

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
KAREN H. ARNOLD,) Case No. 17-01667
)
Debtor.)

ORDER SUSTAINING OBJECTION TO CONFIRMATION

This case is before the court on creditor 21st Mortgage Corporation's objection (doc. 18) to confirmation of debtor's Chapter 13 plan. 21st Mortgage has a secured interest in a 1999 Cavalier 14' x 70' manufactured home owned by debtor. Debtor's plan (doc. 13) values the collateral at \$12,798 and proposes to pay that amount at a 4% interest rate. 21st Mortgage contends that the value and rate are too low and that the plan thus violates Bankruptcy Code § 1325(a) by proposing to distribute less than the value of its allowed secured claim. 21st Mortgage has filed a secured claim (no. 1) in the amount of \$28,890.52. The court conducted an evidentiary hearing and heard testimony from the debtor and from Billy Pendergraft, an appraiser retained by 21st Mortgage. Having considered the record evidence and the applicable law, and for the reasons discussed below, the court will sustain 21st Mortgage's objection to confirmation.

In this chapter 13 case, the value of personal property collateral such as debtor's mobile home is determined based upon the replacement value of the property as of the petition date without deduction for cost of sale of marketing. 11 U.S.C. § 506(a)(2). With respect to property acquired for personal, family, or household purposes, replacement value means the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined. *Id.* Only perfected security interests are considered in determining value under § 506(a) because the trustee has the avoidance powers of a hypothetical

judgment lien creditor under § 544(a)(1), and an unperfected security interest is subordinate to the rights of a subsequent lien creditor. *See* Ala. Code § 7-9A-317.

In this matter, not long after Ms. Arnold purchased the mobile home, 21st Mortgage sent her a “NADA Guides Value Report” (debtor’s Exhibit 5) of \$13,279.50. Ms. Arnold was understandably upset to think that she had paid \$42,500 for a mobile home which was only valued at \$13,279.50. However, 21st Mortgage sent her a letter (creditor’s Exhibit A) explaining that the number was only a NADA opinion as to the base value of manufactured homes of the same year, make, and model and that it did not include any upgrades, accessories, or other features. 21st Mortgage’s appraiser also testified that the \$13,279.50 figure represented a base valuation for simply the box of the mobile home without any additional features or accessories.

Debtor introduced into evidence an online NADA value report in the amount of \$14,688.10 (debtor’s Exhibit 2). The court gives some weight to that appraisal, although it finds that the condition of the mobile home is better than the “poor” selected and that the figure is thus too low as a result.

Appraiser Billy Pendergraft presented a detailed report (21st Mortgage’s Exhibit D). He found the condition of the mobile home and accessories to be generally good, which is supported by the photographs which were also admitted into evidence. Mr. Pendergraft appraised the mobile home at \$30,500 (*id.*, p. 5). However, the court finds that it needs to make several adjustments to that figure to come up with a proper valuation pursuant to § 506.

First, the \$30,500 value includes \$3,207 added as “community location value” based upon the alleged desirability of the mobile home park and its amenities. Bankruptcy Code § 506(a) does not provide for adjustment of value based upon desirability (or lack thereof) of the personal property’s location, and this court in other mobile home valuation cases has rejected

debtors' attempts to reduce valuation because of the mobile home being located in remote or less desirable areas. The "community location value" is simply an adjustment for location by another name, and the court thus does not think it is appropriate under § 506(a). *See, e.g., In re Fields*, No. 16-12315, 2017 WL 3580169, at *3 (Bankr. D. Kans. July 17, 2017)

Second, 21st Mortgage's note and security agreement, attached to its proof of claim, creates a first priority security interest in "the Manufactured Home, and all accessions, attachments, accessories, replacements and additions to the Manufactured Home, whether added now or later" 21st Mortgage attached to its proof of claim a copy of the certificate of title with it listed as lienholder. The listing of 21st Mortgage on the certificate of title perfected its security interest in the manufactured home and any "accessions" to the manufactured home pursuant to Alabama Code §§ 32-40-41 and 7-9A-335(d). Alabama Code § 7-9A-102(a)(1) defines "accession" as "goods that are physically united with other goods in such a manner that the identity of the original goods is not lost." The court has not been able to find a more detailed definition of accession under Alabama law, but courts in other states have held, for example, that a good is an accession if it has become an integral part of the property to which it was attached or if it cannot be conveniently detached. *See, e.g., In re Sweeney*, 556 B.R. 208, 214-15 (Bankr. E.D.N.C. 2016); *In re Thornton*, No. 15-6762-RLM-13, 2016 WL 3092280, at *4 (Bankr. S.D. Ind. May 23, 2016). Although 21st Mortgage's security agreement covers more than accessions, there is no record evidence that 21st Mortgage perfected its interest in any non-accession item by filing a UCC-1 or otherwise.

After hearing the testimony of Mr. Pendergraft and reviewing the components and accessories described in his report and the values he attributed to them, the court finds that the

following items and values should be deducted from Mr. Pendergraft's valuation because the items are not "accessions" in which 21st Mortgage holds a perfected security interest:

Refrigerator	\$240
Range	\$254
Washer/dryer	\$76
Drapes	\$242
Ceiling fans	\$234
Hutch	\$109
Porch	\$96
Steps	\$101
Carport	\$1,500
Sunroom	<u>\$4,495</u>
Total	\$7,347

Mr. Pendergraft specifically testified, in response to the undersigned's questions, that the carport and sunroom could be detached from the mobile home, thus retaining their separate identities; the court thus finds that they are not "accessions."

Subtracting the \$3,207 in "community location value" and the \$7,347 in non-accession items from Mr. Pendergraft's appraised value of \$30,500, the court arrives at a valuation of 21st Mortgage's secured claim under § 506(a) of \$19,946. Because the debtor's current plan only proposes to pay 21st Mortgage the amount of \$12,798 plus interest, the court sustains the creditor's objection to confirmation. The parties did not put on evidence regarding or argue the 4% interest rate under *Till* and the court is not ruling upon that issue at this point.

Dated: October 17, 2017


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE