

**VALUATION OF CLAIMS
SECURED BY
LIENS ON PROPERTY
AND APPRAISAL TESTIMONY**

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A. VALUATION

GENERALLY

One of the most frequently litigated motions in bankruptcy practice is the valuation of a claim secured by property of the estate. Section 506 allows the debtor or another party in interest to ask the court to split a secured claim into secured and unsecured portions based on the value of the property securing that claim.

Federal Rules of Bankruptcy Procedure 3012 says that “[t]he court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.”

Generally, a request for the valuation of a secured claim must be made by motion, and not solely through the provisions of a Chapter 13 plan. *In re Linkous*, 141 B.R. 890 (W.D. Va. 1992), *aff’d*, 990 F.2d 160 (4th Cir. 1993).

11 U.S.C. § 506(a) says:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under § 553 of this title, is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor’s interest.

1. BURDEN OF PROOF

The party seeking to value the secured claim probably has the burden of proof.¹

2. EFFECT OF VALUING A SECURED CLAIM UNDER § 506(A)

Section 506(A) splits an undersecured claim into two separate parts based upon the court’s valuation of the collateral: (1) secured portion generally equal to the lesser of the amount of the creditor’s claim or the value of the collateral securing the creditor’s claim; (2) unsecured claim to the extent the claim exceeds the value of the collateral securing the creditor’s claim. *See In re Coates*, 180 B.R. 110 (Bankr. D.S.C. 1995).

¹ Fed. R. Bankr. P. 3001(f): “A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.”

The first sentence, in its entirety, tells us that a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion limited to the value of the collateral To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of such property,' i.e., the collateral. That comparison is sometimes complicated. A debtor may own only a part interest in the property pledged as collateral, in which case the court will be required to ascertain the 'estate's interest' in the collateral. Or, a creditor may hold a junior or subordinate lien, which would require the court to ascertain the creditor's interest in the collateral.

ASSOCS. Commercial Corp. v. Rash, 117 S. Ct. 1879, 1884-1885 (1997).

The Supreme Court, in *Dewsnup v. Timm*, 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992), held that § 506(d) could not be used in a Chapter 7 case to void the unsecured portion of a real estate mortgage lien since the claim had been "allowed" and was a "secured" claim.

3. ELEMENTS OF § 506(A)

1. There must be a "creditor" as defined in § 101(10). Some creditors may not be "creditors" as defined in § 101(10) and, as such, are not subject to valuation of their claims. *In re Delnero*, 191 B.R. 539 (Bankr. N.D.N.Y. 1996) (retirement account loan was not secured debt).
2. There must be a "lien" as defined in § 101(37).
3. Some courts hold that in order for a secured claim to be valued, the creditor must have filed a proof of claim before that creditor's lien may be voided. *See In re Linkous*, 141 B.R. 890, 892 (W.D. Va. 1992), *aff'd*, 990 F.2d 160 (4th Cir. 1993); *In re King*, 165 B.R. 296 (Bankr. M.D. Fla. 1994).
4. The allowed amount of the creditor's claim must be determined. *In re Duggins*, 263 B.R. 233, 244 (Bankr. C.D. Ill. 2001) (Allowed secured claim is the lesser of the amount of the debt or the value of the collateral securing the debt).
5. The value of the estate's interest in the property securing the claim must be determined. *See Smith v. Creative Fin. Mgmt. (In re Carolina-Va. Fin. Mgmt., Inc.)*, 954 F.2d 193 (4th Cir. 1992) (creditor secured by collateral of third party did not have secured claim against debtor's estate).
6. The court must determine the value of the creditor's interest in the estate's interest in the property. *See In re Midway Partners*, 995 F.2d 490, 495 (4th Cir. 1993) ("Because we have concluded that the amount due on the first loan entirely consumed the collateral securing both loans, we must

necessarily conclude that the second loan was completely unsecured at the time the bankruptcy court made its initial valuation. . . .“).

4. STANDARD FOR DETERMINING VALUE-IN GENERAL

What is the actual value of the property securing the claim being valued? This can be only an evidentiary issue as the court determines which party has provided the most persuasive evidence of value. What standard should the court use for determining the value of the property securing the claim?

