustee stipulated and agreed, *inter alia*, that:

a. On January 12, 2022, the Debtor was offered a loan modification through JPMorgan Chase Bank, N.A., which included the following terms:

- i. Modified Principal Balance: \$136,938.35
- ii. Modified Interest Rate: 3.25%
- iii. Modified Monthly Payment: \$1,154.79

A copy of the written loan modification agreement was attached as Exhibit A to the Stipulation (the "LMA"); and

b. The Debtor would file a motion to modify the Chapter 13 Plan within 14 days of the Court's approval of the Stipulation.

5. On February 22, 2022, the Court signed the Order approving the Stipulation⁷ (the "Approval Order").

6. On March 11, 2022, the Debtor filed the Third Motion to Modify Chapter 13 Plan,⁸ which was approved by Order dated April 5, 2022.⁹ The Third Modified Chapter 13 Plan references the LMA in the treatment of JPMorgan's secured claim.

7. On January 16, 2023 - - approximately nine months after approval of the Third Modified Chapter 13 Plan - - JPMorgan filed the Motion to Vacate.¹⁰

⁶ D.I. 74.

⁷ D.I. 75.

⁸ D.I. 77.

⁹ D.I. 89.

¹⁰ D.I. 101.

8. On February 21, 2023, the Debtor filed his Objection and Countermotion.¹¹

9. On August 22, 2023, JPMorgan filed a Reply in support of the Motion to Vacate and Objection to the Debtor's Countermotion.¹²

10. On August 29, 2023, the Court heard argument on the Motion to Vacate and took the matter under advisement.

THE PARTIES' ARGUMENTS

11. JPMorgan seeks relief pursuant to Federal Rule of Bankruptcy Procedure 9024, which incorporates Federal Rule of Civil Procedure 60, and permits relief from a judgment or order for a "mistake, inadvertence, surprise, or excusable neglect . . . or any other reason that justifies relief."¹³

12. JPMorgan argues that the LMA was unsigned when it was submitted to the Court for approval with the Stipulation. JPMorgan further argues that, after approval, the Debtor improperly executed the LMA by having the same person witness and notarize the document. JPMorgan asserts that its guidelines prevented it from processing the LMA with this "defect," so it promptly asked the Debtor and the Debtor's attorney to correct the LMA, but the Debtor failed to do so. JPMorgan claims it canceled the LMA on April 26, 2022 and argues that the Approval Order should be vacated because the LMA was never an enforceable contract.

13. The Debtor responds that the LMA was offered in writing to the Debtor and was duly accepted when the Debtor executed the signature pages provided by the creditor. The Debtor notes that the underlying Note and Mortgage also were witnessed and notarized by the same person, yet JPMorgan does not challenge the enforceability of those documents. In his

¹¹ D.I. 103.

¹² D.I. 115.

¹³ Fed.R.Civ.P. 60(a).

countermotion, the Debtor seeks enforcement of the LMA and requests damages for any losses incurred by the Debtor from JPMorgan's breach of contract or purported revocation of the LMA.

14. In its Reply, JPMorgan adds that enforcing the LMA would be inequitable since it alleges that the Debtor has not complied with the terms of the LMA by making payments required thereunder. Specifically, JPMorgan claims the Debtor is at least 14 months in arrears and has failed to provide evidence that a recorded homeowners association lien on the Property has been satisfied.

ANALYSIS

15. The record reflects that JPMorgan offered a loan modification to the Debtor in writing in January 2022. The Debtor filed a Stipulation with the Chapter 13 Trustee seeking Court approval of the LMA. After the Court entered the Approval Order, the Debtor accepted the LMA by signing and returning the LMA to JPMorgan.¹⁴ Nothing in the record indicates that the Court's approval of the LMA in February 2022 was predicated upon a mistake or other reason to justify vacating the Approval Order under Fed.R.Bankr.P. 9024.

16. After obtaining Court approval and in reliance of the terms provided for in the LMA, the Debtor filed his Third Modified Chapter 13 Plan, which references the LMA and adjusts amounts owing to JPMorgan. Vacating the Order, therefore, would directly impact the Third Modified Plan which has been in effect for many months. Rule 9024 provides that Fed.R.Civ.P. 60 applies in cases under the Bankruptcy Code *except* that any complaint to revoke an order confirming a plan must be filed in the time allowed by Bankruptcy Code § 1330.

¹⁴ These facts illustrate an offer and acceptance to create a contract. "An offer is any display of willingness to enter into a contract on specified terms." *Eugenia VI Venture Holdings, Ltd. v. MapleWood Holdings LLC (In re AMC Investors, LLC)*, 637 B.R. 43, 62 (Bankr. D. Del. 2022) (citations omitted). "[A]n acceptance 'results when a party expresses his or her intent to accept the offer, by word, sign, writing or act, communicated or delivered to the person making the offer.'" *Id.* The "Signing Instructions" for the LMA contained detailed instructions for the notary public but does not appear to specify any particular requirements for witnessing the signature.

Section 1330 requires such a request to be filed within 180 days after the date of confirmation, and permits revocation only if the order was procured by fraud. JPMorgan's Motion to Vacate was not filed within 180 days of the Order approving the Third Modified Chapter 13 Plan and provides no basis for a finding of fraud.¹⁵

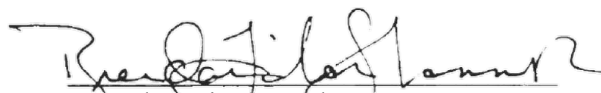
Accordingly, it is hereby:

ORDERED that the JPMorgan's Motion to Vacate is **DENIED**;¹⁶ and it is further,

ORDERED that the Court will hold a status hearing on **October 24, 2023 at 10:00 a.m. (ET)** in Courtroom No. 1, United States Bankruptcy Court, 824 N. Market Street, 6th Floor, Wilmington, DE 19801.

BY THE COURT:

Dated: September 20, 2023
Wilmington, Delaware


Brendan Linehan Shannon
United States Bankruptcy Judge

¹⁵ The Court notes JPMorgan's argument that the Debtor has not complied with the terms of the LMA by failing to make the required payments. However, the creditor's remedy for non-compliance is not vacatur, but rather to seek relief from the automatic stay or dismissal of the case.

¹⁶ The relief granted by this Order is limited to denying the Motion to Vacate. For the avoidance of doubt, no other relief is granted hereby, including any request for damages in the Debtor's Countermotion or relief arising from JPMorgan's allegations of the Debtor's nonpayment.