## 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	)	

## DEBTOR'S RESPONSE TO OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN

COMES NOW the Debtor, by counsel, and as and for Debtor's Response to Wesbanco Bank, Inc.'s Objection to Confirmation of Chapter 13 Plan ("Objection"), states as follows:

- 1. The allegations contained in Paragraphs 1, 2, 3, 4, 6, and 8 of the Objection are admitted.
- 2. The allegations contained in Paragraphs 7, 9, 10, 12, 13, 14, and 15 of the Objection are denied and the Debtor demands strict proof thereof.
- 3. The Debtor is without sufficient information to admit or deny the allegations contained in Paragraphs 5 and 11 of the Objection and therefore denies the same.
- 4. In further support of the Debtor's opposition to the Objection, the Debtor states as follows:
- a. The U.S. Supreme Court has made it clear that, even though a debtor has no personal liability on a mortgage note, the mortgage company's *in rem* rights against the property constitute a "claim" under 11 U.S.C. § 101(5), which claim can properly be included in a

James E. Kane (VSB #30081) Jason E. Kane (VSB #96448) KANE & PAPA, P.C. 1313 East Cary Street Richmond, VA 23219

Telephone: (804) 225-9500 Facsimile: (804) 225-9598 Email: jkane@kaneandpapa.com

Counsel for Debtor

Case 23-32811-KRH Doc 21 Filed 09/28/23 Entered 09/28/23 12:36:18 Desc Main Page 2 of 3 Document

debtor's Chapter 13 Plan. Johnson v. Home State Bank, 501 U.S. 78, 84; 111 S. Ct. 2150, 2154;

115 L. Ed. 2d 66, 75 (1991).

b. Pursuant to 12 U.S.C. § 1701j-3(d)(5), the Movant is prohibited from exercising

the mortgage's "due on sale clause" simply because the Debtor acquired the Property by virtue

of the death of his mother.

c. The Debtor has filed a Chapter 13 Plan in this case that provides, *inter alia*, the

curing of the default under the Movant's note, which he is permitted to do in accordance with 11

U.S.C. § 1322(b)(3).

WHEREFORE, the Debtor respectfully requests that the Objection to Confirmation of

Chapter 13 Plan be overruled, and for such other relief as the Court deems appropriate.

ARTHUR JOSEPH STEVENSON

By: /s/ James E. Kane

Counsel

James E. Kane (VSB #30081)

Jason E. Kane (VSB #96448)

KANE & PAPA, P.C.

1313 East Cary Street

Richmond, VA 23219

Telephone: (804) 225-9500

Facsimile: (804) 225-9598

Email: <u>ikane@kaneandpapa.com</u>

Counsel for Debtor

2

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 2023, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all parties registered to receive notice thereof.

/s/ James E. Kane

James E. Kane (VSB #30081) Jason E. Kane (VSB #96448) KANE & PAPA, P.C. 1313 East Cary Street Richmond, Virginia 23219

Telephone: (804) 225-9500 Facsimile: (804) 225-9598

Email: jkane@kaneandpapa.com