The legislative history of § 506(a) says:

“[v]alue” does not necessarily contemplate forced sale or liquidation value of the collateral; nor does it always imply a full going concern value. Courts will have to determine value on a case-by-case basis, taking into account the facts of each case and the competing interests in each case.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 356 (1977).

[w]hile courts will have to determine value on a case-by-case basis, the subsection makes it clear that valuation is to be determined in light of the purpose of the valuation and the proposed disposition or use of the subject property. This determination shall be made in conjunction with any hearing on such disposition or use of property or on a plan affecting the creditor’s interest. To illustrate, a valuation early in the case in a proceeding under sections 361-363 would not be binding upon the debtor or creditor at the time of confirmation of the plan.

S. Rep. No. 95-989, 95th Cong., 2d Sess. 68 (1978). *See Estate Const. Co. v. Miller & Smith Holding Co.*, 14 F.3d 213, 219 (4th Cir. 1994); *Coker v. Sovran Equity Mortgage Corp.*, 973 F.2d 230 (4th Cir. 1992); *Brown & Co. Sec. Corp. v. Balbus (In re Balbus)*, 933 F.2d 246 (4th Cir. 1991).

In discussing the replacement value standard in cram down cases, the Supreme Court in *Rash* said:

Our recognition that the replacement-value standard, not the foreclosure-value standard, governs in cram down cases leaves to bankruptcy courts, as triers of fact, the identification of the best way of ascertaining replacement value on the basis of the evidence presented. Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of

the retail price, if any, that reflect the value of items the warranties, inventory, and reconditioning Nor should the creditor gain from modifications to the property—e.g., the addition of accessories to a vehicle—to which a creditor’s lien would not extend under state law.

ASSOCS. Commercial Corp. v. Rash, 117 S. Ct. 1879, 1886-1887 n.6 (1997).

The valuation process is not an exact science, and the court must allocate varying degrees of weight depending upon the court’s opinion of the credibility of the evidence. *In re Coates*, 180 B.R. 110 (Bankr. D.S.C. 1995).

5. DEFINITION OF REPLACEMENT VALUE

In *Rash*, the Court said:

By using the term ‘replacement value,’ we do not suggest that a creditor is entitled to recover what it would cost to purchase collateral brand new [B]y replacement value, we mean the price a willing buyer in the debtor’s trade, business, or situation would pay a willing seller to obtain property of like age and condition.

ASSOCS. Commercial Corp. v. Rash, 117 S. Ct. 1879, 1884 n.2 (1997).

6. FAIR MARKET VALUE STANDARD

Most courts in valuation proceedings have used fair market value as the standard.² *Coker v. Sovran Equity Mortgage Corp.*, 973 F.2d 230 (4th Cir. 1992) (proper value of junior lien on residence being retained by Chapter 13 debtor was fair market value without deducting disposition costs or hypothetical costs of sale); *Brown & Co. Sec. Corp. v. Balbus (In re Balbus)*, 933 F.2d 246 (4th Cir. 1991) (“unadjusted fair market value”); *Thomas v. United States (In re Thomas)*, 246 B.R. 500 (E.D. Pa. 2000) (in Chapter 13 case, appropriate measure of value of corporation wholly owned by debtor and subject to tax lien was income based method of corporation as going concern, not liquidation value of corporate assets because debtor intended to continue operating business); *In re Coles*, 252 B.R. 66 (Bankr. E.D. Va. 1999) (Amount of allowed secured claim on automobile being retained by Chapter 13 debtor was equal to replacement value which was purchase price paid by debtors two and one half months earlier and was not average of Kelly Blue Book retail and trade-in values); *In re Russell*, 211 B.R. 12 (Bankr. E.D.N.C. 1997) (appropriate measure of replacement value under *Associates Commercial Corp. v. Rash*, 117 S. Ct. 1879 (1997), for car being retained by Chapter 13 debtor was NADA retail value); *In re Dews*, 191 B.R. 86, 88 (Bankr. E.D. Va. 1995) (“[T]his court believes that

