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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

ROBERT J. MAYO, JR.
FDBA GREAT LAKES CONSTRUCTION CO. Case No. 90-12688 K
FDBA GREAT LAKES HOMES
MARIA R. MAYO

Debtors

ROBERT J. MAYO, JR.
FDBA GREAT LAKES CONSTRUCTION CO.
FDBA GREAT LAKES HOMES
MARIA R. MAYO

Petitioners

-vs-

JOHN H. BLACK CORPORATION

Respondent

The debtors have re-opened their Chapter 7 case and here seek to value a judgment lien creditor's secured claim under 11 U.S.C. § 506(a) and to void the lien under 11 U.S.C. § 506(d) to the extent there is no value supporting it. The lien is on nonresidential real estate. The case was closed as a "no-asset" case in 1991.

The judgment creditor argues that the relief requested must be denied in light of the Supreme Court's recent holding in *Dewsnup v. Timm*, ___ U.S. ___, 112 S.Ct. 773, 116 L.Ed.2d 903 (U.S. 1992). I agree.

Although *Dewsnup* involved a mortgage, the Court did not limit its analysis to mortgage liens. My reading of the case is that section 506(d) does not allow "strip down" of a lien, any lien, unless the underlying claim is disallowed. In other words, section 506(d) operates only to the extent that the claim it

secures would fail under 11 U.S.C. § 502. (For example, if the underlying judgment were found to be unenforceable (§ 502(b)(1)) for want of jurisdiction, then section 506(d) would void the lien.)

Thus it appears that the Supreme Court has inextricably linked section 506 to the process of allowance and disallowance of claims under section 502, as did Chief Bankruptcy Judge Beryl E. McGuire in *In re Mammoser*, 115 B.R. 758 (Bkrctcy. W.D.N.Y. 1990) wherein Judge McGuire further noted that the claims process itself is only implicated in the context of distribution.¹

While the full ramifications of *Dewsnup* remain to be explored, it is now clear that a Chapter 7 debtor may not utilize 11 U.S.C. § 506(d) to "strip down" a lien, where no distributive purpose is served (this being a no-asset case) and the only effect would be to permit the debtor alone benefit from appreciation in the value of the real estate.

The debtor's motion is denied.

Dated: Buffalo, New York
February 27, 1992

/S/ MICHAEL J. KAPLAN

U.S.B.J.

¹Judge McGuire noted that § 506 is placed in Subchapter I of Chapter 5 of the Bankruptcy Code, that that Subchapter is entitled "Creditors and Claims," and that it "is integral to the distribution process and simply interacts with and implements the remedial chapters of the Code." 115 B.R. 758, at 759.