UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division

In re TANYA M. ROLLINS,	)	Case No. 05-65013-LYN
	)	
Debtor.	)	
	)	

ORDER

For the reasons stated in the accompanying memorandum the objection of Vanderbilt Mortgage and Finance, Inc., to the confirmation of the Debtor's chapter 13 plan is sustained.

Upon entry of this Order the Clerk shall forward a copy to Richard C. Maxwell, Esq., counsel for Vanderbilt Mortgage and Finance, Inc., and Douglas E. Little, counsel for the debtor.

Entered on this 8th day of November, 2006.

William E. Anderson
United States Bankruptcy Judge

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MEMORANDUM

This matter comes before the court on an objection by Vanderbilt Mortgage and Finance, Inc., ("Vanderbilt") to the confirmation of the modified chapter 13 plan of Tanya M. Rollins ("the Debtor").

This Court has jurisdiction over this matter. 28 U.S.C. § 1334(a) & 157(a). This proceeding is a core proceeding. 28 U.S.C. § 157(b)(2)(A)&(B). This Court may enter a final order. This memorandum shall constitute the Court's findings of fact and conclusions of law as required by Fed. R. Civ. P. 52, which is made applicable in this proceeding by Fed. R. Bankr. P. 7052.

Facts

On June 26, 1998, the Debtor and Malcolm L. Johnson entered into a Retail Installment Contract - Security Agreement with Vanderbilt to facilitate the purchase of a 1998 Clayton

Mobile Home, Serial Number CLM070142TN ("the Mobile Home"). Payment of the obligation was secured by (1) a Deed of Trust on approximately 1.6 acres of land ("the Land") on Route 759 in Louisa County and (2) a lien on the Mobile Home.

The Mobile Home was set up on the Land. The Debtor and four of her children and a grandchild reside in the Mobile Home. When the Mobile Home was delivered the wheels and the hitch used to transport the Mobile Home were removed The Mobile Home is now supported by cinder blocks, is strapped to the ground by metal straps, and has two porches attached to it. The Mobile Home has a heat pump and satellite dish and is connected to a well and a septic system.

On October 16, 2005, the Debtor filed the above styled petition. Vanderbilt filed a proof of claim in the amount of $38,762.08.

On December 11, 2005, the Debtor filed a motion ("the Valuation Motion") to value the Mobile Home in the amount of $14,500.00[1]. Louisa County assessed the Mobile Home in 2005 as personal property valued at $30,000.00. The debtor did not seek to value the Land in the Valuation Motion.

In her amended chapter 13 plan, the Debtor valued the Mobile Home at $1,000.00 and the Land at $13,500.00. The Real Property has a tax assessed value of $19,900.00. In her amended chapter 13 plan, the Debtor proposes to pay Vanderbilt $14,500.00 plus interest over four years by means of monthly payments of $353.19.

Discussion.

The issue is whether a debtor may, through the provisions of a chapter 13 plan, modify a

[1] The valuation motion refers only to the Mobile Home, but the debtor may have intended to include the Land in the valuation motion, as indicated by the valuations that the debtor asserted in her amended plan.

creditor's claim that is secured only by an interest, or interests, in a mobile home and the land upon which it rests. A chapter 13 plan may "modify the rights of holders of secured claim, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . ." 11 U.S.C. § 1322(b)(2). Stated otherwise, a chapter 13 plan may not modify (1) a secured claim (2) that is the debtor's principal residence (3) that is secured only by an interest in real property.

Both the first and second requirements are met. Vanderbilt's claim is secured by a deed of trust on the Land and a lien on the Mobile home. Vanderbilt is the holder of a claim secured by the Mobile Home and the Land.

It is not relevant that section 1322(b)(2) refers to "a" security interest and Vanderbilt has a security interest evidenced by two separate recordations, one on the Mobile Home as evidenced by a notation on the title and one the Land as recorded in the county land records. First, the fact that Vanderbilt has two liens is the result of the taxing scheme used in Virginia, not the result of a lien on personal property. Second, the use of the singular in an Act of Congress is to be construed as allowing the plural. See 1 U.S.C. 1 ("In determining the meaning of any Act of Congress, unless the context indicates otherwise – words importing the singular include and apply to several persons, parties, or things . . ."). The first requirement is met.

