

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

William Jenkins Wright and Gwendolyn
Thompson Wright
Debtor.

C/A No. 01-2305-W

ORDER
Chapter 13

FILED
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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
ENTERED
JUN 14 2001
V. L. D.

THIS MATTER comes before the Court upon the Objection to Confirmation (the "Objection") filed by Stoneburner Properties on March 30, 2001. The Objection is based on the ground that the valuation provided for in Debtor's Proposed Chapter 13 Plan is not proper. Thus, the issue before the Court is the proper value of the Debtors' residence. As this Court has previously held in In re Meade, C/A No. 95-73378-W (Bankr. D.S.C. 1995):

Before looking to the applicability of §1322, the status of the junior mortgagee's claim must be determined pursuant to §506. 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, as the parties stipulated, §1322 and Nobelman apply, and bifurcation and modification of the claim is prohibited.

Id. (citations omitted); see also In re Jones, C/A No. 97-05001-D (Bankr. D.S.C. 1/30/1998).

Thus, if the value of Debtors' home in this case exceeds the amount of the first mortgage, which was stipulated to be in the amount of \$52,926.28, as reflected in the Proof of Claim filed by Superior Bank FSB on April 20, 2001; then the second mortgage, would not be deemed to be wholly unsecured; and thus would be entitled to the protection of §1322(b)(2).

In this case, Mrs. Wright testified that, in her opinion, the house, which is in a state of disrepair, has a value between \$40,000.00 and \$45,000.00. Furthermore, as reflected in the Settlement Statement of the U.S. Department of Housing & Urban Development, Debtors purchased the house at issue in 1999 for \$65,000.00.¹ 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 Stoneburner Properties is hereby not avoidable and the creditor is entitled to the protection of §1322 (b)(2). It is therefore.

ORDERED that the Objection to the Chapter 13 confirmation filed by Stoneburner Properties is hereby sustained.

AND IT IS SO ORDERED.

Columbia, South Carolina,
June 12, 2001.


UNITED STATES BANKRUPTCY JUDGE

¹ The objecting party tried to introduce into evidence a Uniform Residential Appraisal Report reflecting the appraisal of the subject residence as of May 24, 1999; however, the Court sustains Debtor's objection on this ground that such document in itself is hearsay evidence which is not admissible absent testimony of the appraiser himself or herself.

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:

JUN 14 2001

Stoneburner via BNC
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE jgmt indiv

VANNA L. DANIEL

Deputy Clerk