UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
DAVID MEADE and CONSTANCE D. MEADE	:	
Debtors	:	Bankruptcy No. 98-32648F

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MEMORANDUM

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By BRUCE FOX, Chief Bankruptcy Judge:

The debtors in this chapter 13 bankruptcy case have objected to a proof of claim filed by Firstplus Financial, Inc., which proof asserts that the claim is secured by the debtors' real estate - their home located at 58 Jewel Lane, Levittown, Pennsylvania. The debtors object to the allowance of this claim as secured, and contend that Firstplus holds only an allowed unsecured claim pursuant to 11 U.S.C. § 506(a) and (d). Firstplus counters that the debtors are attempting a "modification" of its claim which is forbidden by 11 U.S.C. § 1322(b)(2).

The parties reached agreement with respect to many of the operative facts in this litigation, and after a hearing was held the matter is now ripe for decision.[1]

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[1]After the proof of claim was filed in this case, Firstplus filed its own bankruptcy petition under chapter 11 in the Northern District of Texas. Counsel of record for Firstplus in this contested matter then filed a suggestion of bankruptcy, implying that the creditor's bankruptcy filing should stay the resolution of this claims objection. After a hearing, I concluded, in an order dated April 14, 1999, that the automatic stay did not bar the determination of the instant objection. Accord In re Financial News Network, Inc., 158 B.R. 570 (S.D.N.Y. 1993).

The April 14th order also established a briefing schedule which was intended to

(continued...)

I.

The debtors own and reside in the real property located at 58 Jewel Lane, Levittown, PA. They filed the instant chapter 13 bankruptcy petition on October 2, 1998. The parties agree[2] that this property has a fair market value "as of both October 2, 1998 and January 12, 1999" of $100,000.00. Ex. J-1, ¶ 4. They also stipulated that this real property is encumbered by a first mortgage lien in favor of GMAC Mortgage, Ex. J-1, ¶ 2, and that as of November 4, 1998, the "payoff balance" on the GMAC mortgage was in the amount of $101,117.50. Id. The debtors have tendered to GMAC the requisite December, 1998 and January, 1999 mortgage payments in the amount of $1,133.07. Id.

Firstplus filed an amended proof of claim on November 11, 1998, shortly after the instant objection was filed, but which continued to assert a secured claim in the amount of $43,211.05. Ex. J-4. In effect, then, the parties agree that at all times relevant to this objection the first mortgage lien held by GMAC was in an amount

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[1](...continued)
afford Firstplus ample opportunity to engage special counsel to represent its interests in this court. Regrettably, no special counsel has appeared on behalf of this bankrupt creditor; nor has Firstplus filed any supporting post-hearing memorandum, and the deadline for doing so has passed. As no request for additional time to participate has been made, I conclude it is appropriate to decide this objection based upon the evidence submitted, the oral arguments advanced by counsel for both parties in open court, the pre-hearing memorandum of the creditor, and the post-hearing memorandum submitted by the debtors.

[2]The parties jointly submitted into evidence four documents, one of which consisted of a handwritten list of stipulated facts. The evidentiary record was built upon these documents, the testimony of Mrs. Meade, and copies of two documents offered by the debtors: the settlement sheet, which was generated when they purchased their home; and their application for a second mortgage loan.

greater than the fair market value of the secured real estate, and that Firstplus's mortgage lien was second in priority to that held by GMAC. Ex. J-1, ¶ 3.

The parties' second joint exhibit consists of two mortgage account statements from GMAC, dated June 10, 1997 and November 4, 1998. Ex. J-2. These statements reflect that the mortgage payment made by the debtors in June 1997 included a principal payment of $72.06, and a payment of interest of $726.06. By November 1998, the debtors' mortgage payment was amortized $81.69 to principal and $716.83 to interest.

