

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                                    |   |                                   |
|------------------------------------|---|-----------------------------------|
| <b>In re:</b>                      | : | <b>Chapter 13</b>                 |
|                                    | : |                                   |
| <b>HARRIET M. KRUGER,</b>          | : |                                   |
|                                    | : |                                   |
| <b>Debtor.</b>                     | : | <b>Bankruptcy No. 02-14310KJC</b> |
| <hr/>                              | : |                                   |
| <b>HARRIET M. KRUGER</b>           | : |                                   |
|                                    | : |                                   |
| <b>Plaintiff</b>                   | : |                                   |
|                                    | : |                                   |
| 5.                                 | : |                                   |
|                                    | : |                                   |
| <b>EASTERN SAVINGS BANK, FSB :</b> | : |                                   |
|                                    | : |                                   |
| <b>Defendant</b>                   | : | <b>Adversary No. 02-471</b>       |
| <hr/>                              | : |                                   |

**M E M O R A N D U M**

**BY: KEVIN J. CAREY, UNITED STATES BANKRUPTCY JUDGE**

On April 3, 2002, Harriet M. Kruger (the “Debtor”), filed a complaint to determine the secured status of Eastern Savings Bank’s (“Eastern”) claim, which claim arises out of a 1989 residential mortgage loan to the Debtor. On June 24, 2002, Eastern filed a motion for summary judgment pursuant to Fed.R.Civ.P. 56, made applicable to this proceeding by Fed.R.Bankr.P. 7056 (“Eastern’s Motion”), seeking dismissal of this adversary proceeding. Eastern’s Motion was supported by a brief. On July 31, 2002, **the Debtor, filed an answer to Eastern’s Motion and Memorandum of Law in opposition to Eastern’s Motion. On August 23, 2002, Eastern filed a reply brief to the Debtor’s opposition memorandum.**

**On October 31, 2002, a hearing was held to consider Eastern’s Motion, at which the parties presented oral argument.**

For the reasons set forth below, Eastern's Motion will be granted, in part.

### LEGAL STANDARD

Fed.R.Civ.P. 56 requires that summary judgment be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The legal standard for a summary judgment motion has been described as follows:

[W]hen deciding a summary judgment motion, the court's task is not to resolve questions of fact, but to determine whether there is in fact any genuine issue of fact to be resolved at trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). In doing so, the court should view all facts in the light most favorable to the opposing party, Continental Insurance Co. v. Bodie, 682 F.2d 436, 438 (3d Cir. 1982), including any factual inferences, and refrain from resolving a genuine issue of credibility. Pryzbowski v. U.S. Healthcare, Inc., 245 F.3d 266 (3d Cir. 2001)(citation omitted); Boyle v. Allegheny County, Pa., 139 F.3d 386, 393 (3d Cir. 1998).

Sonders v. Mezvinsky (In re Mezvinsky), 265 B.R. 681, 688 (Bankr. E.D. Pa. 2001).

### DISCUSSION

Eastern seeks a determination that the security interests granted by virtue of the mortgage agreement constitute, as a matter of law, a security interest in only real property (the Debtor's residence at 1907 Eva Drive, Lansdale, Pennsylvania), and, therefore, are

entitled to the protection of the anti-modification provision of 11 U.S.C. § 1322(b)(2).<sup>1</sup>

---

<sup>1</sup> 11 U.S.C. Section 1322(b)(2) provides:  
(b) Subject to subsections (a) and (c) of this section, the plan may –  
....  
(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, ...

**The Debtor, by contrast, alleges that Eastern's lien can be modified because its security interest, as described in the mortgage, includes fixtures.<sup>2</sup> The Debtor argues that fixtures are property in addition to and distinct from the realty; therefore, Eastern's claim falls outside of the anti-modification protection of section 1322(b)(2).**

**Decisions of other bankruptcy judges in this district have held** that fixtures constitute real property under Pennsylvania law and mortgages that include a security interest in fixtures will not be excluded from the protection of the anti-modification provision. Rodriguez v. Mellon Bank, N.A. (In re Rodriguez), 218 B.R. 764, 776-77 (Bankr.E.D.Pa. 1998). See also In re Abruzzo, 245 B.R. 201, 210 (Bankr. E.D. Pa. 1999), vacated and remanded on other grounds, 2000 WL 420635 (E.D.Pa. 2000)("[t]he enumeration of items classifiable as fixtures will also not bring a mortgage out from protection of the anti-modification clause because fixtures are a component of real property."); In re Toms, 1998 Bankr. LEXIS 1830, at \*5, citing In re Davis, 989 F.2d 208, 212 (6<sup>th</sup> Cir. 1993)("the clear weight of authority supports a finding that the addition of the boilerplate phrase 'rents, royalties, profits and fixtures' to a mortgage . . . will not generally remove the claim from the protection of § 1322(b)(2)").

---

<sup>2</sup> The parties agree that the security interest granted in the mortgage includes "all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil, and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property."

