

11 USC §1322(b) (3)
11 USC §541
ORS 312.120(2)
Comity

In re Desrosiers

Case No. 392-33417-H13 HLH

9-1-92

Before the chapter 13 petition was filed, Multnomah County foreclosed on the debtor's real property for failure to pay the property taxes when due. The debtor's plan treated Multnomah County as the holder of a secured claim and proposed to cure the default in the payment of the property taxes over the life of the plan.

The county objected to confirmation on the ground the County was not a creditor and the debtor could only redeem the property by payment in full of the amount due within 2 years of the foreclosure in accordance with ORS 312.120(2).

The court overruled the objection and confirmed the plan on the ground that §1322(b) (3) gives a chapter 13 debtor the right to cure "any" default. The only limit on this right is found, as a logical matter, in §541 which describes property of the estate. In this case, the debtor had an interest in the realty at the time she filed the petition by virtue of her statutory right of redemption. That interest became part of the estate. This fact and the fact that §1322(b) (3) allows a cure of any default, gave the debtor the right to cure the default in the payment of the tax debt by paying the taxes over the life of the plan notwithstanding the state law requirements for redemption.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

Re)
) Case No. 392-33417-H13
ROBERT O. DESROSIERS)
MARY A. DESROSIERS) OPINION
)
Debtor.)

This matter came before the court upon an objection to confirmation of the chapter 13 debtors' proposed plan. The objection was filed on behalf of Multnomah County. The County is represented by Sandra Duffy and the debtors by Willis Anderson, both of Portland, Oregon.

The debtors were the owners of certain real property located in Multnomah County. The debtors contend the property is worth \$52,000. This contention has not been disputed. The debtors failed to pay property taxes totaling about \$8,000 on the property and the County foreclosed on the property before

1 this case was filed. The debtors' redemption period expires on
2 October 1, 1993. See ORS 312.120(2).

3 The debtors' plan proposes to pay the County \$283 monthly
4 plus interest at 16%. At this rate, the past due taxes will be
5 paid in full in about 32 months. The County objects to
6 confirmation on the ground it is not a creditor and that the
7 plan fails to provide for payment in full of the amount due
8 within the two year redemption period.

9 The facts in this case are nearly identical to those that
10 resulted in this court's published opinion in In Re O'Neal, ___
11 B.R. ___ (Bankr. Or. 1992); 1992 Bankr. LEXIS 1007; Bankr. L.
12 Rep. (CCH) P74,719 (July 10, 1992). In O'Neal, unlike this
13 case, the County failed to object to confirmation and the court
14 held that this failure was fatal to the County's case. The
15 court went on to write, however, that even if the County had
16 objected on the basis now asserted by it, the objection would
17 have been overruled. For all the reasons stated in O'Neal,
18 which reasons are incorporated herein by reference, this court
19 overrules the County's objections and will enter an order
20 confirming the debtors' plan.

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22 DATED this _____ day of September, 1992.

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26 _____
27 Henry L. Hess, Jr.
28 Bankruptcy Judge

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cc: Sandra Duffy
Willis Anderson
Robert W. Myers, Trustee