A copy of the mortgage entered into by the debtors and "First Suburban Corporation Mtg Bankers" of Santa Ana Heights, California was jointly entered into evidence, and the parties stipulated that Firstplus is First Suburban's successor in interest to this mortgage agreement. Ex. J-1, ¶ 3(D). Exhibit J-3 reflects that First Suburban lent the sum of $42,000.00 to David and Constance Meade on June 17, 1997. Beginning on July 23, 1997, the Meades were to make monthly payments of $637.32 to this second mortgage lender for a period of 25 years. Ex. J-3, Note, ¶ 3.

Constance Meade testified that the contract sales price of the real estate, when purchased by the debtors in 1995, was $104,000.00. See Ex. D-1 (a copy of the closing statement issued in 1995). Mrs. Meade testified that she and her husband sought the second mortgage, or home improvement loan, in 1997 in order to consolidate and pay off their credit card debt. (Exhibit D-2 is a copy of this loan application.) The loan application confirms that the Meades purchased this real estate in August, 1995 for the sum of $104,000.00, and that at the time of this application the present balance owed to the first lienholder was $102,575.00. Mr. and Mrs. Meade

listed the then value of their home on this loan application as $120,000.00; Mrs. Meade testified that she determined this value from her estimation of the worth of the real estate inclusive of its contents.

II.

A.

While the objection to the claim asks that the claim of Firstplus be "classif[ied]" as an unsecured claim, the debtors' attorney asks for the following relief at the conclusion of their post-hearing memorandum of law: "[t]he Debtors' Plan should be confirmed and the claim modified by relegating it to unsecured status." I note that the debtors' request for confirmation is premature: a hearing on the confirmation of the debtors' proposed chapter 13 plan is currently scheduled to be heard on June 8, 1999.

Although a copy of the proposed plan of reorganization was not made a part of the evidentiary record, it is clear that the debtors propose to treat the claim of Firstplus as one which is unsecured by any value in the real property, pursuant to 11 U.S.C. § 506(a)[3], and intend to have this unsecured debt discharged through the

[3]This section is entitled "Determination of secured status," and the subsection 506(a) provides in relevant part: "An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, ... and is an unsecured claim to the extent that the value of such creditor's interest .... 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 (continued...)

successful completion of plan payments. The creditor responds, in essence, that the objection to its proof of claim should be denied because the debtors are not permitted to modify this secured claim.

Thus, the parties differ on whether the debtors should be permitted to "strip off"[4] the lien held by Firstplus, as a more senior mortgage secured by the same property fully encumbers the agreed-upon fair market value of that property. Section 506(a) of the Code, in general, allows debtors to bifurcate a secured creditor's claim into allowed secured and allowed unsecured components. See generally Sapos v. Provident Inst. of Sav. in Town of Boston, 967 F.2d 918 (3d Cir. 1992). However, 11 U.S.C. § 1322(b)(2) limits the debtors' ability to use section 506(a) to modify certain secured claims. Under section 1322(b)(2) a chapter 13 plan may --

> 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, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.

11 U.S.C. § 1322(b)(2) (emphasis added).

Accordingly, if a creditor holds only a "security interest in real property that is the debtors' principal residence" then a debtor may not use the bifurcation provisions of section 506(a). The anti-modification language of section 1322(b)(2) protects the creditor's secured claim from such bifurcation. E.g., Nobelman v.

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[3](...continued)
conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

[4]"In a bankruptcy context, a lien 'strip off' occurs when an entirely unsecured lien is removed, whereas a lien 'strip down' occurs when a partially secured lien is bifurcated and only the unsecured portion is removed." In re Chatman, C.A. No. 98-127(JCL), slip op. at 2 (D.N.J., June 2, 1998) (Lifland, D.J.).