The Debtor's reliance upon a line of Third Circuit cases in support of her position (In re Hammond, 27 F.3d 52 (3d Cir. 1994); Sapos v. Provident Institution of Savings, 967 F.2d 918 (3d Cir. 1992); and Wilson v. Commonwealth Mortgage Corp., 895 F.2d 123 (3d Cir. 1990)) is misplaced. The mortgages at issue in the these Court of Appeals decisions involved personal property, such as furniture, in addition to fixtures. The Third Circuit has not made any determination that the grant of a security interest in fixtures in a mortgage permits modification of the claim.<sup>3</sup>

I agree with the decisions in Rodriguez, Abruzzo, and Toms and conclude that inclusion of "fixtures" as collateral does not remove a mortgage from the protection of the anti-modification clause of §1322(b)(2), because fixtures constitute realty under Pennsylvania law.<sup>4</sup> Because there is no genuine issue of material fact relating to this specific issue, Eastern's motion for summary judgment will be granted, in part.<sup>5</sup>

**An appropriate order follows.**

---

<sup>3</sup> The Debtor also relies upon Steslow v. Citicorp Mortgage, Inc. (In re Steslow), 225 B.R. 883 (Bankr.E.D.Pa.)(Fitzgerald, B.J.) for the proposition that, under Pennsylvania law, "fixtures" can be either personal or real property. See id. at 886 n.5. However, the holding in Steslow was that inclusion of a tax and insurance escrow within the grant of the security interest rendered the mortgage modifiable. Id. In Rodriguez, Judge Raslavich concluded that "fixtures" were necessarily included in "improvements" in 21 P.S. §3, and, therefore, were real property under Pennsylvania law. 218 B.R. at 777. (21 P.S. §3 is the Pennsylvania statute defining which rights are transferred when real estate is conveyed.) Moreover, in the case before me, the grant of the security interest includes "fixtures now or hereafter a part of the property" [emphasis added].

<sup>4</sup> Even were I to adopt the view that, for this purpose, "fixtures" could be either personalty or realty, depending upon the parties' intent (See Steslow, 225 B.R. at 886 n.5), the Debtor has failed, in her opposition to the summary judgment motion, to offer any showing of the her intent. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986) ("[w]hen a properly supported motion for summary judgment is made, the adverse party 'must set forth specific facts showing that there is a genuine issue for trial'.")

<sup>5</sup> The Debtor's complaint requests, in part, that the Court fix the amount of Eastern's claim. The pleadings do not reflect an agreement about the amount of the claim. This issue was not addressed by the parties in connection with summary judgment.

BY THE COURT:

---

KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

Dated: January 8, 2003

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                                    |   |                                   |
|------------------------------------|---|-----------------------------------|
| <b>In re:</b>                      | : | <b>Chapter 13</b>                 |
|                                    | : |                                   |
| <b>HARRIET M. KRUGER,</b>          | : |                                   |
|                                    | : |                                   |
| <b>Debtor.</b>                     | : | <b>Bankruptcy No. 02-14310KJC</b> |
| <hr/>                              | : |                                   |
| <b>HARRIET M. KRUGER</b>           | : |                                   |
|                                    | : |                                   |
| <b>Plaintiff</b>                   | : |                                   |
|                                    | : |                                   |
| 6.                                 | : |                                   |
|                                    | : |                                   |
| <b>EASTERN SAVINGS BANK, FSB :</b> | : |                                   |
|                                    | : |                                   |
| <b>Defendant</b>                   | : | <b>Adversary No. 02-471</b>       |
| <hr/>                              | : |                                   |

**ORDER**

**AND NOW**, this 8<sup>th</sup> day of January, 2003, upon consideration of the Motion of Eastern Savings Bank, FSB for Summary Judgment (the "Motion"), and the Debtor's opposition thereto, and for the reasons given in the accompanying Memorandum, it is hereby **ORDERED**,

**ADJUDGED, AND DECREED** that:

6. The Motion is granted, in part;
7. On the issue of whether the mortgage ("Mortgage") held by defendant, Eastern Savings Bank, FSB ("Eastern"), on the Debtor's residence at 1907 Eva Drive, Lansdale, Pennsylvania, can be modified pursuant to 11 U.S.C. § 1322(b)(2), partial judgment is entered in favor of Eastern, and the Debtor cannot modify the Mortgage pursuant to 11 U.S.C. §1322(b)(2);
8. A status conference will be held on **January 30, 2003 at 10:00 A.M.** in

Bankruptcy Courtroom No. 1, Robert N.C. Nix Federal Building & Courthouse, 900 Market Street, Second Floor, Philadelphia, Pennsylvania, at which time the parties should be prepared to discuss whether there exists any dispute regarding the amount of Eastern's claim and, if so, whether this remaining issue is ready for trial.

BY THE COURT:

---

KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

Copies to:

Harriet M. Kruger  
1907 Eva Drive  
Lansdale, PA 19446

Michael H. Kaliner, Esquire  
312 Oxford Valley Rd.  
Fairless Hills, PA 19030

Scott A. Dietterick, Esquire  
James, Smith, Durkin & Connelly LLP  
P.O. Box 650  
Hershey, PA 17033

Edward Sparkman, Esquire  
P. O. Box 40119  
The Bourse Bldg.  
Philadelphia, PA 19106

Frederic J. Baker, Sr., Esquire  
Senior Assistant United States Trustee  
Curtis Center, Suite 950 West  
601 Walnut Street  
Philadelphia, PA 19106

Joseph Simmons, Clerk, U. S. Bankruptcy Court  
Pamela Blalock, Courtroom Deputy Clerk