² *MetroBank v. Trimble (In re Trimble)*, 50 F.3d 530, 532 (8th Cir. 1995) (where Chapter 13 debtor proposed to retain automobile, proper value was not wholesale value but “the lesser of the principal balance of the debt or the retail value of the encumbered vehicle, without deduction for costs of repossession or sale”); *In re Winthrop Old Farm Nurseries, Inc.*, 50 F.3d 72 (1st Cir. 1995) (In Chapter 11 case where debtor intended to retain real estate, proper value was going concern or fair market value with no deduction for hypothetical costs of sale).

the proper valuation of the motor vehicle that serves as collateral under the circumstances, i.e., in the context of a Chapter 13 plan when the debtors retain the collateral, is the fair market value of the vehicle.” The fair market value was determined by NADA retail value and other credible evidence.); *In re Coates*, 180 B.R. 110 (Bankr. D.S.C. 1995) (proper value for auto being retained by Chapter 13 debtors, absent other evidence, was NADA retail value); *In re Brace*, 163 B.R. 274 (Bankr. WD. Pa. 1994) (proper standard for valuing real estate was current use as working farm and not hypothetical highest use as hobby farm owned by professional). *EEE Commercial Corp. v. Holmes (In re ASI Reactivation, Inc.)*, 934 F.2d 1315, 1322 (4th Cir. 1991) (At hearing on motion for relief from the stay, a “bankruptcy court . . . must decide what is a commercially reasonable value of property in the context of the particular case.”).

7. NO AVERAGING?

Averaging the retail and wholesale value of collateral is not appropriate. “Whatever the attractiveness of a standard that picks the midpoint between foreclosure and replacement values, there is no warrant for it in the Code.” *Assocs. Commercial Corp. v. Rash*, 117 S. Ct. 1879, 1886 (1997). See also *In re Coles*, 252 B.R. 66 (Bankr. E.D. Va. 1999) (Amount of allowed secured claim automobile being retained by Chapter 13 debtor was equal to replacement value which was purchase price paid by debtors two and one half months earlier and was not average of Kelly Blue Book retail and trade-in values).

8. DATE AS OF WHICH VALUATION SHOULD BE MADE

The majority of courts have rejected the petition date and instead have used the date of valuation as the appropriate date for valuing a secured claim. The valuation may occur at different times in a bankruptcy case; the date of the valuation hearing; the date of redemption hearing; the date of confirmation hearing; or the effective date of plan. See *In re Byrd*, 250 B.R. 449, 453 (Bankr. M.D. Ga. 2000) (Sustaining objection of creditor secured by lien on truck to Chapter 13 plan, “[B]ecause creditor is secured by inherently depreciable collateral, and is party to a case under Chapter 13, creditor’s secured status should be determined based on the greater of the pickup’s replacement value as of the confirmation date, or on its liquidation value as of the petition date.”); *In re Coates*, 180 B.R. 110 (Bankr. D.S.C. 1995) (proper date for valuation of collateral in Chapter 13 case was the date of the hearing on valuation, not the petition date); *In re Robertson*, 135 B.R. 350, 352 (Bankr. E.D. Ark. 1992) (Chapter 13 case. “When valuation of a secured claim is for purposes of plan confirmation, the value should be determined as of that date, not as of the filing date.”).

9. CHANGE IN VALUE OF COLLATERAL AFTER VALUATION

When an unforeseen event occurs after the valuation hearing but before the confirmation date which significantly affects the true value of the subject property, the bankruptcy court should take note of that event and conduct a new valuation hearing so as to ensure the most equitable distribution of the property.

In re Moreau, 140 B.R. 943, 944 (Bankr. N.D.N.Y. 1992); *In re Blakey*, 76 B.R. 465 (Bankr. E.D. Pa. 1987).

10. USE OF VALUATION IN CHAPTER 7 CASES

In *Dewsnup v. Timm*, 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992), the debtor borrowed \$119,000 to finance the purchase of farmland later valued in the Chapter 7 proceedings at \$39,000. The debtor filed an adversary proceeding to bifurcate the mortgagee's claim into secured and unsecured portions and void the lien on the unsecured portion pursuant to § 506(d). The lower courts refused to void the mortgagee's lien on the property, and the Supreme Court affirmed.

