

In re Lyman M and Margaret H. Barrett

Case No. 395-31173-psh 13

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PSH

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Creditor American Pacific Bank, objected to the debtor's Chapter 3 plan wherein it was treated as a secured creditor in the amount of \$32,400 with the balance of the \$61,227 treated as unsecured. American argued that at the time of filing its loan was secured only by an interest in real property that was the debtors' principal residence and was therefore not § 1322(b) (2) prohibited modification of its rights.

At the time the loan documents were executed the debtors granted American a second mortgage on their rural residence and a second position security interest in livestock and farm equipment. The parties agree that as of the date the petition was filed the value of the livestock and farm equipment was insufficient to satisfy the first position lien holder. Consequently American's security interest in the livestock and farm equipment had no value. American contended that because the additional collateral had no value, it was secured only by a security interest in the real property. The court rejected American's argument holding that the contractual rights between the parties as of the date of the filing, not the value of the collateral as of that date, determines whether a creditor qualifies under 11 U.S.C. § 1322(b) (2) as a holder of a claim secured only by the debtor's principal residence.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re)
LYMAN M. BARRETT and) Case No. 395-31173-PSH13
MARGARET H. BARRETT,)
Debtor(s).) MEMORANDUM OPINION

The Chapter 13 debtors filed their petition on February 27, 1995. The American Pacific Bank, successor in interest to Santiam Valley Bank, (hereinafter referred to as "Bank") objected to the terms of their proposed plan wherein it was to be paid as a secured creditor in the amount of \$32,400 with the balance of the \$61,227 obligation treated as unsecured. The Bank argues that because at the time of filing it was in fact secured only in the real property, it is the holder of a claim secured only by a security interest in real property which is the debtors' principal residence within the meaning of 11 U.S.C. § 1322(b)(2); consequently its rights cannot be modified.

1 The undisputed facts are as follows. On October 3, 1983 the
2 debtors executed a note in the amount of \$110,000 in favor of Santiam
3 Valley Bank. To secure this note they granted the Bank a second
4 mortgage on their rural residence and, in addition, granted a
5 security interest in livestock and farm equipment. On January 20,
6 1995 the Bank obtained a judgment of foreclosure against the debtors
7 on both the security agreement and the mortgage. At the time the
8 debtors filed bankruptcy the sheriff had yet to hold the foreclosure
9 sale of the property. The real estate was subject to a first
10 mortgage held by the Department of Veterans Affairs. The personal
11 property was subject to a prior security interest held by the Farmers
12 Home Administration. The parties concur that at the time of
13 bankruptcy filing there was no value in the personal property
14 available to secure the debtor's note to the Bank.
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16 The Bank cites In re Nobleman ___ U.S. ___, 113 S.Ct. 2106, 124
17 L.Ed.2d 228 (1993) in support of its position. In Nobleman the
18 Supreme Court held that the debtor may not bifurcate a claim,
19 pursuant to 11 U.S.C. § 506(a), into portions of secured and
20 unsecured if the creditor who is the holder is secured only in real
21 property which is the debtor's principal residence. However, it was
22 uncontested that the Nobleman creditor never held other than a
23 mortgage on the debtor's residence. Consequently the Court was not
24 required to directly address the issue before me.
25

26 Although the Bank cites Nobleman in support of its position, a
careful reading of that case will demonstrate that it undermines the

1 banks's position. The Court interpreted the language of 11 U.S.C. §
2 1322(b)(2) to protect the rights of holders of secured claims. It
3 emphasized that these rights are determined under state law based on
4 the contractual instruments between the parties. These rights are
5 many, including the right to foreclose upon default and the right to
6 obtain a deficiency judgment. They are not limited by the value of
7 the security at the time of filing the petition. As does the Bank,
8 the Nobleman made the mistake of confusing these creditors' rights,
9 protected by § 1322(b)(2) from any modification, with creditors'
10 secured claims which may be modified in amount through the valuation
11 process in 11 U.S.C. § 506(a).
12

13 The necessary conclusion from the Court's foregoing statements
14 must be that valuation of the creditor's collateral at the time of
15 the bankruptcy filing does not determine whether the creditor
16 qualifies under 11 U.S.C. § 1322(b)(2) as a "holder of ...a claim
17 secured only by a security interest in real property that is the
18 debtor's principal residence". Rather qualification rests on the
19 contractual rights between the parties as of the date the debtors
20 file their bankruptcy petition. Lower courts have concurred. See,
21 e.g., In re Spano, 161 B.R. 880 (Bankr. D. Conn. 1993); Matter of
22 Graham, 144 B.R. 80 (Bankr. N.D. Ind. 1992).
23

24 There is further support for this court's ruling found in the
25 legislative history of 11 U.S.C. § 1322(b)(2). Congress amended the
26 original proposed statutory language which prohibited modification of
any claim secured by real estate, to limit the prohibition to those

1 claims secured only by the debtor's principal residence. This
2 language reflects a perception that home mortgage lenders, performing
3 a valuable social service through their loans, needed special
4 protection against the modification of such loans. See Hearings
5 Before the Subcommittee on Improvements of the Judicial Machinery of
6 the Senate Committee on the Judiciary, 95th Cong., 1st Sess.
7 (1977) (pp. 652 et seq.). See also discussion of the legislative
8 history in In re Seidel, 752 F.2d 2393 (9th Cir. 1985) and Grubbs v.
9 Houston First American Savings Ass'n, 730 F.2d 236 (5th Cir. 1984).
10

11 The Bank does not qualify under 11 U.S.C. § 1322(b)(2) as a
12 holder of a claim secured only by a security interest in real
13 property that is the debtor's principal residence. Its contractual
14 rights include not only a mortgage against the farm but also a
15 security interest in livestock and farm equipment with all the
16 attendant privileges to foreclose upon the latter upon default,
17 which indeed it did. The Bank's objection to confirmation of the
18 debtor's plan is overruled. There being no further objections to
19 confirmation of the proposed plan the court will enter an order of
20 confirmation.

21 An order consistent herewith will be entered.
22

23
24 POLLY S. HIGDON
25 Bankruptcy Judge
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