

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

FILED
U.S. BANKRUPTCY COURT
WESTERN DISTRICT OF N C

In Re:

JAMES THOMAS VANDERHALL,
VALERIE DOUGLAS VANDERHALL,

Debtors.

Case No. 91-32340
Chapter 13

APR 01 1992

J. BARON GROSHON
By:
Deputy Clerk

JUDGEMENT ENTERED ON APR 01 1992

ORDER DETERMINING SECURED STATUS

This matter is before the court on the debtor's Motion to Determine Secured Status of Union Mortgage in this Chapter 13 petition. The determination hinges on one issue - the viability of "lien stripping" as a method to void a creditor's lien to the extent that the amount of the claim secured by the lien exceeds the value of the collateral pursuant to § 506(d) of the Bankruptcy Code. After a review of the record and the appropriate case law the court concludes that the claim of Union Mortgage may not be stripped pursuant to § 506(d) of the Bankruptcy Code.

BACKGROUND

The debtors filed their Chapter 13 bankruptcy petition on November 8, 1991. The debtors' residence is encumbered by two mortgages: First Union Mortgage holds a first lien for \$39,000.00; and, Union Mortgage holds a second lien for \$28,979.00.¹ The evidence presented at the hearing indicated that the fair market value of the residence is approximately \$59,000.00. The current Mecklenburg County tax value of the home

¹ The Motion to Determine Secured Status now before the court indicates that the exact amount of the claims may be slightly different and the correct amounts should be taken from the Proofs of Claims.

is \$55,000.00. The court finds the value of the residence to be equal to \$59,000.00. The debtors' motion seeks to determine the secured status of the claim of Union Mortgage.

DISCUSSION

The issue of "lien stripping" has been addressed by this court and others with varying results, and has recently been dealt with by the United States Supreme Court in Dewsnup v. Timm, 502 U.S. ___, 112 S.Ct. 773, 116 L.E.2d 903 (1992).

Lien stripping was accomplished primarily through two Code provisions, § 506(a) which divided claims into secured and unsecured portions based on the value of the collateral and § 506(d) which then potentially voided the lien to the extent the claim was unsecured. Under § 506(a) a creditor who has an allowed claim, has a "secured claim to the extent of the value of such creditor's interest in the estate's interest in [the] property." 11 U.S.C. § 506(a). Under § 506(d) a claim which is "not an allowed secured claim," may be voided. Id. at § 506(d). The phrase "not an allowed secured claim" has been interpreted to constitute the undersecured portion of a secured claim and thus, that portion which may be voided. Franklin v. Union Mortgage Co., (In re Franklin), 126 Bankr. 702, 707 (Bankr. N.D. Mass. 1991).

The issue is complicated further in a Chapter 13 case when the lien is against the debtors' principal residence. Section 1322(b)(2) prohibits the "modification" of a secured claim which is secured by the debtors' principal residence; such prohibition

could preclude any lien stripping of a lien on the debtors' residence. This is the situation before the court.

This district recently adopted a practice which allowed lien stripping, even on a lien against the debtors' residence provided that there was no "modification" of the payment if any part of the claim was secured; however, the unsecured portion was paid in accordance with other unsecured claims. In re Green, 91-31128 (Bankr. W.D.N.C. 1991) (Hodges, J.). In light of the Dewsnup opinion, this practice will have to be reversed to prohibit lien stripping.

In Dewsnup, the Chapter 7 debtor attempted to void a lien against the debtor's property to the extent that the lien exceeded the value of the property - i.e. was "not an allowed secured claim." The Court concluded that the term "allowed secured claim" in § 506(d) does not necessarily refer to the classification in § 506(a) of an "allowed claim" that is "secured" to the extent of the value of the collateral. Consequently, § 506(d) does not authorize the debtor to "strip down" a lien, albeit unsecured, that is allowed in its entirety under § 502. Dewsnup, 116 L.E.2d 903, 911. The Court acknowledged that another reading of the two subsections, which would permit lien stripping of undersecured liens was possible; however, the Court stressed that Congress did not intend to alter the "pre-Code rule that liens pass through bankruptcy unaffected." Id.

There are several procedural and factual differences in Dewsnup and the case at hand; however, the Supreme Court's

holding was not limited to the particular facts of that case nor to a Chapter 7:

Therefore, we hold that § 506(d) does not allow [the debtors] to "strip down" [the secured creditors'] lien, because [the secured creditors'] claim is secured by a lien and has been fully allowed pursuant to § 502.

116 L.E.2d 903, 911. That holding, applied to this case, requires the conclusion that the lien of Union Mortgage may not be stripped down pursuant to § 506(d). The consequences of this holding are threefold:

- 1) Pursuant to § 506(a) the claims are classified as follows:
 - a) First Union Mortgage holds a secured claim for \$39,000.00.
 - b) Union Mortgage holds a secured claim for \$20,000.00 and an unsecured claim for \$8,979.00.
- 2) Pursuant to § 506(d):
 - a) The unsecured portion of Union Mortgage's claim may not be voided.
- 3) Pursuant to § 1322(b)(2):
 - a) Neither the secured nor undersecured portions of the claims of First Union Mortgage or Union Mortgage may be modified.

Trying to reconcile §§ 1322(b)(2), 506(a) and 506(d) is somewhat more complicated after Dewsnup. The effect of the holding is that even though the claim of Union Mortgage is classified by § 506(a) as partially unsecured, the treatment of such claim may not be modified as dictated by § 1322(b)(2). Section 1322(b)(2) refers to modification of secured claims; Union Mortgage's entire claim is secured, a portion of it, however, is

undersecured and not voidable. The entire lien of Union Mortgage will survive bankruptcy and the payment of that claim, whether secured or unsecured, may not be modified.

It is therefore ORDERED that:

- 1) First Union Mortgage Company holds a secured claim for \$39,000.00;
- 2) Union Mortgage holds a secured claim for \$20,000.00 and an unsecured claim for \$8,979.00; and

This the ____ day of March, 1992.

George R. Hodges
United States Bankruptcy Judge