

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

Case No. 9:12-bk-00519-FMD
Chapter 13

Joni Spearman and
David Spearman,

Debtors.

**ORDER DENYING DEBTORS' MOTION TO
DETERMINE SECURED STATUS OF
J.P. MORGAN CHASE BANK, N.A., AND TO
STRIP LIEN EFFECTIVE UPON DISCHARGE**

THIS CASE came on for consideration of the Debtors' Motion to Determine Secured Status of Chase Bank, N.A., and to Strip Lien Effective upon Discharge (Doc. No. 37) (the "Motion") and the response filed by J.P. Morgan Chase Bank, N.A. (Doc. No. 39). The Motion states that J.P. Morgan Chase Bank, N.A. (the "Bank") holds both the first and second mortgages on the Debtors' homestead property. The Motion further states that the amount of the first mortgage is \$235,947.54, and that the value of the subject property is \$240,000.00. Thus, the value of the property exceeds the amount of the first mortgage.

In *Nobelman v. Am. Sav. Bank*, 508 U.S. 324 (1993), the Supreme Court addressed the question of whether a Chapter 13 debtor is prohibited by 11 U.S.C. § 1322(b)(2) from relying upon § 506(a) to reduce an undersecured mortgage on the debtor's principal residence to the fair market value of the residence. Section 1322(b)(2) provides that a Chapter 13 plan may not modify the rights of holders of secured claims secured only by a security interest in real property that is the debtor's principal residence.

The debtor in *Nobelman* argued that § 1322(b)(2)'s anti-modification provision applies only to the extent that the mortgagee holds a "secured claim" in the debtor's residence, and that the Court should first look to § 506(a) to determine the value of the mortgagee's "secured claim." The debtor argued that the secured claim should then be stripped down to the value of the collateral.

The Supreme Court rejected this interpretation because it failed to take into account 1322(b)(2)'s focus on "rights." *Id.* at 328. In short, a mortgage holder's rights, which are protected by § 1322(b)(2), are

not limited by the value of its secured claim. Rather, the creditor's contractual rights, including the right to retain the lien until the debt is paid off, are derived from the creditor's mortgage instruments. It is these rights, bargained for by the mortgagor and the mortgagee, that are protected from modification by § 1322(b)(2). *Id.* at 329-330 (citing *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992)). And, the creditor's contractual rights are contained in a "unitary note" that applies to the bank's overall claim, which includes its secured and unsecured components. *Id.* at 331-32.

Nobelman makes it clear that § 1322(b)(2) cannot be used to modify the rights of a holder of secured claim where any portion of the claim is secured by the debtor's principal residence. Because the value of the Debtors' principal residence exceeds the amount of the obligation secured by the Bank's first mortgage, the Bank's second mortgage is not wholly unsecured, and, therefore, cannot be stripped.

Accordingly, it is

ORDERED:

The Motion is hereby DENIED.

DONE and ORDERED in Chambers at Tampa, Florida, on August 17, 2012.

/s/
Caryl E. Delano
United States Bankruptcy Judge