UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

HARRY R. HORNER and
MARY A. HORNER

Case No. 93-11379 K

Debtors

HARRY R. HORNER

Plaintiff

-vs-

MANUFACTURERS AND TRADERS TRUST COMPANY,
MARINE MIDLAND BANK, N.A., and
NATIONAL WESTMINSTER BANK OF NEW JERSEY,
MODERN FINANCIAL PLANS AND SERVICES,

Defendants

Before the Court is the Chapter 13 Debtor's[1] motion to "strip down" the mortgage lien (a second mortgage) of Manufacturers and Traders Trust Company (M & T) to zero and that (a first mortgage) of Marine Midland Bank (Marine) to the alleged $3236.72 value of the land and to "strip down" the UCC lien of National Westminster Bank of New Jersey (National) upon the Debtor's double-wide mobile home to the alleged $6,000 value of the double-wide as "personalty."

The motion is denied in part as a matter of law, and continued for further hearing in part.

The request to set aside any portion of the liens of

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[1]Mr. Horner is apparently the sole owner of the real estate.

Marine and M & T is denied as a matter of law, governed by the decision of the U.S. Supreme Court in *Nobelman v. American Savings Bank*, 113 S.Ct. 2106 (1993).

In *Nobelman* the Court overruled *Bellamy v. Federal Home Loan Mortgage Corp.*, 962 F.2d 176 (2d Cir. 1992), and held that a Chapter 13 Debtor has no right to pay a mortgage loan on his homestead as a secured claim only to the extent of the value of the real estate; it must be paid in full accordance with its terms.

The Debtor here seeks to distinguish *Nobelman* on the grounds that the Marine and M & T mortgages are not purchase-money mortgages, unlike the mortgage at the *Nobelman* Bar.

Neither 11 U.S.C. § 1322(b)(2) nor any language contained in the opinion of the Court in *Nobelman* supports such a distinction,[2] and the present Court rejects the Debtor's argument.

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[2]To the extent (if any) that the one-paragraph concurring opinion of Mr. Justice Stevens supports such a distinction, the present Court notes that the loans in question would fall well within the protection of *Nobelman* since the Debtor admits in his affidavit that the $12,000 loan from Marine was applied to preparing the site for installation ($8,000) of the new mobile home, and to pay off the outstanding balance ($4,000) on the prior mobile home in which he resided on that site; and the $15,000 loan from Central Trust (later assigned to M & T) was used to move and install the new mobile home, and for landscaping, plumbing, electric and other matters appurtenant thereto.

Furthermore, in the face of a clear holding regarding unambiguous statutory language, Justice Stevens' comments do not necessarily suggest a different result even when loans are not applied to homestead purposes. It is not uncommon for a statute to achieve a less-favored purpose in order that it achieve a more-favored purpose without attempting arbitrary or uncertain distinctions. For example, might not "home equity" loans used for debt consolidation serve the purpose of helping to enhance or

As a matter of law, the Debtor may not strip down Marine or M & T.

It is clear on the other hand that National is not protected by *Nobelman* if National has no lien on the Debtor's real estate, and it asserts no such lien. The creditors argue that it is protected by *Dewsnup v. Timm,* 112 S.Ct. 773 (1992). That case, however, taught only that 11 U.S.C. § 506(d) plays no role in a no-asset Chapter 7 case.

If the Debtors wish to and are able to proceed with a Chapter 13 case despite the duty to treat Marine and M & T in accord with *Nobelman*, then it is necessary for a further hearing to determine the extent and method of affixation of the double-wide to the land. Although this matter has no bearing on what the Debtors must provide to Marine or M & T under a Plan, it is decisive of (1) whether National continues to have any lien under the UCC,[3] and (2) how the homestead is to be valued for Chapter 7 test purposes.[4]

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preserve the homestead if it enables the debtor to obtain other credit dedicated to the home? At a sophisticated extreme, one might use a "home equity" loan rather than a car loan to purchase a vehicle, then use the "savings" in interest and taxes to make extra payments on a <u>different</u> mortgage loan, and thus build exempt equity in the home.

[3]If the double-wide became a "fixture" or "realty," National may have lost its lien under the UCC because it did not effect a "fixture filing" or obtain a mortgage.

[4]If the double-wide has not lost its identity as personalty, the Debtors might have no non-exempt equity, and no Chapter 7 test obligation to their unsecured creditors, arising out of their

If such a hearing is to be held, it should not be necessary for experts to attend it. The parties should be able to stipulate to the on-site facts, and at hearing place those facts on the record and argue only the significance of those facts.

Counsel for the Debtors shall advise the lenders and the Court in writing on or before October 15, 1993,whether said hearing is required or whether the Debtors have decided to withdraw or convert their case. If the hearing is needed, it will be conducted at Part I, U.S. Bankruptcy Court, 310 U.S. Courthouse, Buffalo, New York on October 29, 1993 at 9:00 a.m. (Mark Exhibits at 8:45 a.m.) Actual valuation will not be examined thereat, but will remain for yet a further hearing, if required.

SO ORDERED.

Dated: Buffalo, New York
September 30, 1993

U.S.B.J.

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homestead.