

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
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MAY 03 2002  
ERENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (3)

IN RE:

Barry Eugene Cook and  
Dianne Russell Cook,

Debtors.

C/A No. 02-00806-W

ORDER

Chapter 13

ENTERED  
MAY 03 2002  
KLD

THIS MATTER comes before the Court upon the Continued Confirmation Hearing of Barry Eugene Cook and Dianne Russell Cook's ("Debtors") Chapter 13 Plan and Chase Manhattan Bank's ("Chase") Objection to Confirmation. In their Plan, Debtors attempt to strip off the second mortgage encumbering their residence, and they argue that strip off is merited because the value of the first mortgage lien, which the parties stipulate is \$169,000.00, is more than the value of their residence, which Debtors claim is \$157,000.00. Chase disputes the valuation of the residence and argues that its value is \$175,000.00; as a result, the second mortgage is undersecured but not unsecured. Relying on 11 U.S.C. §1322(b)(2), Chase asserts that, because the mortgage is partially secured, Debtors may not strip off this lien.

The evidence indicates disagreement among the parties regarding the value of Debtors' residence. According to Mr. Cook, the residence is worth \$157,000.00.<sup>1</sup> He describes the residence as being in good condition, but he notes some problems with the residence that need to be repaired. Mr. Cook acknowledges that, in 1999, Debtors refinanced their residence, and, at that time, the residence's value was appraised to be \$180,000.00. In addition, Mr. Cook

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<sup>1</sup> Debtors assert that they have an appraisal to substantiate their belief that the residence's value is \$157,000.00; however, at the hearing, no appraiser was present. Because there was no expert to introduce the appraisal, the appraisal was not admitted into evidence.

acknowledges that, during the first meeting of creditors, he represented to the Chapter 13 Trustee that the residence's value was \$200,000.00. In contrast, Chase relies on the appraisal completed by William G. Turner, Jr. as well as Mr. Turner's testimony to conclude that the residence's value is \$175,000.00. To reach this value, Mr. Turner compared Debtors' residence to other homes in the area that have sold within the last year that have features similar to Debtors', including square footage, a scenic view, and approximately two to five acres of land in addition to the physical residence.

The Court finds that the evidence presented at the Confirmation Hearing on Debtor's Chapter 13 Plan reflects that Debtors' residence is worth more than the stipulated amount of the first mortgage on the property; therefore, the second mortgage held by Chase is not modifiable as Chase is entitled to the protection of §1322(b)(2). This Court has previously ruled,

If the junior mortgagee's claim is found to be wholly unsecured, then there is no claim secured by the debtor's principal residence. Thus, the protections of §1322 do not apply and the inquiry ends. However if, a valuation of the claim indicates that the junior mortgagee is secured by the real property in any amount, then the creditor's interest in the estate's interest in the real property is more than zero, and the claim is secured to some extent by the real property. Consequently, . . . §1322 and Nobelman apply, and bifurcation and modification of the claim is prohibited.

In re Meade, C/A No. 95-73378 slip op. 2-3 (Bankr. D. S.C. Oct. 4, 1995) (citations omitted).

Recently, several Circuits of the Court of Appeals have addressed the issue of lien modification in the Chapter 13 context, and these cases include language indicating that an undersecured lien on a residence may not be stripped off or otherwise modified. See Lane v. Western Interstate Bancorp (In re Lane), 280 F.3d 663, 669 (6th Cir. 2002) ("If a claimants lien on the debtor's homestead has a positive value, no matter how small in relation to the total claim, the claimant

holds a 'secured claim' and the claimant's contractual rights under the loan documents are not subject to modification by the Chapter 13 plan."); Pond v. Farm Specialist Realty (In re Pond), 252 F.3d 122, 126 (2d Cir. 2001) ("We conclude . . . that the antimodification exception of Section 1322(b)(2) protects a creditor's rights in a mortgage lien only where the debtor's residence retains enough value -- after accounting for other encumbrances that have priority over the lien -- so that the lien is at least partially secured under Section 506(a."); Tanner v. FirstPlus Financial, Inc. (In re Tanner), 217 F.3d 1357, 1359 (11th Cir. 2000) (describing the majority approach as viewing §1322(b)(2)'s antimodification provision as protecting only undersecured, not wholly unsecured, homestead lenders and adopting this reasoning). It is, therefore,

**ORDERED** that the Objection to the Chapter 13 confirmation filed by Chase is sustained.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
May 3, 2002.

  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States  
Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

MAY 3 2002

Kelchner for CR  
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE via BNC

VANNA L. DANIEL

Deputy Clerk