

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Pamela L. Utsey,

Debtor.

C/A No. 02-08676-W

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court denies confirmation of the Plan filed on July 24, 2002. Any amended plan must be filed within ten days of the entry of this Order.

Columbia, South Carolina,
October 4, 2002.


UNITED STATES BANKRUPTCY JUDGE

ENTERED
OCT 04 2002
J.G.S.

FILED
OCT 04 2002
BRANDI K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (13)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
OCT 04 2002
BANKRUPTCY CLERK
United States Bankruptcy Court
Columbia, South Carolina (10)

IN RE:

Pamela L. Utsey,

Debtor.

C/A No. 02-08676-W

ORDER

Chapter 13

THIS MATTER comes before the Court upon the Confirmation Hearing of Pamela L. Utsey's ("Debtor") Chapter 13 Plan and South Carolina Federal Credit Union's ("SCF") Objection to Confirmation. In her Plan, Debtor attempts to strip off the second mortgage encumbering her residence, and she argues that the strip off is merited because the value of the first mortgage lien, which the parties stipulate is \$76,628.00, is more than the value of her residence, which Debtor claims is \$65,000.00. SCF disputes the valuation of the residence and argues that its value is \$110,000.00; as a result, the second mortgage is either fully secured or undersecured but not unsecured. Relying on 11 U.S.C. §1322(b)(2), SCF asserts that, because the mortgage is at least partially secured, Debtor may not strip off this lien.¹

To support their positions regarding the value of Debtor's residence, the parties rely upon the stipulated submission into evidence of two written appraisals. Debtor submits an appraisal completed by Ryan S. Raley that values the residence at \$65,000.00 as of September 27, 2002. SCF submits an appraisal completed by Joe D. Hunter that values the residence at \$110,000.00 as of June 21, 2001. Neither appraiser appeared before the Court to offer testimony to explain or support their respective opinions of value. Furthermore, Debtor did not testify regarding the

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Further references to the Bankruptcy Code shall be by section number only.

current condition of the residence or if any events occurred that would effect a change in value since Debtor acquired the residence at a foreclosure sale by the Veterans Administration on March 16, 2001 for a bid of \$68,500.00.

Initially, the Court notes the difficulty in evaluating written appraisals that present such a significant range of difference in values, \$65,000.00 and \$110,000.00, without the supporting testimony from the appraisers or Debtor. However, the Court identifies the following factors as a basis for its decision in this case. First, although Debtor's appraisal is more recent than SCF's appraisal, which was apparently made in connection with the loan made to Debtor in 2001, the comparable sales used in Debtor's appraisal were located between 5 and 11 miles from Debtor's residence, while two of the three comparables used in SCF's appraisal were located within 1.5 miles of Debtor's residence. Secondly, SCF's appraisal indicates that since Debtor purchased the residence in March of 2001, remodeling was done, which increased the value of the residence. However, Debtor did not present further evidence or testimony to explain the apparent decrease in value between 2001 to the date of the recent appraisal. For those reasons, the Court finds the Johnson appraisal more persuasive.

Weighing the evidence before the Court and recognizing that it is Debtor's burden of proof to establish value for purpose of stripping off the second mortgage, In re Brown, 244 B.R. 603, 611 (Bankr. W.D. Va. 2000), and Debtor's burden to meet the requirements of §1325, In re Johnson, C/A No. 99-10986-W slip op. (Bankr. D. S.C. Mar. 20, 2000), the Court finds that Debtor's residence is worth more than the stipulated amount of the first mortgage on the property; therefore, the second mortgage held by SCF is not modifiable as SCF 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); see also In re Cook, C/A No. 02-00806-W slip op. (Bankr. D. S.C. May 3, 2002). It is therefore,

ORDERED, that the Objection to the Debtor's Chapter 13 Plan filed by SCF is sustained. Any amended plan must be filed within ten days of entry of this Order.

AND IT IS SO ORDERED.

Columbia, South Carolina,
October 4, 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:

re judgment

OCT 4 2002

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DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH

Deputy Clerk

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