UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

CAROLYN R. WEEKS, a.k.a.
KERI WEEKS,

Debtor.

CASE NO. 94-20983

DECISION & ORDER

BACKGROUND

On May 10, 1994, the debtor, Carolyn R. Weeks (the "Debtor"), filed a petition initiating a Chapter 7 case. On her schedules, the Debtor listed a 1993 Hyundai (the "Hyundai") which she valued at a current market value of $7,325.00 based on the May, 1994 N.A.D.A. value. The schedules also indicated that G.M.A.C. had an undisputed claim in the amount of $13,631.88 secured by the Hyundai and that Beneficial Finance of New York, Inc. ("Beneficial") had an undisputed claim in the amount of $5,000.00 also secured by the Hyundai. No claim of an exemption in the Hyundai was made by the Debtor on her Schedule C.

On May 27, 1994, a Section 341 Meeting Notice was sent to all creditors by the Court which indicated that "at this time there appear to be no assets available from which payment may be made to unsecured creditors." On June 17, 1994, the trustee appointed by the Office of the United States Trustee conducted a Section 341 Meeting, examined the Debtor, and on June 22, 1994 filed a Minute Report indicating that the Debtor's case was a no asset case and that the Section 341 Meeting had been closed.

On June 20, 1994, the Debtor filed a motion,[1] returnable on July 6, 1994 for an order pursuant to Section 506(a) and Rule 3012 determining the fair market value of the secured claim of

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[1] Although Rule 3012 provides for the valuation of a secured lien by motion, Rule 7001 contemplates that the avoidance of a lien by the use of Section 506(d), other than as part of a plan confirmation proceeding, will be by adversary proceeding.

Beneficial in the Hyundai to be zero, declaring such claim to be unsecured, and avoiding the lien of Beneficial in the Hyundai (presumably pursuant to Section 506(d)). Beneficial did not oppose the Debtor's motion.

Because the attorney for the Debtor insisted that this requested relief had always been granted by the Court in the past, especially when, as in this case, the secured creditor did not interpose any opposition and had defaulted, the Court advised that it would reserve on the matter and issue a short decision.

DISCUSSION

The United States Supreme Court has addressed the issue of lien stripping in a Chapter 7 case and decided that a creditor with an allowed secured claim with a lien secured by property of the debtor may not have the lien stripped down or avoided pursuant to the provisions of Section 506(d). *Dewsnup v. Timm*, --- U.S. ---, 112 S.Ct. 773, 116 L.Ed.2d 903 (1992).

Although the Supreme Court decision in *Dewsnup v. Timm* dealt with real estate, after the Supreme Court decision, courts having addressed the issue in connection with personal property and have determined that similar undersecured liens on personal property can nevertheless not be stripped down and avoided in a Chapter 7 case by the use of Section 506(d). *See In re Jordan*, 164 B.R. 89, 91 (Bankr. E.D.Mo. 1994). As Chief Judge Schermer stated in *In re Jordan*, "the difference in the type of collateral is not a significant distinction." *Jordan,* 164 B.R. at 91 n.3.

The assertion by the attorney for the Debtor that this type of motion had been routinely granted by the Court must have been a reference to periods prior to January, 1992 when I was sworn in, or, if subsequent to that time, in connection with the confirmations of Chapter 11, 12 or 13 plans or redemption motions, since I am not aware of having previously granted such a motion in a Chapter 7 case, especially in view of the Supreme Court's decision in *Dewsnup v. Timm* on January

15, 1992.

As to the assertion that the relief requested should be granted because the respondent, Beneficial, did not oppose the motion, I have consistently advised parties appearing before me and various bar associations that this Court will not grant relief that a party is not otherwise entitled to simply because a respondent defaults and does not oppose the relief requested. Often in Bankruptcy Court parties do not oppose motions, because the economics of the case do not warrant expending funds to oppose a given matter and not because they do not have a meritorious defense to the relief requested in the motion. In light of the presence of so much economic burden-shifting in Bankruptcy Court, this Court believes that defaults must be closely scrutinized to insure that a party has a fundamental right to the relief requested before it is granted that relief even when there is a default by the respondent. In this case, the Debtor is not entitled to the relief requested, avoiding the lien of Beneficial, under the U.S. Supreme Court's decision in *Dewsnup v. Timm*, notwithstanding Beneficial's failure to object to the motion or the procedural correctness of the relief requested in the motion.

CONCLUSION

The relief requested by the Debtor, to strip down and avoid the lien of Beneficial on the Hyundai in her Chapter 7 no asset case, is in all respects denied in accordance with the decision of the United States Supreme Court in *Dewsnup v. Timm.*

IT IS SO ORDERED.

/s/
HON. JOHN C. NINFO, II
U.S. BANKRUPTCY COURT JUDGE

Dated: July 11, 1994