American Sav. Bank, 508 U.S. 324 (1993). Conversely, if the scope of the security interest includes more than the debtors' residence (i.e., it includes personalty), bifurcation into allowed secured and unsecured components is permitted in a chapter 13 case. E.g., In re Johns, 37 F.3d 1021 (3d Cir. 1994).[5]

The debtors here acknowledge that the scope of the security interest held by Firstplus does not exceed the debtors' residence; nevertheless, they argue that the provisions of 11 U.S.C. § 506(a) permit them to treat Firstplus's claim solely as an allowed unsecured claim. They contend that the anti-modification provisions of section 1322(b)(2) provide no protection to a secured claim when that claim is completely undersecured because the value of the realty is less than the amount owed to a prior lienholder. Rather, the debtors maintain, the anti-modification provisions of section 1322(b)(2) apply only when the value of the residence is such that were it sold for such net value there would be some proceeds to distribute to the challenged creditor on its secured claim.

Firstplus counters that its claim, whether or not completely undersecured, is protected by the clear language of section 1322(b)(2), and that its claim cannot be modified in the manner proposed by the debtors.

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[5]It is well accepted in this circuit that if a loan is secured by collateral in addition to the debtor's residence, then the anti-modification provision of section 1322(b)(2) by its express terms does not apply. See In re Hammond, 27 F.3d 52, 56 (3d Cir. 1994); see also Sapos v. Provident Inst. Of Sav. In Boston, 967 F.2d 918, 925-26 (3d Cir. 1992); Wilson v. Commonwealth Mortgage Corp., 895 F.2d 123, 128-29 (3d Cir. 1990). That is, consistent with the Supreme Court's decision in Nobelman, these Third circuit decisions allow for a bifurcation under section 506(a) when the mortagee has an additional security in property other than the mortgagors' primary residence.

The debtors here have not argued that Firstplus is secured by more than their primary residence; thus, for purposes of resolving this dispute I shall accept that this claim is secured only by real property which is the debtors' residence.

B.

This dispute is not brought by way of a complaint under Fed.R.Bankr.P. 7001(2) "to determine the validity, priority or extent of a lien …."[6] Nor does the issue arise in connection with a motion to value security under Fed.R.Bankr.P. 3012, or an objection to confirmation under Rule 3015. Instead, this dispute is raised in the context of an objection to a proof of claim under Rule 3007. Compare Nobelman v. American Savings Bank, 508 U.S. 324 (1993) (interpreting sections 1322(b)(2) and 505(a) in context of the denial of plan confirmation).

Rule 3007 provides, in part, that if an objection contains "a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding." See generally Matter of Sanders, 202 B.R. 986, 991 (Bankr. D.Neb. 1996). Furthermore, although Firstplus initially objected to the procedure instituted by the debtors - that is, the creditor argued in its pre-hearing memorandum that was inappropriate for chapter 13 debtors to assert the provisions of section 506(a) outside of an adversary proceeding - Firstplus did not press this issue at the hearing on the objection. Rather, it stipulated to various facts deemed by the parties as relevant to this dispute.

Accordingly, to the extent there was any procedural defect, I consider that issue waived. Thus, I shall accept the parties' position that this proof of claim litigation

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[6]See, e.g., American General Finance, Inc. v. Dickerson, 229 B.R. 539 (M.D.Ga. 1999) (complaint to allow a junior mortgagee's claim as unsecured); Lewandowski v. U.S.Dept. Of Housing and Urban Development, 219 B.R. 99 (Bankr. W.D.Pa. 1998) (adversary complaint filed to determine that second claim was wholly unsecured and avoidable under section 506(d)); Fraize v. Beneficial Mortgage Corp.of New Hampshire, 208 B.R. 311 (Bankr. D.N.H. 1997) (complaint filed by debtors to determine priority, validity, and extent of mortgage lien held by second mortgagee, and for confirmation of plan).

properly raises the following question of law: Whether it is permissible, on these agreed facts, for these chapter 13 debtors to treat the secured claim of Firstplus solely as an allowed unsecured claim under section 506; or do the provisions of section 1322(b)(2) preclude such treatment?[7]

III.

The issue before me is one disinclined to easy resolution. I observe that the attempt to reconcile these two sections of the bankruptcy code - sections 506(a) and 1322(b)(2) - has been resolved by various courts in well-considered opinions that reach differing conclusions on facts similar to these. Compare, e.g., In re Chatman, C.A. No. 98-127(JCL), slip op. (D.N.J., June 2, 1998) (Lifland, D.J.) ("strip off" of third mortgagee's lien not barred by section 1322(b)(2)) with, e.g., McDonald v. Master Financial, Inc., C.A. No. 99-CV-149, slip op. (E.D.Pa., April 9, 1999) (Giles, D.J.) ("strip off" of second mortgage lien precluded by section 1322(b)(2)), appeal pending. The parties to the instant dispute therefore have each been able to refer to thoughtful decisions which support their respective positions. At bottom, however, I am persuaded that Congress, in enacting these two statutory provisions, most likely intended to prohibit the "stripping" of a lien secured solely by the debtors' primary

[7]Insofar as the debtors' proposed plan, which provides that the claim of Firstplus shall be treated as unsecured, will very shortly be considered for confirmation, the instant dispute does not call for an advisory opinion. If the debtors' objection is overruled, then confirmation must be denied.

residence, even where (as here) that claim would be wholly unsecured were the collateral sold.

I first note that this question has not been addressed by the Third Circuit Court of Appeals, and the parties have not referred to any appellate decision on this precise issue by any other of the circuit courts since the Nobelman decision was rendered.[8] Judges within this circuit, both bankruptcy and district, have reached varying conclusions. Thus, while there is no controlling judicial authority for me to follow, the extant case law may be considered to the extent it is persuasive.

As all recent decisions on this question note, the analysis must begin with the binding interpretation of section 1322(b)(2) provided by the Supreme Court in Nobelman v. American Savings Bank. In that decision, the Court held that a chapter 13 debtor was prohibited by section 1322(b)(2) from utilizing section 506(a) to propose a viable plan which would bifurcate the secured claim of a mortgagee into an allowed secured claim equal to the fair market value of the debtor's residence, and an allowed unsecured claim for the difference, where the mortgage claim was secured only by the debtor's principal residence.

The facts in Nobelman involved a first mortgage claim with an unpaid balance of approximately $70,000.00 and a residence with a fair market value of only $23,500.00. The debtor had proposed a plan which "stripped down" the mortgagee's secured claim into allowed secured and unsecured components based upon the realty's

[8]To the extent the debtors rely upon In re Bellamy, 962 F.2d 176 (2d Cir. 1992) in their post-hearing submission for support, the Bellamy decision pre-dated the Supreme Court's decision in Nobelman, and did not construe section 1322(b)(2) in a manner consistent with that declared by the Supreme Court.

value and then treated the two allowed claims differently. The creditor objected, arguing that bifurcating the claim into secured and unsecured components would run afoul of the anti-modification provisions of section 1322(b)(2); the debtor maintained that section 1322(b)(2) applied only to the extent that the creditor held an allowed secured claim on the residence.

In Nobelman, the Court held that section 1322(b)(2) prohibited the debtor from bifurcating the creditor's claim on those facts, because such treatment was a "modification" of the secured claim prescribed by this subsection. Nobelman, 508 U.S. at 329. One court has interpreted the Nobelman decision in the following manner:

> The Court interpreted the statement in § 1322(b)(2) that a plan may '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,' as not applying exclusively to those claims that are secured pursuant to valuation under § 506(a). The debtors had argued that because the clause prohibiting modification of homestead liens came immediately after the term 'secured,' that Congress intended for only secured claims, as opposed to unsecured claims, to be protected by § 1322(b)(2). The Court rejected this argument and found that, while such a reading of the statute was sensible, it was not compelled. Instead of using the phrase 'claim secured … by,' Congress could have repeated the term 'secured claim.' Nobelman, 508 U.S. at 330-331.... By choosing not to use the term of art 'secured claim' the Court inferred that Congress intended to use the term 'claim' in the ordinary sense, defined by the Bankruptcy Code as including any 'right to payment, whether … secured or unsecured.' 11 U.S.C. § 101(5). Based on this reasoning, the Court found it plausible to read the phrase prohibiting modification of homestead liens 'as referring to the lienholder's entire claim, including both the secured and unsecured components of the claim.' Id. at 331..... Justice Stevens wrote a concurring opinion, noting that the apparent conflict in the Code sections was explained by the legislative history of §1322(b)(2), which reveals that