Therefore we hold that section 506(d) does not allow petitioner to "strip down" respondents' lien, because respondents' claim is secured by a lien that has been fully allowed pursuant to section 502 . . . we think, however, that the creditors lien stays with the real property until the foreclosure . . . the voidness language sensibly applies only to the security aspect of the lien and then only to the real deficiency in the security.

Dewsnup v. Timm, 112 S. Ct. 773, 778.

Most courts have relied on *Dewsnup* to limit a Chapter 7 debtor's right to strip down liens. *In re Virello*, 236 B.R. 199 (Bankr. D.S.C. 1999) (Court denied Chapter 7 debtor's motion to value at \$0 claim secured by inventory and second mortgage on real estate, even though stay had been lifted to allow for liquidation of inventory and senior mortgage exceeded the value of the debtor's real estate. "This court agrees with the Eighth and Ninth Circuits and many other jurisdictions that the *Dewsnup* decision stands for the proposition that § 506(d) alone does not operate to void a lien but that it must be used in conjunction with another statute such as § 722, § 1129, § 1225, or § 1325. Without more from Congress, a Chapter 7 debtor does not have standing to use § 506(d) to void a lien on real property which is abandoned or likely to be abandoned and therefore of no benefit to the estate." The court went on to say, "Under the reasoning of *Dewsnup* if a creditor has an allowed claim and a lien on property, § 506(d) is not operative. Therefore, this Court agrees . . . that the filing of claims in general in an asset case does not change the effect of *Dewsnup*, absent a disposition of the collateral or valuation of the claim for plan confirmation purposes in a reorganization case.").

11. SHOULD HYPOTHETICAL COSTS OF SALE BE DEDUCTED WHEN DETERMINING THE ALLOWED AMOUNT OF A SECURED CLAIM?

The majority of courts hold that hypothetical costs of selling collateral should not be deducted when determining allowed amount of secured claim unless debtor actually proposes to sell collateral. *Coker v. Sovran Equity Mortgage Corp.*, 973 F.2d 230 (4th Cir. 1992); *Brown & Co. Sec. Corp. v. Balbus (In re Balbus)*, 933 F.2d 246, 251 (4th Cir. 1991) ("[T]he better view is that the secured creditor's interest may be valued for section

506(a) purposes without superimposing a foreclosure or other sale of the collateral where a disposition of the claim is not reasonably in the offing”).³

12. APPEAL OF VALUATION ORDER

“Valuation is a question of fact, and can be overturned on appeal only if clearly erroneous. (Citation omitted.) In other words, to set aside a valuation of equity in the property, there must be a ‘definite and firm conviction that a mistake has been committed.’” See *Estate Const. Co. v. Miller & Smith Holding Co.*, 14 F.3d 213, 219 (4th Cir. 1994) (citation omitted) (affirming value set by lower court in order modifying stay).

13. VALUATION IN CHAPTER 13 CASE WHEN CASE IS LATER CONVERTED TO ONE UNDER CHAPTER 7

In cases filed on or after October 22, 1994, § 348 (f)(1)(B), as amended, says: “valuations of property and of allowed secured claims in the Chapter 13 case shall apply in the converted case, with allowed secured claims reduced to the extent that they have been paid in accordance with the Chapter 13 plan.”

B. EVIDENTIARY ISSUES AND APPRAISAL TESTIMONY

1. APPRAISAL MUST CONFORM TO USE PROPOSED BY DEBTOR

Section 506(a) says: “Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property . . .”

In South Carolina, the Bankruptcy Court has rejected a debtor’s appraisal that did not reflect the actual intended use by the debtor. *In re Pavilion Properties, LP*, Case No. 97-3186-B (Bankr. D.S.C. September 14, 1998). There, the debtor’s appraiser valued the subject apartment building/office complex at \$4,300,000. The debtor’s Chapter 11 plan proposed to repair and renovate the building. The secured creditor’s appraiser valued the property based on the proposed repairs being made. The debtor’s appraiser testified that the debtor instructed him to appraise the property assuming that the property would not be repaired and that he did so. “In doing so, (the appraiser’s) assumptions are inconsistent with the debtor’s proposed use of the Property in its Plan because *Rash* holds that Section 506(a) requires that value reflect the proposed use of the property by the

