UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Larry Hurlburt v. Juliet Black

Larry Hurlburt v. Juliet Black, 925 F.3d 154 (4th Cir. 2019) · No. No. 17-2449 · Decided May 24, 2019

SUMMARY

The Fourth Circuit en banc held that 11 U.S.C. § 1322(c)(2) permits Chapter 13 debtors to bifurcate undersecured home mortgage loans that mature before the plan's final payment into secured and unsecured components and "cram down" the unsecured portion, overruling its prior decision in *Witt v. United Cos. Lending Corp. (In re Witt)*, 113 F.3d 508 (4th Cir. 1997). The court reasoned that the plain text of § 1322(c)(2) authorizes modification of claims—not just payment schedules—and that the provision's reference to § 1325(a)(5) confirms Congress intended to allow stripdown of qualifying short-term residential mortgages. This decision aligns the Fourth Circuit with every other circuit that has addressed the issue, reversing the district court's judgment that had relied on *Witt* to bar bifurcation.

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Wynn; GREGORY; WILKINSON; NIEMEYER; MOTZ; KING; AGEE; KEENAN; WYNN; DIAZ; FLOYD; THACKER; HARRIS; RICHARDSON; QUATTLEBAUM
JURISDICTION	Federal
DECIDED	May 24, 2019
DOCKET	No. 17-2449
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of North Carolina at Wilmington, which affirmed the bankruptcy court's denial of confirmation of Hurlburt's Chapter 13 plan.
STANDARD OF REVIEW	De novo review of questions of statutory construction.
PRECEDENTIAL VALUE	published
PARTIES	Larry Albert Hurlburt v. Juliet J. Black

TOPICS

bankruptcy · chapter 13 · statutory interpretation · foreclosure · appellate procedure · standard of review

PRACTICE AREAS

Bankruptcy

QUESTIONS PRESENTED

1. Whether 11 U.S.C. § 1322(c)(2) authorizes modification of a homestead mortgage claim, including bifurcation and cram down, when the last payment on the original payment schedule is due before the final payment under the plan, or only authorizes modification of the payment schedule.

HOLDINGS

1. The plain text of § 1322(c)(2) authorizes modification of such claims, not just the payment schedule, including through bifurcation and cram down.

KEY QUOTATIONS

> *"we now align our circuit with every other court that has considered this issue to hold that the plain text of 11 U.S.C. § 1322(c)(2) authorizes modification of such claims, not just the payment schedule for such claims, including through bifurcation and cram down."* (at 3 (slip op. at 3))

> *"Notwithstanding subsection (b)(2) and applicable nonbankruptcy law . . . 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."* (at 10 (slip op. at 10))

> *"Accordingly, we overrule our decision in Witt."* (at 17 (slip op. at 17))

FACTUAL BACKGROUND

In May 2004, Larry Hurlburt purchased real property from Juliet Black for $136,000, paying $5,000 down and executing a promissory note for $131,000 secured by a deed of trust. The loan had a balloon payment due May 26, 2014. Hurlburt defaulted, and Black initiated foreclosure. Hurlburt filed for Chapter 13 bankruptcy, valuing the property at $40,000. He proposed a plan to bifurcate Black's claim into a secured claim of $41,132.19 and an unsecured claim, and to cram down the unsecured portion. The bankruptcy court denied confirmation based on Witt.

PROCEDURAL HISTORY

The bankruptcy court granted partial summary judgment to Black, holding the deed of trust valid. Hurlburt then proposed a Chapter 13 plan seeking to bifurcate Black's claim into secured and unsecured components and cram down the unsecured portion. The bankruptcy court denied confirmation, holding that under Witt v. United Cos. Lending Corp. (In re Witt), 113 F.3d 508 (4th Cir. 1997), the plan violated § 1322(b)(2). The district court affirmed. A panel of this court affirmed, but the en banc court granted rehearing and reversed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the district court for further proceedings not inconsistent with this opinion.

CASES CITED

- Witt v. United Cos. Lending Corp. (In re Witt), 113 F.3d 508 (4th Cir. 1997)
- Am. Gen. Fin., Inc. v. Paschen (In re Paschen), 296 F.3d 1203 (11th Cir. 2002)
- First Union Mortg. Corp. v. Eubanks (In re Eubanks), 219 B.R. 468 (B.A.P. 6th Cir. 1998)
- Nobelman v. American Savings Bank, 508 U.S. 324 (1993)
- Associates Commercial Corp. v. Rash, 520 U.S. 953 (1997)
- Tidewater Fin. Co. v. Kenney, 531 F.3d 312 (4th Cir. 2008)
- First Nat. Fidelity Corp. v. Perry, 945 F.2d 61 (3d Cir. 1991)
- In re Young, 199 B.R. 643 (Bankr. E.D. Tenn. 1996)
- Minor v. Bostwick Labs., Inc., 669 F.3d 428 (4th Cir. 2012)
- Kennedy v. St. Joseph's Ministries, Inc., 657 F.3d 189 (4th Cir. 2011)
- United States v. Ron Pair Enters., Inc., 489 U.S. 235 (1989)
- In re Price, 562 F.3d 618 (4th Cir. 2009)
- Anderson v. Hancock, 820 F.3d 670 (4th Cir. 2016)
- Litton v. Wachovia Bank (In re Litton), 330 F.3d 636 (4th Cir. 2003)
- In re Sunterra Corp., 361 F.3d 257 (4th Cir. 2004)
- Milner v. Dep't of Navy, 562 U.S. 562 (2011)
- Encino Motorcars, LLC v. Navarro, 138 S. Ct. 1134 (2018)
- Hamilton v. Lanning, 560 U.S. 505 (2010)

CITED IN

- Larry Hurlburt v. Juliet Black, Hurlburt v. Black, 925 F.3d 154, 158 (4th Cir. 2019)