> the favorable treatment of residential lenders was intended to encourage the flow of capital into the home lending market. Id. 508 U.S. at 332.... Essentially, then, Congress intended for § 1322(b)(2) to trump § 506(a) with respect to homestead liens.

American General Finance, Inc. v. Dickerson, 229 B.R. 539, 541 (M.D.Ga. 1999).

Similarly, one commentator has focused upon the Court's discussion of the "rights" of a lienholder in Nobelman and reached the following conclusion therefrom:

> It could be argued that the emphasis of the Supreme Court on the unassailability of a secured creditor's "rights" would support the result that even a wholly unsecured creditor with a security interest in real property that is the debtor's principal residence is protected from modification by § 1322(b)(2). Nobelman could thus be read as holding that, in a Chapter 13 case, any secured or unsecured claim where the claim holder also has a security interest in real property that is the debtor's principal residence is nondischargeable.

5 Norton Bankruptcy Law and Practice 2d §121:5, at 151-52 (Supp. Feb. 1999).

To the extent that this analysis accurately construes the Supreme Court's decision, then claims secured solely by the debtor's residence would be protected from modification even if there was no value to their lien position. See, e.g., McDonald v. Master Financial, Inc.; In re Robinson, 231 B.R. 30, 32 (Bankr. D.N.J. 1997); In re Lewandoski, 219 B.R. 99, 104 (W.D.Pa. 1998); In re Bauler, 215 B.R. 628, 630-31 (Bankr. D.N.M. 1997); In re Neverla, 194 B.R. 547, 550 (Bankr. W.D.N.Y. 1996). See also Lundin, Keith M., Chapter 13 Bankruptcy, § 4.46, p. 4-56 (2d ed. 1994) ("The clear implication of this analysis is that even a completely unsecured claim holder 'secured' only by a lien on real property that is the debtor's principal residence

would be protected from modification by § 1322(b)(2), notwithstanding that such an 'unsecured' lienholder could not have an allowable secured claim under § 506(a)").

As the debtors in the instant controversy correctly note, however, the Nobelman decision involved a partially secured claim, not one wholly unsecured. They fairly point to a number of decisions, such as In re Lam, 211 B.R. 36 (9th Cir. BAP 1997), which hold to the contrary of those just cited. As stated by another bankruptcy commentator:

> The Nobelman opinion strongly suggests, however, that if a lien is completely undersecured, there would be a different result. The opinion relies on the fact that, even after bifurcation, the creditor in the case was 'still the 'holder' of a 'secured claim' because petitioners' home retain[ed] $23,000 of value as collateral.' If the creditor had held a lien on property that had no value (perhaps because the property was fully encumbered by prior liens), then under this analysis, the creditor would not have been a 'holder of a secured claim' entitled to protection by section 1322(b)(2). Thus, since Nobelman, such completely undersecured claims have been found to be modifiable under section 1322(b)(2).

L. King, 8 Collier on Bankruptcy, ¶ 1322.06[1][a] at 1322-21 (15th ed. rev. 1999) (footnotes omitted); see, e.g., Johnson v. Asset Management Group, LLC, 226 B.R. 364, 366-67 (D. Md. 1998); Wright v. Commercial Credit Corp., 178 B.R. 703, 705-06 (E.D. Va. 1995); In re Libby, 200 B.R. 562, 566-67 (Bankr. D.N.J. 1996).

