

FILED

at \_\_\_\_\_ O'clock & \_\_\_\_\_ min. \_\_\_\_\_ M

JAN 20 2006

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court  
Columbia, South Carolina (30)

ENTERED

JAN 20 2006

D.L.L.

In re:

Robert Suminski and  
Margaret Delaney Suminski,

Debtors.

Robert Suminski and  
Margaret Delaney Suminski,

Plaintiffs,

v.

Mortgage Lenders Network USA, Inc.

Defendant.

C/A No. 05-05360-jw

Adv. Pro. No. 05-80184-jw

Chapter 13

**JUDGMENT**

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the relief sought by Robert Suminski and Margaret Delaney Suminski in their adversary complaint is denied. Therefore, judgment is rendered in favor of Mortgage Lenders Network, USA Inc.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
January 20, 2006.

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Chapter 13

**ORDER**

This matter comes before the Court upon an adversary proceeding in which Robert Suminski and Margaret Delaney Suminski ("Debtors") object to the mortgage claim of Mortgage Lenders Network USA, Inc. ("MLN"). The critical issue for the Court's determination is whether a judgment obtained by MLN against Debtors for breach of contract in a prior state court action effectively reduced MLN's mortgage claim from One Hundred Thirty-eight Thousand Two Hundred Fifty-eight and 22/100 Dollars (\$138,258.22) to Nine Thousand Three Hundred Thirty and 79/100 Dollars (\$9,330.79).

Debtors contend that the state court judgment reduced MLN's mortgage claim to the judgment amount and that the doctrine of collateral estoppel prevents MLN from maintaining the full amount of its outstanding mortgage claim against Debtors. For the reasons articulated below, this Court disagrees.

In light of the parties' arguments and submissions, the Court makes the following findings of fact and conclusions of law.<sup>1</sup>

### **FINDINGS OF FACT**

1. This is an adversary proceeding brought by Debtors against MLN, a creditor of the estate, to determine the amount of MLN's secured claim pursuant to §§11 U.S.C. 502(a) and (b) and 506(a) of the Bankruptcy Code.
2. This court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§157, 1334, 2201, 2202, and Fed. R. Civ. P. 57. This is a core proceeding arising under Title 11 of the United States Code.
3. Debtors are residents of Anderson County, South Carolina. They are joint debtors in the above-captioned Chapter 13 case.
4. MLN holds a secured claim on Debtors' principal residence, which consists of a 4.12 acre lot with an affixed manufactured home located at 195 T. C. Bannister Road, Belton, South Carolina (the "property"). MLN's secured claim is evidenced by a note and mortgage, each of which is dated May 10, 2000.
5. MLN services Debtors' mortgage loan for the current holder, Bank One, National Association.
6. On May 10, 2000, MLN made a loan to Debtors in the original principal amount of Ninety-two Thousand Eight Hundred and no/100 Dollars (\$92,800.00) to enable Debtors to refinance their principal residence. Debtors executed a note, which was secured by a mortgage on Debtors' principal residence in favor of MLN. Thus, MLN has a secured claim on Debtors' residence.

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<sup>1</sup> To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

7. In March 2002, Debtors filed suit against MLN in the Anderson County Court of Common Pleas (C.A. No. 2002-CP-04-868).

8. From October 26, 2004 through October 28, 2004, a jury trial was held in the Court of Common Pleas for Anderson County.

9. Prior to the trial of the state court case, MLN moved to amend its pleadings to include counterclaims for foreclosure and breach of contract and to stay MLN's foreclosure claim until after the legal issues were determined by the jury. Debtors' counsel indicated his consent to MLN's motion on the record. The trial court granted MLN's motion

10. On October 29, 2004, a verdict was entered in favor of MLN on Debtors' Complaint. Moreover, the jury awarded MLN the amount of Nine Thousand Three Hundred Thirty and 79/100 Dollars (\$9,330.79) on MLN's counterclaim for breach of contract against Plaintiffs.

11. MLN, as a secured creditor, has filed a proof of claim in the amount of One Hundred Thirty-eight Thousand Two Hundred Fifty-eight and 22/100 Dollars (\$138,258.22).

### **CONCLUSIONS OF LAW**

The preclusive effect of a state court judgment in federal court depends upon state law. See Levine v. McLeskey, 164 F.3d 210, 213 (4<sup>th</sup> Cir. 1998) (noting that district court properly utilized Virginia collateral estoppel law to determine preclusive effect of Virginia judgment in federal court). See also In re Swilley, 295 B.R. 839, 846 (Bankr. D.S.C. 2003) (noting that the bankruptcy court typically looks to a forum state's laws to

make a determination on collateral estoppel and that federal law on collateral estoppel is applicable where the judgment at issue was rendered in federal court).

In South Carolina, “[t]he party asserting collateral estoppel must show that the issue was actually litigated and directly determined in the prior action and that the matter or fact directly in issue was necessary to support the first judgment.” Carrigg v. Cannon, 347 S.C. 75, 80, 552 S.E.2d 767, 770 (Ct. App. 2001). Based upon the evidence presented at trial, this Court finds that Debtors, as the party asserting collateral estoppel, have failed to demonstrate that the reduction of MLN’s claim was actually litigated and directly determined in the state court litigation. Furthermore, Debtors also failed to demonstrate that the reduction of MLN’s claim was a necessary finding to support a judgment for MLN on its breach of contract action.

Under South Carolina law, “[i]n a breach of contract action, damages serve to place the non-breaching party in the position he would have enjoyed had the contract been performed.” Collins Entertainment, Inc. v. White, 363 S.C. 546, 559, 611 S.E.2d 262, 268-69 (Ct. App. 2005). In light of the purpose of breach of contract damages, as expressed by the South Carolina Court of Appeals, the Court finds that the liquidation of MLN’s mortgage claim to \$9,330.79 does not place MLN in the position it would have enjoyed had Debtor’s performed their obligations under MLN’s note and mortgage.

The Court further finds that Debtors’ Exhibit 2 and the deposition testimony of a juror involved in the state court proceeding indicate that the state court judgment was intended to award MLN certain ancillary damages associated with the collection of its claim (in this case attorney’s fees and costs for \$6,710.50 and a recoverable balance of \$2,620.29), rather than determine the full amount due and owing under MLN’s note and

mortgage. Such evidence severely undermines Debtors' case and supports MLN's response to Debtors' objection to claim. Therefore, the Court finds for MLN in this adversary proceeding. Furthermore, since the Court concludes that the state court judgment did not decrease MLN's mortgage claim to \$9,330.79, Debtors' assertion of intentional interference with contractual relations and intentional interference with prospective contractual relations is without evidentiary support; and thus, the Court also rules for MLN on those issues.

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
January 20, 2006.