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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

In Re: :

 ARTHUR JOSEPH STEVENSON : **Case No. 23-32811 KRH**
 : **Chapter 13**
 Debtor. :

_____:

**OBJECTION TO CONFIRMATION
OF CHAPTER 13 PLAN**

Wesbanco Bank, Inc. (“Wesbanco”), by and through counsel, hereby files this Objection to Confirmation (“Objection”) of the Chapter 13 Plan (the “Plan”) proposed by Arthur Joseph Stevenson (the “Debtor”) dated August 17, 2023, and in support thereof states as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction over this Objection pursuant to 28 U.S.C. § 1334(b) and 11 U.S.C. § 1325.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

BACKGROUND

4. Wesbanco Bank, Inc. is a successor in interest to Old Line Bank and The Washington Savings Bank, F.S.B., by merger (“Wesbanco”). Its principal place of business is 1 Bank Plaza, Wheeling, West Virginia 26003.

5. Wesbanco is a secured creditor of Ruby A. Novillo, now deceased¹, and/or her estate, pursuant to mortgage loan with a Note dated September 25, 2003, in the principal amount of \$83,000.00 (the “Note”) and secured by a Deed of Trust recorded among the land records of Westmoreland County, Virginia at Deed book 617, page 701 (the “DOT”), with respect to the real property commonly known as 253 Gordon Road, Kinsale, Virginia 22488 (the “Property”). The mortgage loan obligation is in default. The total amount owed under the mortgage loan as of the petition date of August 17, 2023, is \$56,446.33. The last payment received by Wesbanco was on October 3, 2022, in the amount of \$807.65 (including escrows). A copy of the Note and DOT are attached hereto as **Exhibits A and B**, respectively. A copy of the payoff statement as of the petition date of August 17, 2023, is attached as **Exhibit C**.

6. The Debtor’s bankruptcy schedules identify a secured claim in favor of Wesbanco in the amount of \$52,000.00 and assert that the value of the Property securing Wesbanco’s claim as \$225,000.00.

OBJECTION

7. Wesbanco has no monetary claim, nor any right to assert a monetary claim, against the Debtor, *in personam*. Wesbanco’s rights in this case are limited only to its *in rem* interests in the Property. Wesbanco therefore has not filed, and does not intend to file, a proof of claim in this case.

8. The mortgage loan that the Debtor’s Chapter 13 Plan proposes to cure is a loan between Wesbanco and the Debtor’s deceased mother, Ruby A. Novillo. The Debtor is purportedly an heir of Ruby A. Novillo and asserts as her heir, an interest the Property.

9. The Debtor is not in privity of contract with Wesbanco, nor any of its predecessors in interest.

¹ Upon information and belief Ms. Novillo passed away on October 17, 2022.

10. The mortgage loan secured by the Property is non-assumable without the consent of Wesbanco and any interest of the Debtor in the Property remains subject to the lien granted by Ruby A. Novillo.

11. Under similar facts to the instant case, the United States Bankruptcy Court for the Western District of New York held “the reach of 11 U.S.C. § 1322(b)(2) cannot extend to modification of a secured claim already in place when the debtor equitably or legal acquired the property.” *In re Parks*, 227 B.R. 20, 25 (Bankr. W.D.N.Y. 1998). In so ruling, the Court reasoned as follows:

The mortgage granted by the father in this case was a burden on the land whenever the son acquired it, and any default in the Note and Mortgage is not curable in the son's Chapter 13. Nor may the son here modify this creditor's right to foreclose in the event of a default. The mortgagee's right to foreclose in such event was a right freely accepted by the son when he took ownership subject to that right. *Id.*

12. The Debtor’s Plan in essence seeks a *de facto* assumption of the mortgage loan between Wesbanco and Ruby A, Novillo, which is not permitted by the terms of the DOT without the consent of Wesbanco and Wesbanco has not consented to such assumption.

13. Wesbanco avers that the Debtors’ Chapter 13 Plan is in violation of 11 U.S.C. §§ 1322(b)(2), (3) and (5), 1325(a)(5) as such.

14. Confirmation of the Debtors’ proposed Chapter 13 Plan should therefore be denied.

CONCLUSION

15. For the reasons set forth above, the Debtors’ Chapter 13 Plan does not meet the requirements of 11 U.S.C. §§ 1322(b)(2), (3) and (5), 1325(a)(5).

WHEREFORE, Wesbanco Bank, Inc. respectfully requests that this Court:

A. ORDER that confirmation of Debtors’ proposed Chapter 13 Plan be denied; and

B. ORDER such other and further relief as this Court deems proper.

Respectfully submitted,

McNAMEE, HOSEA, P.A.

/s/ Craig M. Palik

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 14th day of September 2023, a copy of the foregoing Objection to Confirmation of Chapter 13 Plan was served electronically to all registered users via CM/ECF:

James E. Kane
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Debtor's Counsel

and by first class mail, postage prepaid, upon the following:

Carl M. Bates
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Chapter 13 Trustee

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Debtor

/s/ Craig M. Palik

Craig M. Palik, Esq.