

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

O'clock P. min. M.

IN RE:

C/A No. 05-10574-JW

NOV 18 2005

Johnny Walter Chavis, Jr. and
Selena Joy Chavis,

ENTERED

Chapter 13

Debtors.

NOV 18 2005

ORDER

United States Bankruptcy Court
Columbia, South Carolina (11)

K. E. P.

This matter comes before the Court upon the confirmation of the Chapter 13 Plan filed by Johnny Walter Chavis, Jr. and Selena Joy Chavis (collectively hereinafter referred to as "Debtors") and American General Finance's ("Creditor") Objection to Motion to Set Value of Collateral ("Objection to Valuation"). Creditor holds a second mortgage on real property that serves as Debtors' residence.¹ The second mortgage secures payment on a claim with a remaining balance of \$17,948.00. In their motion to value and plan, Debtors assert that the \$59,342.00 first mortgage on their real property exceeds the property's market value. Therefore, Debtors, in reliance on 11 U.S.C. § 1322(b)(2), conclude that they are entitled to strip off Creditor's mortgage and treat the indebtedness thereunder as unsecured. Creditor contends otherwise by asserting that the value of Debtors' residence is greater than the balance due on the first mortgage; and therefore, Debtors are not entitled to strip off the second mortgage.

The Court notes that neither Debtors nor Creditor presented an appraiser or other third party expert as a witness in order to offer testimony to explain or support their asserted valuations of Debtors' property. Creditor relies upon the appraisal of the property that Debtors attached and incorporated into their Schedule A. The appraisal was

¹

The street address of Debtors' residence is 148 Delane Street, Lexington, South Carolina, 29072.

dated November 1, 2004, and made in connection with the Creditor's loan. Debtors acknowledged that the attached appraisal valued their residence at \$85,000.00.

To support the motion to value and plan, Debtors referenced the values provided by certain tax assessments² attached to Schedule A that valued Debtors' residence at \$47,500.00.³ Furthermore, Ms. Chavis testified that Debtors' residence had decreased in value to approximately \$43,000.00 because of water damage to Debtors' mobile home caused by a ruptured water heater pipe. According to Ms. Chavis, the extent of the water damage requires replacement of the kitchen floor, carpet and certain walls of sheet rock in the mobile home, and additionally, the mobile home's roof needs replacement within the next two years. Furthermore, the mobile home needs to be "re-settled" because the foundation has shifted over time. In addition to the problems associated with the mobile home, Ms. Chavis also testified that an increase in the crime rate of the neighborhood contributed to the decrease in the value of Debtors' residence.

On cross-examination, however, Ms. Chavis did not demonstrate the water damage through pictures or other means nor provide estimates and invoices describing the costs of the repairs that the mobile home required. Furthermore, she did not sufficiently quantify how the decline in the neighborhood decreased the value of Debtors' residence.

It appears that the November 1, 2004 appraisal is credible evidence indicating the value of Debtors' residence. The November 1, 2004 appraisal is the product of a third

² The Court notes that neither the appraisal nor the tax assessments were submitted into evidence by the parties. However, because the appraisal and tax assessments were attached to Schedule A, and acknowledged by the parties at the hearing, the documents are deemed admitted, and thus, are considered a part of the evidentiary record for this matter.

³ The \$47,500.00 tax valuation is comprised of a \$16,000.00 value assessed to Debtors' land and \$31,500.00 value assessed to Debtors' mobile home.

party that is not affiliated with either the Debtors or Creditor. Furthermore, the appraisal lists comparable properties that are worth approximately \$84,000.00 or more. The appraisal also notes that the area where Debtors' residence is located has "experienced high demand and marketability should be good." On the other hand, the tax assessments that Debtors rely upon do not provide detailed consideration of the relevant factors examined in the November 1, 2004 appraisal. Therefore, the tax assessments do not appear to provide a sufficiently detailed analysis of relevant factors affecting market value. See In re Faust, C/A No. 05-01958-jw, slip op. at 5 (Bankr. D.S.C. Aug. 1, 2005) ("Debtors must make a sufficient good faith effort to determine current market value by considering such factors as recent neighborhood sales, prior offers made to the debtors by potential purchasers, the purchase price paid by debtors, *prior appraisals* or other valuation information.") (emphasis added).

In order to strip off Creditor's lien, Debtors are required to demonstrate that the value of their residence decreased from the \$85,000.00 appraised value to less than \$59,342.00 within a period of approximately one (1) year. Accordingly, Debtors must demonstrate a decrease in their residence's value that is greater than \$25,648.00. However, in light of the evidence presented, Debtors have failed to quantitatively show that the problems associated with their mobile home and neighborhood equate to such a large decrease in value.

Therefore, in light of the evidence presented, Debtors have not met their burden to prove that the value of their residence is less than the balance of the first mortgage encumbering it. See In re Utsey, C/A No. 02-8676, slip op. at 3 (Bankr. D.S.C. Oct. 4,

2002) (requiring evidence or testimony to explain an apparent decrease in value between a current appraisal and an appraisal done a year earlier).

Weighing the evidence before the Court and recognizing that it is Debtors' burden of proof to (1) establish value for purposes of stripping off Creditor's mortgage and (2) meet the requirements of confirmation pursuant to 11 U.S.C. § 1325, In re Jurisin, C/A No. 05-06215-JW, slip op. at 3 (Bankr. D.S.C. Aug. 25, 2005), the Court finds that Debtors' home is worth more than the balance of the first mortgage encumbering it. Therefore, Creditor's Objection to Valuation is sustained, and a separate order addressing confirmation of the plan shall be entered by the Court.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
November 18, 2005