

In Re Maria Theresita H. ALDAN

**BK No. 88-00001
District Court NMI
Bankruptcy Division**

Decided May 13, 1988

**1. Bankruptcy - Reorganization -
Secured Loans**

A debtor is precluded from curing the default on her home loan through a reorganization plan where the loan matured before the filing of her petition for bankruptcy. 11 U.S.C. §1332(b).

1 28, 1988, one day before the foreclosure sale.

2 Debtor's schedules listed, inter alia, a secured debt
3 to Bank of Guam for \$18,787.89. Subsequently, Debtor filed a
4 plan which provided that she would pay Bank of Guam \$350 per
5 month for a period not exceeding 36 months following confirmation
6 of the plan. According to Debtor, this plan would satisfy the
7 principal due to Bank of Guam plus 12% interest, the legal limit.
8 Bank of Guam objected to the plan based on §1322(b)(2).

9 Section 1322(b)(2) provides that a plan for
10 reorganization may not modify the rights of a holder of a secured
11 claim who possesses a security interest in real property that is
12 the debtor's principal residence. Subsection 5 of §1322 provides
13 that notwithstanding subsection 2, a debtor can cure a default on
14 a secured claim in which the last payment on the loan is due
15 after the date on which the final payment under the plan is due.

16 Debtor maintains that her plan does not modify Bank of
17 Guam's rights contrary to the provisions of §1322(b)(2). Rather,
18 Debtor argues that her plan simply allows for her to cure the
19 default as provided in §1322(b)(5). According to Debtor, as long
20 as there has been no foreclosure sale, Debtor is entitled to cure
21 the default within a reasonable time. (Citing In re Glenn, 760
22 F.2d 1428 (6th Cir.), cert. denied, Miller v. First Federal, 474
23 U.S. 849 (1985), and others). As Debtor sees it, the only issue
24 is whether 36 months is a reasonable time to cure the default.

Bank of Guam argues that the cure provision of
§1322(b)(5) does not apply when a debt has reached its maturity

1 date, in the absence of acceleration, prior to the filing of the
2 Chapter 13 petition (citing In re Seidel, 752 F.2d 1382 (9th Cir.
3 1985)). The Bank proposes that the only issue is whether the
4 loan had reached its maturity date prior to the filing of this
5 petition.

6 In 1985, the Ninth Circuit held that §1322(b)(2) "bars
7 a home mortgagor from delaying payment of an already matured
8 debt." In re Seidel, 752 F.2d 1382, 1385 (9th Cir. 1982). The
9 Court concluded that the cure provisions of §1322(b)(5) are not
10 applicable when a debtor is seeking to delay payments on a debt
11 that is already due and payable. Id. at 1386,

12 In 1986, the Court reaffirmed its position in In re
13 Harlan, 783 F.2d 339 (9th Cir. 1986). Citing In re Seidel, the
14 Court held that a debtor could not modify an already matured home
15 mortgage debt.

16 [¶] The law in the Ninth Circuit is clear. Debtor is
17 precluded from curing the default in her home loan that had
18 matured prior to the filing of her petition. The Court sustains
19 the objection of Creditor Bank of Guam.

20 IT IS SO ORDERED.

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22 DATED this 13th day of May, 1988.

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26 Judge Alfred Laureta