Although the debtors' construction of sections 506 and 1322 is plausible, I conclude that the analysis suggested by Chief District Judge Giles in McDonald v. Master Financial, Inc. more likely expresses congressional intent on the point. McDonald relies upon the following reasoning from Nobelman, 508 U.S. at 331:

> Congress chose to use the phrase "claim secured … by" in § 1322(b)(2)'s exception, rather than repeating the term of art "secured claim." Nobelman, 508 U.S. at 331. The

> unqualified word 'claim' is broadly defined under the Code to encompass any "right to payment, whether … secure[d] or unsecured" or any "right to an equitabale remedy for breach of performance if such breach gives rise to a right to payment, whether … secure[d] or unsecured." Id. The plain language supports the finding that even though Appellee's claim is unsecured on Appellants' principal residence, Appellants are forbidden from modification. The term "secured claim" is used throughout the Bankruptcy Code, but the draftsmen in this instance chose not to use it.

McDonald v. Master Financial, Inc., slip op., at 8; see, e.g., In re Fraize, 208 B.R. 311, 313 (Bankr. D.N.H. 1997); In re Shandrew, 210 B.R. 829, 831 (Bankr.E.D.Cal. 1997) (Nobelman found that "secured claim" is determined by section 506(a); a "claim secured … by" in section 1322(b)(2) refers to the entire claim, including its secured and unsecured components); In re Jones, 201 B.R. 371, 373 (Bankr. D.N.Y. 1996); In re Neverla, 194 B.R. at 550:

> Although the Supreme Court in Nobelman noted that the holder of the Homestead Mortgage in that case had an allowed secured claim after the application of Section 506(a), it nevertheless emphasized that the focus of Section 1322(b)(2) was on the bargained for rights of the holder of a Homestead Mortgage, rights which are granted to it under the mortgage contract, and indicated that the Section 506(a) determination 'does not necessarily mean that the 'rights' the bank enjoys as a mortgagee, which are protected by § 1322(b)(2), are limited by the valuation of its secured claim.' Nobelman, 508 U.S. at 329, 113 S.Ct. at 2110.
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> Furthermore, the Supreme Court specifically rejected the 'rule of the last antecedent' and rejected an interpretation of Section 1322(b)(2) which would protect only a Section 506(a) 'secured claim' of a holder of a Homestead Mortgage. Nobelman, 508 U.S. at 330.…

See also, e.g., In re Barnes, 199 B.R. 256, 257 (Bankr. W.D.N.Y. 1996) ("As in Nobelman, by reason of their mortgage contracts, [the mortgage companies] are each 'indisputably the holder of a claim secured by a lien on petitioners' home.' 508 U.S. at

328.... Although section 506(a) may still operate to determine the unsecured component of the claim, 'that determination does not necessarily mean that the 'rights' the bank enjoys as a mortgagee, which are protection by § 1322(b)(2), are limited by the valuation of its secured claim.' 508 U.S. at 329...."); In re Bauler, 215 B.R. 628, 632-33 (Bankr.D.N.M. 1997).

Where section 506(a) refers to "allowed" secured claims, the language of section 1322(b)(2) suggests that this latter provision was concerned only with the existence vel non of a claim which is secured by the debtor's residence, as opposed to the "allowance" of the secured and unsecured components of that claim.

As many courts have pointed out, a contrary result would place too heavy a reliance upon valuation evidence surrounding the collateral, which reliance could well be misplaced. The valuation of real property is not a science; many factors and variables interact to influence its determination. Experts may well vary, and vary widely, in their appraisal of real estate. See In re Fraize, 208 B.R. 311, 313 (Bankr. D.N.H. 1997); Matter of Atlanta Southern Business Park, Ltd., 173 B.R. 444 (Bankr. N.D.Ga. 1994) ("valuation is not an exact science, and the chance for error always exists"); In re Liona Corporation, N.V., 68 B.R. 761 (Bankr.E.D.Pa. 1987); In re Edwards, 67 B.R. 1008, 1010 (Bankr. D.Conn. 1986); In re Mikole Developers, 14 B.R. 524, 526 (Bankr.E.D.Pa.1981). It is unlikely that Congress intended for a creditor's entire claim, secured solely by real property, to be totally discharged in bankruptcy as opposed to completely honored, as in Nobelman, due solely to the value of the realty which may be inexact. As noted in In re Fraize:

> to allow a section 506 valuation to determine whether the holder of the claim is protected by a section 1322(b)(2)

> exemption puts too much emphasis on the valuation, which is less than an exact science. If one assumes the value of the debtor's primary residence to be $100,000 and if the first mortgage is equal to that value, then a second mortgagee would hold a zero secured claim under section 506 and not be protected under section 1322(b)(2). However, should the first mortgage be $99,999, the second mortgagee would hold a $1 secured claim under section 506 and, pursuant to Nobelman, would be fully protected under section 1322(b)(2). This surely cannot be the result anticipated by Congress.

208 B.R. at 313.[9]

In addition, as the Lewandowski decision recognized, to the extent that section 1322(b)(2) was concerned with protecting the state law rights of the mortgage holder from modification, those rights are established under non-bankruptcy law without regard to the value of the residence or the practical value of a fully undersecured mortgage. Id., 219 B.R. at 103. Here, Firstplus was free under Pennsylvania law to foreclose upon and take title to the debtors' residence upon a material default in the mortgage agreement without regard to value of the collateral or the amount owed to the first mortgagee. Were it to do so, then Firstplus would benefit from any future appreciation in the value of the realty. The relief sought by the debtors in the instant dispute would extinguish Firstplus's state law rights.

Finally, if Congress intended the anti-modification provisions of section 1322(b)(2) to apply to a second residential lien only when the value of the realty is

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[9]Indeed, I note that the facts of this case approach this hypothetical. As of November 4, 1998, the amount owed the first lienholder was $101,117.50. The parties have agreed to a valuation of the realty of $100,000.00. If this agreed value were inaccurate by only 2% - well within the normal range of any appraisal - Firstplus would be in the precise factual situation as the mortgage company in Nobelman: having a small portion of its claim allowed as a secured claim under section 506.

greater than the amount owed on the first position lien, then this statute might encourage prospective chapter 13 debtors to take steps either to reduce the value of their home (i.e., defer maintenance) or increase the amount due to the first lienholder (i.e., stop first mortgage payments). It is unlikely that the policy surrounding the enactment of section 1322(b)(2) would seek to encourage such pre-bankruptcy planning.

Accordingly, given the interpretation of section 1322(b)(2) as provided in Nobelman, the particular language used in that statutory provision, plus the practical concerns which would arise if a contrary interpretation were used, I am persuaded that the holding of Nobelman v. American Sav. Bank applies to residential secondary mortgages otherwise within the scope of section 1322(b)(2), even if such a secondary lien is completely undersecured. Congress likely intended that these liens should pass through bankruptcy unmodified. Therefore, the fact that Firstplus has a claim secured by a lien on real estate which happens to be fully encumbered by a first mortgage does not cause this creditor to lose its lien in this chapter 13 case.

Accordingly, the debtors' objection to the amended proof of claim must be denied. An appropriate order shall be issued.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
DAVID MEADE and CONSTANCE D. MEADE	:	
Debtors	:	Bankruptcy No. 98-32648F

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ORDER

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AND NOW, this 3rd day of June, 1999, for the reasons stated in the attached memorandum, it is hereby ordered that debtors' objection to amended proof of claim filed by Firstplus Financial, Inc. is overruled.

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BRUCE FOX
Chief Bankruptcy Judge

IN RE:
DAVID MEADE and
CONSTANCE D. MEADE

Chapter 13
Bankruptcy No. 98-32648F

Copies of the Bankruptcy Judge's Memorandum and Order dated June 3, 1999, were mailed on said date to the following:

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