The Debtor lists the Mobile Home as her residence on her schedules. The Mobile Home is not currently mobile, is affixed to the land by straps and by its connection to a septic system and well. The Land and the Mobile home, taken together, constitute the Debtor's principle

residence[2]. The second requirement is met.

The only remaining issue is whether the Land and Mobile Home, taken together, constitute "real property" as that term is used in section 1322(b)(2). In bankruptcy proceedings, property rights are to be defined under state law unless a countervailing federal interest requires a contrary result.

> Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.
>
> . . .
>
> To summarize then, while federal law creates the bankruptcy estate, Butner and the cases following it establish that state law, absent a countervailing federal interest, determines whether a given property falls within this federal framework. Thus, we must first decide if a countervailing federal interest requires that we determine property interests here in a way different from that mandated by state law.

American Bankers Ins. Co. of Florida. v. Maness, 101 F.3d 358, 363 (4th Cir. 1996). And see Butner v. United States, 440 U.S. 48, 55, 99 S.Ct. 914, 918, 59 L.Ed.2d 136 (1979).

The Land is real property. Under Virginia law, the Mobile Home is defined as personal property for the purpose of assessing and levying property taxes. See Va. Code § 58.1-3503(6). "Tangible personal property is classified for valuation purposes according to the following

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[2] See Debtor's Brief, P. 1 at ¶ 2.

Section 101(13A), which defines a "debtor's principle residence", was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("the BAPCPA"). See Pub. L. No. 109-8, 119 Stat. 23 (2005). Under section 101(13A), the term "debtor's principal residence" (A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and (B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer. 11 U.S.C. § 101(13A). The BAPCPA, however, is applicable only to cases in which the petition was filed on or after October 17, 2005.

separate categories . . . (6) Manufactured homes as defined in § 36-85.3 . . ." "Manufactured home" means a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and forty body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure." Va Code § 36-85.3 The Mobile Home is a manufactured home under Virginia law. The Mobile Home is personal property for purposes of the assessment and levy of Virginia property taxes.

The fact that the Mobile Home is personal property for purposes of assessing and levying property taxes under Virginia law does not necessarily mean that it is personal property for purposes of section 1322(b)(2)[3]. If a countervailing federal interest requires the Mobile Home to be treated as real property for purposes of section 1322(b)(2), then it must be deemed to be real property.

One Court has considered the purpose of the anti-modification exception in paragraph 1322(b)(2) and concluded from the legislative history that the purpose of the residential real-property anti-modification exception in Section 1322(b)(2) was to protect the home mortgage industry.

The legislative history says little in terms of political or social philosophy as such.

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[3] Terms are often defined differently under state law than they are under federal law. For example, a debt arising pursuant to a the dissolution of a marriage may be a non-alimony debt under Section 523(a)(5) even though the parties, or the state court, designate that debt as alimony in their separation agreement. See, e.g., Gionis v. Wayne (In re Gionis), 170 B.R. 675 (9th Cir. B.A.P. 1994) (Whether a state court's award of attorney fees in a marriage dissolution proceeding constitutes non-dischargeable alimony, maintenance, or support is question of federal law, the resolution of which is not bound by labels that were applied by the parties or the state court.)

> However, it does reveal that the final language of section 1322(b) evolved from earlier language, incorporated in the bill apparently at the behest of representatives of the mortgage market, [Footnote 1, see infra] that would have prohibited modification of the rights of all creditors whose claims were wholly secured by mortgages on real property. Although the earlier language did not survive, the statute as finally enacted by Congress clearly evidences a concern with the possible effects the new bankruptcy act might have upon the market for homes. If any other policy objective of Congress was adequate to compete against the objective of protecting wage earners generally, it was a policy to encourage the increased production of homes and to encourage private individual ownership of homes as a traditional and important value in American life. Congress had to face the reality that in a relatively free society, market forces and the profit motive play a vital role in determining how investment capital will be employed. Every protection Congress might grant a homeowner at the expense of the holders of security interests on those homes would decrease the attractiveness of home mortgages as investment opportunities. And as home mortgages decrease in attractiveness, the pool of money available for new home construction and finance shrinks.