³ “The proposed disposition of the property in this case is that Balbus will not sell his house. Therefore, this factor indicates that there is no need to subtract the hypothetical costs of sale as they are just that – hypothetical. The second sentence of 11 U.S.C. § 506(a) requires that we determine the value of a creditor’s interest ‘in light of the purpose of the valuation and of the proposed disposition or use of such property.’ We find that we cannot ignore the direction of that sentence and thus cannot follow those courts which have chosen to focus on the first sentence of § 506(a). In this case, the purpose of valuation, to determine whether the dollar limits of 11 U.S.C. § 109(e) have been exceeded, counsels that hypothetical costs should not be deducted. Balbus intends to continue living in his house, so the proposed disposition of the property also counsels that hypothetical costs should not be deducted.” *In re Balbus*, 933 F.2d at 251.

debtor under its plan, (the appraiser's) appraisal of the apartment buildings carries little, if any, probative weight." *Pavilion, supra*.⁴

If the opposing party proposes to use an appraisal based on a use inconsistent with the debtor's proposed use, consider a motion in limine. *In re Pack*, Case No. 03-05021-W (Bankr. D.S.C. September 12, 2003). In *Pack*, the debtors filed a valuation motion. The debtors proposed to continue using the subject property as a poultry farm, its pre-bankruptcy use. The debtors' appraiser, however, concluded that the highest and best use of the property was as vacant farmland and valued the property accordingly (at a much lower value than asserted by the secured creditor). The creditor filed a motion in limine to exclude the proposed testimony of the appraiser. At the valuation hearing, the Court granted the limine motion and denied the debtors' valuation motion "as the debtors' proposed use does not comport with their appraiser's use, the Appraisal Report does not comply with the mandatory requirements of Section 506(a)."

2. DEDUCTION OF DISPOSITION COSTS

Where the debtor proposes to retain the property in question, it is improper to deduct the disposition costs of a hypothetical sale from the fair market value of the property. *In re Balbus*, 933 Fed.2d 246 (4th Cir. 1991). In *Balbus*, the lienholder argued for deducting the costs of a hypothetical sale. Such a deduction would have increased the value of the unsecured claims beyond the \$100,000 jurisdictional limit. The Bankruptcy Court refused to deduct the costs, and the Court of Appeals affirmed.

In a later case, the Fourth Circuit held that disposition costs of a hypothetical sale should not be deducted from the fair market value of the debtors' property when determining the extent of a security interest held by a junior lienholder. *In re Coker*, 973 Fed.2d 258 (4th Cir. 1992). In that Chapter 13 case, the debtors owed \$82,000 on a first mortgage and \$9,504.87 on a second mortgage. The debtors' appraiser estimated the property's market value at \$91,500. The second mortgagee's appraiser estimated value at \$95,500. The Bankruptcy Court accepted the higher appraisal and ruled that costs would not be deducted because, according to the debtors' plan, they intended to retain the property. Therefore, the Court concluded that the second lienholder's claim was fully secured and denied the debtor's Section 506 motion to declare the second mortgage debt unsecured. In affirming, the Court of Appeals said:

Chapter 13 is a reorganization mechanism for individuals. One of its advantages...is that they may retain their home by reaffirming the mortgage debt...on the one hand, the debtors have submitted their plan, which includes a pledge to continue their mortgage payments in full....On the other hand, the (debtors) want the court to value (the second mortgage

⁴ In *In re Williamson*, the Court valued the collateral at a highest and best use value apart from the debtor's proposed actual use value, but the highest and best use value was higher than the actual use value. The Court said some deviation is permitted if "not unreasonably speculative." *In re Williamson*, Case No. 90-05477-B (Bankr. D.S.C. June 27, 1991).

claim) as if the very event that Chapter 13 permits them to avoid has occurred, *i.e.*, a foreclosure. *In re Coker*, 973 F.2d 230 (4th Cir. 1992).

3. NADA AS STANDARD

Where the subject of evaluation is a motor vehicle, the National Automobile Dealers Association (NADA) value has frequently been used as a standard. In interpreting the directive of the Supreme Court in *Rash*, the Bankruptcy Court in North Carolina concluded that the NADA retail value most accurately reflects the replacement-value standard as set forth in *Rash*. *In re Russell*, 211 B.R. 12 (Bankr. E.D. NC 1997).

