



**ORDERED** in the Southern District of Florida on February 25, 2016.

A handwritten signature in black ink, appearing to read "Erik P. Kimball". The signature is written in a cursive style and is positioned above a horizontal line.

Erik P. Kimball, Judge  
United States Bankruptcy Court

---

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

**In re:**

**CASE NO. 14-25315-EPK  
CHAPTER 13**

**ANAMARIA PRADA and  
JORGE ENRIQUE MEJIA,**

**Debtors.**

\_\_\_\_\_ /

**ORDER DENYING MOTION FOR CLARIFICATION**

**THIS MATTER** came before the Court for hearing on January 11, 2015 upon the *Motion for Clarification of Order Granting in Part Debtors' Motion to Compel CitiMortgage, Inc. [DE# 84] and Request for Hearing on Motion to Vacate Order Granting Renewed Motion to Approve Loss Mitigation/Mortgage Modification Agreement [DE#83] [ECF No. 88]* (the "Motion") filed by CitiMortgage, Inc. ("Citi").

On December 3, 2015, this Court entered its *Order Granting in Part Debtors' Motion to Compel CitiMortgage, Inc. [ECF No. 84]* (the "December Order"). The December Order recounts in detail the filing by Anamaria Prada and Jorge Enrique Mejia (the "Debtors") of several documents incorporating the terms of a loan modification with Citi, the hearings on

those documents, and the ample notice provided to Citi of the Debtors' requests for relief. The background contained in the December Order is incorporated here.

The December Order ruled on the *Debtors' Motion to Compel Lender to Comply with Orders (1) Granting Renewed Motion to Approve Loss Mitigation/Mortgage Modification Agreement with Lender (ECF 62) and (2) Sustaining Objection to Notice of Mortgage Payment Change (ECF 78)* [ECF No. 80]. In response to ECF No. 80, Citi had filed its *Combined Response to Debtors' Motion to Compel Lender to Comply with Order Granting Renewed Motion to Approve Loss Mitigation/Mortgage Modification Agreement and Motion to Vacate Order Granting Renewed Motion to Approve Loss Mitigation/Mortgage Modification Agreement* [ECF No. 83] (the "Response").

The December Order required Citi to comply with this Court's *Order Sustaining Debtors' Objection to Notice of Mortgage Payment Change (ECF No. 72)* [ECF No. 78] (the "July Order"), which was entered on July 17, 2015. The July Order, in turn, directed Citi to comply with the previously approved loan modification which also had been incorporated into the Debtors' chapter 13 plan pursuant to a separate motion to modify.

In the present Motion, Citi requests an order clarifying that the December Order does not dispose of a component of Citi's Response requesting that the Court vacate a prior order (Citi also requests a hearing on this request) or, if the Court determines that the December Order denied the motion to vacate aspect of the Response, clarify how Citi can be bound by some but not all terms of a loan modification agreement that Citi argues is internally inconsistent and not severable.

At the hearing on the present Motion, counsel for Citi argued, for the first time, that the Response was in fact a request for relief from this Court's orders that approved the loan modification with (according to Citi) erroneous terms, due to mistake, inadvertence, surprise,

or excusable neglect. *See* Fed. R. Civ. P. 60(b)(1), made applicable to this contested matter by Fed. R. Bankr. P. 9024. Nowhere in the original Response or in the present Motion does Citi present any rationale for such relief or even cite Rule 60(b). Even if the Motion could be considered a request for relief under Rule 60(b)(1), it should be denied.

Rule 60(b)(1) provides, in relevant part, that “the court may relieve a party [from a final judgment or order]. . . for . . . mistake, inadvertence, surprise, or excusable neglect.” Such a motion must be made within a reasonable time but no more than a year after entry of the judgment or order. Fed. R. Civ. P. 60(c)(1). Citi argues that it made calculation errors in the loan modification when it was originally proposed to the Debtors long ago and that this mistake merits relief under Rule 60(b). Even if it is proper to use Rule 60(b) to ameliorate errors in a contract, in light of the Debtors’ filings and the hearings held in this case, Citi did not act within a reasonable time and should not be relieved from the Court’s prior orders.

This Court’s *Order Granting Renewed Motion to Approve Loss Mitigation Agreement with CitiMortgage, Inc. Acct \*9093* [ECF No. 62] was entered on April 15, 2015 and this Court’s *Order Granting Debtors’ Motion to Modify the Chapter 13 Plan* [ECF No. 69] was entered on May 15, 2015. This Court’s July Order (which directed Citi to comply with the Court’s orders entered at ECF Nos. 62 and 69) was entered on July 17, 2015. The Response was filed on November 2, 2015.<sup>1</sup> As detailed in this Court’s December Order, the Debtors filed and noticed for hearing several requests for relief that specifically relied on the terms of the loan modification. Citi received ample notice of the Debtors’ filings and the hearings. Citi did not object or appear at the relevant hearings thereon. Indeed, in Citi’s own filings it

---

<sup>1</sup> Even if applicable to the orders at issue, the Response cannot be considered a motion to alter or amend a judgment pursuant to Fed. R. Bankr. P. 9023, because the Response was filed more than 14 days after entry of the orders.

admits that it noticed the alleged error in the loan modification proposal as early as April or May, 2015. Even if the Court construes the Response as a Rule 60(b)(1) motion, there is simply no reason given for this substantial delay.

In the present Motion, Citi argues that the Court failed to rule on Citi's request in the Response that the Court vacate certain orders. Yet it is obvious from the text of the December Order that the request was denied. There could be no real confusion on this issue and, if there was, the confusion was of Citi's own creation as it improperly combined such a request for relief with its Response.

In the Motion, Citi also asks the Court to clarify how Citi may be bound by, in its own words, some but not all terms of a loan modification that is not severable. The December Order contains the background of this case [ECF No. 84]. In short, Citi and the Debtors attended mediation and reached agreement on a trial loan modification. When the trial period ended, Citi sent the Debtors a proposed permanent loan modification agreement with the same terms as agreed at mediation. The agreed loan modification required the Debtors to make monthly payments in a stated amount based on a fixed interest rate with a stated balloon payment at maturity. It is obvious from the terms of the modification that the regular monthly payments, at the stated interest rate, would not fully amortize the outstanding principal balance to the point where the principal amount owing on the maturity date would equal the stated balloon payment. Although the agreement provides that there is no present principal forgiveness, the only reasonable way to interpret the agreement as negotiated is that if the Debtors complete all monthly payments through the maturity date, there will be a principal reduction at that time and the loan may be paid off at the stated balloon amount. If the Debtors default and fail to make all required monthly payments, then they will owe the full principal amount as provided in the agreement, plus interest and other costs.

Citi argues that Paragraph K of the loan modification agreement requires the Debtors to execute a completely different agreement that, in Citi's view, represents what Citi thought they were proposing. Paragraph K is a standard provision requiring the Debtors to execute amendments to the loan modification document to "correct the terms and conditions" of the agreement "if an error is detected after execution." Such an error, however, refers to an error in the documentation of the parties' agreement. Yet Citi concedes that the loan modification agreement, drafted by Citi itself based on its own proposal at mediation and after months of receiving payments under a trial modification, incorporates the exact terms agreed to at mediation. There is no error to be corrected under Paragraph K. Other than the discomfort of having to accept payments under its own proposal, there is no reason Citi cannot comply with the loan modification as ordered by this Court multiple times.

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that the Motion [ECF No. 88] is DENIED.

###

Copies furnished to:  
Stefan Beuge, Esq.

*Stefan Beuge, Esq., is directed to serve a copy of this order on all appropriate parties and file a certificate of service.*