In re Glenn, 760 F.2d 1428, 1433-34 (6th Cir. 1985). Footnote 1 in Glenn provides:

> This language appeared in the Senate version of the bill, S. 2266, 95th Cong., 2d Sess. § 1322 (1978), not long after Senate committee hearings at which Edward J. Kulik, representing the Real Estate Division of Massachusetts Mutual Life Insurance Company, testified that Chapter 13, as then proposed, might have the unintended effect of restricting the flow of home mortgage money. *See Bankruptcy Reform Act of 1978: Hearings on S. 2266 and H.R. 8200 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 707, 714-15 (1977) (statement of Edward J. Kulik, Senior Vice-President, Real Estate Division, Massachusetts Mutual Life Ins. Co.). Specifically, Mr. Kulik was concerned that provisions (1) allowing modification of rights of holders of secured claims and (2) protecting guarantors and codebtors as well as the Chapter 13 debtor might have this effect. He urged:
>
> Serious consideration should be given to modifying both bills so that, at the least: One, a mortgage on real property other than investment property may not be modified, and two, providing that the stay of actions against a guarantor or other codebtor is applicable only to guarantees executed after the effective date of the new legislation.
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> Id. at 714.
>
> In response to Senator DeConcini's comments questioning the severity of the problem, Robert E. O'Malley, Mr. Kulik's counsel, stated:
>
> With respect to the savings and loans, in particular, and the future prospects for loans to individuals under the proposed bills, there is really only one basic problem. That is, the provision in both bills that provides for modification of the rights of the secured creditor

> on residential mortgages, a provision that is not contained in present law.
>
> I think the answer to your question is that, of course, savings and loans will continue to make loans to individual homeowners, but they will tend to be, I believe, extraordinarily conservative and more conservative than they are now in the flow of credit.
>
> It seems to me they will have to recognize that there is an additional business risk presented by either or both of these two bills if the Congress enacts chapter XIII in the form proposed, thus providing for the possibility of modification of the rights of the secured creditor in the residential mortgage area.
>
> I think the answer is that they will be much more conservative than they have been in the past.
>
> Id. at 715 (statement of Robert E. O'Malley, Attorney, Covington & Burling).

Id. at n. 1. Also see In re Seel, 22 B.R. 692 (Bankr. D. Kan. 1982) (Finding that the exception was included by Congress to provide stability in the residential long-term home financing industry by protecting institutional lenders engaged in providing long-term home mortgage financing.)

Because Congress' purpose of enacting the anti-modification exception to section 1322(b)(2) was to protect mortgage lenders and because mobile homes are generally financed by mortgage lenders, it is concluded that Congress intended to include mobile homes when it used the term real property in paragraph 1322(b)(2).

This conclusion is consistent with, and essentially required by, an opinion rendered by the Fourth Circuit Court of Appeals. See In re Witt, 113 F.3d 508 (4th Cir. 1997). In Witt, a case originating in the Bankruptcy Court for the Western District of Virginia, the Fourth Circuit Court of Appeals held that section 1322(b)(2) prohibited the debtors from modifying the secured creditor's claim in a case in which the facts were on all fours with that at the bar.

In Witt, the debtors owed $22,561.02 to a secured creditor. The "note was secured by a first

deed of trust on the [debtors'] only residence, a mobile home and lot located in Appomattox County, Virginia." Witt, 113 F.3d at 509. The debtors valued their home is $13,100.00. In their proposed Chapter 13 plan the debtors bifurcated the obligation to the secured creditor into a secured claim in the amount of $13,100.00 (representing the value of creditor's interest in the home) and an unsecured claim in the amount of the balance $9,461.02. The debtors provided in their plan that the secured claim would be paid out in full with interest at 10% over five years. The plan provided that the debtors would pay the creditor 30% of the balance of the claim, the same percentage that was to be paid on account of all unsecured claims under the plan.

The creditor objected to the debtors' plan, claiming that the bifurcation of its claim modified its rights under the secured note in violation of 11 U.S.C. § 1322(b)(2). The Bankruptcy Court overruled the creditor's objection by holding that Section 1322(c)(2) created an exception to Section 1322(b)(2)'s prohibition against bifurcation of home mortgage debt. On appeal the district court reversed and remanded, concluding that Section 1322(c)(2) does not permit bifurcation. See United Companies Lending Corp. v. Witt, 199 B.R. 890, 895 (W.D.Va.1996). The debtors appealed to the Fourth Circuit Court of Appeals.