In *Russell*, the secured creditor objected to the debtor's valuation of collateral which the debtor proposed to retain. The debtor relied on Section 1325(a)(5)(B), the Chapter 13 cram down provision. The Court noted that evaluation is made on a case-by-case basis but that value is generally established at the meeting of creditors, with very few valuation hearings being held.

“The starting point for valuation of an automobile to be retained by a Chapter 13 debtor has been the NADA retail value with adjustments agreed to by the debtor, the secured creditor and the secured Chapter 13 trustee. If the parties do not agree, a hearing is held, and the court determines the value using a replacement standard, which in most cases is retail value. That practice has worked well and will be continued in this district.”

211 B.R. at 12.⁵

4. NEED FOR INDEPENDENT TESTIMONY

Frequently, the debtor and a representative of the creditor provide valuation testimony. This may not be sufficient. In a recent Chapter 13 case, a secured creditor filed an objection to the debtor's plan based on inadequate valuation of collateral. *In re Johnson*, Case No. 99-10986-W (Bankr. D.S.C. March 20, 2000). There, at the confirmation hearing and hearing on objection to valuation, the debtor testified as to the value. The debtor had no expertise in valuation and arrived at the value by looking at other mobile homes. The creditor offered the testimony of the manager of the mobile home lot which sold the home to the debtor. The Court noted that the manager had an ongoing business relationship with the creditor and was not impartial. Further, the manager had not inspected the mobile home and had no knowledge of its present condition. No evidence from an independent appraiser was offered nor was the Court presented with any valuation guides, reports of comparable sales “or even pictures indicating the present condition of the subject collateral.”

⁵ The *Russell* court declined to reduce retail value by any retail costs, as some have suggested is allowed under *Rash*.

The testimony presented a significant range of difference (\$19,000 and \$36,000). Therefore, the Court held there was no credible evidence as to value. As it was the debtor's burden to meet the requirements of 11 U.S.C. § 1325, the Court denied confirmation of the plan.

5. TESTIMONY VS. WRITTEN APPRAISALS

Appraisal testimony can be expensive, but may be necessary for success. In a recent Chapter 13 case, the debtor attempted to strip the second mortgage encumbering her residence claiming the value of the first mortgage lien exceeded the value of the residence. *In re Utsey*, Case No. 02-08676-W (Bankr. D.S.C. October 4, 2002).

There, both parties submitted, by stipulation, competing written appraisals. The debtor's appraisal valued the residence at \$65,000 as of September 27, 2002 (the approximate date of the confirmation hearing). The second mortgagee submitted an appraisal valuing the residence at \$110,000 as of June 21, 2001. Neither appraiser testified. The debtor did not testify. The debtor had acquired the residence at a foreclosure sale on March 16, 2001 for \$68,500.

The Court, after noting the difficulty of evaluating written appraisals without supporting testimony, found the second mortgagee's appraisal more persuasive. The comparable sales used in the debtor's appraisal were substantially more distant from the residence than the comparables in the mortgagee's appraisal. Next, the mortgagee's appraisal indicated that remodeling had been done since the debtor purchased the residence. Finally, the debtor did not offer any evidence to explain the alleged decrease in value from the time the debtor acquired the property until the date of confirmation hearing.

The Court noted that it is the debtor's burden to establish value for the purpose of stripping a second mortgage and the debtor's burden to meet the requirements of Section 1325. The Court held that the residence was worth more than the stipulated value of the first mortgage. Therefore, the second mortgage was not modifiable as the second mortgagee was entitled to the protection of Section 1322(b)(2). As the valuation indicated that the second mortgagee's claim was secured to some extent, the debtor could not prevail. The objection to the plan was sustained.

CONCLUSION

Valuation issues may determine the success or failure of a bankruptcy proceeding. Proper analysis, preparation and willingness to litigate the issue will provide a foundation for success. There is no substitute for a good working knowledge of the applicable rules and understanding the theories of appraisal testimony and their application to your case.

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