

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:)	Chapter 13
)	
Evangeline M. Ford,)	Case No.: 97-05675-D
)	
)	MEMORANDUM
)	AND
)	ORDER
Debtor.)	
_____)	

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U.S. BANKRUPTCY COURT
DIST. OF SOUTH CAROLINA

ENTERED
OCT 29 1997
K. R. D.

In her case, under chapter 13 of the Bankruptcy Code (11 U.S.C. §§101 et seq.)¹, the debtor has filed a plan wherein, she proposes to satisfy the creditor who holds a security interest on a parcel of her land as well as her mobile home situated thereon. The debtor contends that, because the mobile home is personal property (apart from the real estate on which it is situated), she is not bound by the proscription of section 1322(b)(2)² which prevents her modifying the rights of EquiVantage, Inc., formerly known as Transworld Mortgage (hereinafter "EquiVantage") the holder of the security interest. She wants the rights of EquiVantage modified under section 1322(b)(2) notwithstanding the admitted fact that the claim is "secured only by a security interest in real property that is the debtor's principal residence."

¹Further reference to the United States Bankruptcy Code, 11 U.S.C. §§101 et seq., will be by section number only.

²11 U.S.C. §1322. Contents of plan

(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, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

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FACTS

On September 3, 1996, the debtor gave EquiVantage a \$37,500 promissory note secured by a mortgage on her principal residence.

The mortgage describes the metes and bounds of the real property on which is the debtor's residence — the mobile home with additions. The mortgage contains, inter alia, this language:

. . . . Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property in LANCASTER County, South Carolina:

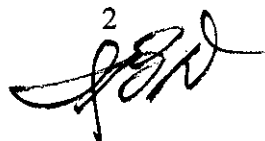
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART
HEREOF [The metes and bounds description of the real estate]

MANUFACTURED HOME INFORMATION

MAKE: SHILOH
MODEL: 1979
SERIAL NO: 323637AB
LENGTH: 60
WIDTH: 24

At the time of the execution of the mortgage, and to now, the mobile home, has a brick foundation, has no wheels, and, in addition, has a 30' X 10' room (added to the front) and an outside wooden deck. The residence is surrounded by large shrubbery as well as central heating and cooling units, all of which would have to be removed before the home could be detached and moved.

On July 7, 1997, less than a year after obtaining the \$35,700 loan from EquiVantage, the debtor filed the petition for relief under the Bankruptcy Code, along with her chapter 13 plan and motion to value separately the real property and mobile home. Not unexpectedly, EquiVantage has filed its objection to the confirmation of the plan and to the debtor's motion to value

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separately (1) the mobile home and (2) the other property which serves as security for the loan.

ISSUE

The issue is whether the mobile home has become such a part of the real property that plan may not be confirmed inasmuch as it, despite the proscription of §1322(b)(2), seeks to modify the secured claim of EquiVantage in real property that is the debtor's principal residence.

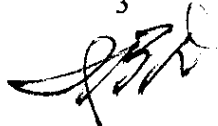
DISCUSSION

(a).

The question of whether or not a mobile home is sufficiently affixed to real property to be "real property" afforded the protection of §1322(b)(2) is a question of state law. See Keith M. Lundin, Chapter 13 Bankruptcy, Vol. 1, §4.40, p. 4-40 (1st ed. 1994). "It has long been the law in South Carolina that fixtures annexed to land which is encumbered with a mortgage inure to the benefit of the real property mortgage." In re Rebel Mfg. and Marketing Corp., 54 B.R. 674, 675 (Bankr. D. S.C. 1985), citing Planter's Bank v. Lummus Cotton Gin Co., 132 S.C. 16, 128 S.E. 876 (1925).

In Rebel Mfg. supra, this court followed a four factor test set forth in In re Avery, 7 B.R. 28 (Bankr. D. S.C. 1980), for determining whether or not a mobile home is sufficiently attached to real property so that it is covered by a real property mortgage. The criteria are: (1) the mode of attachment, (2) the character of the structure, (3) the intent of the parties, and (4) the relationship of the parties.

As to factors (1) and (2), the debtor's mobile home sits on a brick foundation; the wheels have been removed; and, to the mobile home, a 30' X 10' room has been added on the front and a wooden deck has been attached to the rear; large shrubbery and heating and cooling appliances

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surround the residence. The home obviously could not be moved without damaging the foundation, the additions and the surrounding shrubbery.

As to factor (3) — the intention of the parties — their listing the mobile home as part of the mortgaged property, evinces an intent of the parties to treat the real property including the mobile home as an inducement for effectuating the loan. It is undisputed that at all relevant times, the debtor's intent has been to use the mobile home plus the additions as her principal residence.

Factor (4) appears to be inoperable in this proceeding since the debtor here, as in Rebel Mfg., supra, has title to all of the property in question.

Application of the three relevant factors leads to the conclusion that the mobile home is so annexed as to be the real property which constitutes the debtor's principal residence.

(b).

A mortgage listing an item of security in addition to the real property does not necessarily preclude the mortgage from the protection afforded by §1322(b)(2). See In re Harris, 167 B.R. 813 (Bankr. D. S.C. 1994) — wherein it was held that rents, issues, and profits covered by the mortgage became a part of the debtor's principal residence and, as such, did not exclude the mortgage from the protection of §1322(b)(2). See also In re Hernandez, 149 B.R. 441 (Bankr. E.D. Tex. 1993)(profits and royalties); In re Carter, 116 B.R. 156 (Bankr. W.D. Mo. 1990)(real estate and mobile home); In re Washington, 967 F.2d. 173 (5th Cir. 1992)(credit life insurance) which stand for the same proposition. See generally, Butler, J. Bankruptcy Handbook, vol. 1, §12.36, p. 12-25, 12-26 (1996).

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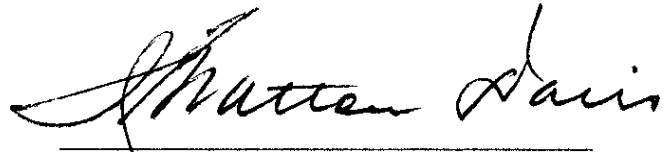

CONCLUSIONS

The application of the law to the facts leads to the conclusion that the mobile home is such a part of the "real property that is the debtor's principal residence" that the debtor may not modify the security interest of EquiVantage.

EquiVantage is entitled to the protection afforded by §1322(b)(2). That renders the debtor's motion to value the mobile home moot. For these reasons EquiVantage's objection to the confirmation of the debtor's plan is sustained; and confirmation of the debtor's plan should be denied.

ORDER

Confirmation of the debtor's chapter 13 plan, dated July 5, 1997, is denied.



J. BRATTON DAVIS
Chief Judge

Columbia, South Carolina
October 27, 1997