On Appeal, the debtors relied on Section 1322(c) which had been added by the 1994 Bankruptcy Reform Act. Section 1322(c) provides in relevant part that

> Notwithstanding subsection (b)(2) and applicable nonbankruptcy law-···
> . . .
>
> > (2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

Because the debtors' last payment on the original payment schedule was due before the date of the

final payment under the plan, the parties agreed that the debtors' plan could "provide for payment of the claim as modified pursuant to . . . [Section 1325(a)(5)]". The debtors argued that section 1322(C)(2) meant that they could modify the claim[4]; the creditor argued that the phrase meant that the debtors could modify the amount of each payment under their plan, but could not bifurcate the claim.

After parsing the language of Section 1322(c)(2), the Court agreed with the creditor's assertion that Section 1322(c)(2) did not permit the debtors to bifurcate the creditor's claim. "[W]e hold that § 1322(c)(2) does not permit the bifurcation of an undersecured loan into secured and unsecured claims if the only security for the loan is a lien on the debtor's principal residence. Because the Witts' bankruptcy plan proposed such a bifurcation, [the creditor's] objection to the plan was well taken." Witt, 113 F.3d at 513-514.

In Witt, the issue was the effect of Section 1322(c) on Section 1322(b)(2). In reaching its holding, the Fourth Circuit Court of Appeals necessarily held that a mobile home and lot, taken together, constitute "real property" as that term is used in section 1322(b)(2). In this case the Mobile Home and Land, taken together, constitute real property that is the Debtor's principle residence. Consequently, the Debtor's plan may not modify Vanderbilt's rights in the Mobile Home and Land.

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[4] As explained by the Court in Witt, 113F.3d at 511, n. 2.

> Under § 1325(a)(5), a Chapter 13 bankruptcy plan can only be approved if it meets one of three conditions with respect to each "allowed secured claim": (A) the holder of the claim has accepted the plan; (B) the holder both retains its lien and receives property worth at least the allowed amount of the claim; or (C) the holder is given the property securing the claim. The Witts contend that the term "allowed secured claim" must be interpreted according to 506(a) to mean only that portion of the claim which is equal to the current market value of the underlying collateral. Under such an interpretation, the requirement of § 1325(a)(5)(B) is met as long as the holder of the claim would receive the value of the claim that was still secured *after* bifurcation. Because the Witts' plan provides for full payment of the portion of United's claim that is still secured after bifurcation (*i.e.,* $13,100), it would meet the requirements of § 1325(a)(5)(B) as interpreted by the Witts.

In the case at bar, the Debtor emphasizes the word "only" in paragraph 1322(b)(2), noting that it compels that a chapter 13 plan may "modify the rights of holders of secured claim, other than a claim secured *only* by a security interest in real property that is the debtor's principal residence . . ." The Debtor cites a number of opinions in support of this proposition.

Vanderbilt recorded two liens, one on the Land and one on the Mobile Home. The reasons that Vanderbilt recorded and acquired two liens is that the Commonwealth of Virginia imposes different methods of recordation of liens on property that is taxed as real property and that which is taxed as personal property. Paragraph 1322(b)(2), prohibits a creditor's claim from being secured by any property, whether real or personal, other than the debtor's residential real property. It does not prohibit the creditor from acquiring two liens on the debtor's residential real property if required to do so by state law.

As noted, for purposes of paragraph 1322(b)(2), the Mobile Home is deemed to be real property that is the Debtor's residence. If the Commonwealth of Virginia's characterization of the Mobile Home as personal property cannot remove it from the anti-modification exception in section 1322(b)(2), then its requirement that a creditor record its security interest in the debtor's residence in two separate manners cannot remove it from that exception.

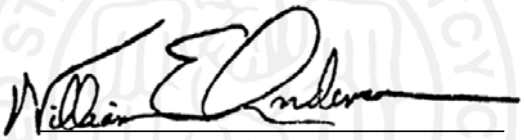
Conclusion

The Mobile Home and Land, taken together, constitute real property that is the Debtor's principal residence. Therefore, the Debtor's chapter 13 plan impermissibly modifies the secured claim of Vanderbilt Mortgage and Finance, Inc. The objection of Vanderbilt Mortgage and Finance, Inc., to the confirmation of the Debtor's chapter 13 plan is sustained.

An appropriate order will issue.

Upon entry of this Memorandum the Clerk shall forward a copy to Richard C. Maxwell, Esq., counsel for Vanderbilt Mortgage and Finance, Inc., and Douglas E. Little, counsel for the debtor.

Entered on this 8th day of November, 2006.



William E. Anderson
United States Bankruptcy Judge