

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:)	
)	
MARK ALLEN TRIBLE,)	Case No. 00-13359
)	Chapter 7
)	
Debtors.)	
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)	
J. MICHAEL MORRIS, Trustee,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 00-5357
)	
CITIFINANCIAL; and)	
MARK A. TRIBLE,)	
)	
)	
Defendants.)	
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**SUPPLEMENTAL MEMORANDUM OPINION AS TO VALUE
OF AVOIDED LIEN**

This Opinion supplements the Court’s Memorandum Opinion and Order dated July 24, 2002,¹ as corrected and reissued this date,² and should be read together with it. The issue remaining for decision is the allocation of value between Citifinancial’s avoided lien on the mobile home and its non-avoided lien on the real estate as contemplated by *In re Rubia*³ and this Court’s prior

¹ Dkt. 60.

² Dkt. 77. The opinion was revised due to typographical errata.

³ 257 B.R. 324 (10th Cir. BAP 2001), *aff’d* 23 Fed. Appx. 968 (10th Cir. 2001).

Memorandum Opinion.⁴ The real estate and the mobile home are referred to together herein as the “Property.” As noted previously, the value to be allocated between the mobile home and the real estate is limited to the amount of Citifinancial’s claim at the date of filing – \$36,460.72.⁵

On February 4, 2003, the Court held an evidentiary hearing on the apportionment of value between the real property in which the Trustee claims no interest and the mobile home subject to the avoided lien. No live testimony was presented. Instead, the parties stipulated to the admission of several documentary exhibits, choosing to rely on written appraisal reports. These reports included three commissioned appraisals⁶ and Sedgwick County’s property data listing showing appraised values for the Property for tax years 1998, 1999, and 2000.⁷ Counsel also advised the Court that the debtor has claimed the Property exempt as his homestead, that there has been no reaffirmation agreement, and that the debtor continues to make his regular payments on the indebtedness. The Court took the matter under advisement.

Because the valuation issue is dependent upon the appraisal information before it, the Court will summarize the various appraisals. The Trustee relies on an appraisal prepared for Citifinancial dated July 27, 2000 (“the Hopkins Appraisal”)⁸, shortly before Citifinancial made its loan to the

⁴ Because the debtor has continued to make regular payments on the property during the pendency of these proceedings, the Court’s decision will determine the amount of those payments that will be paid to and retained by the Trustee for the benefit of the bankruptcy estate.

⁵ *In re Rubia*, 257 B.R. at 328.

⁶ Ex. 4, Ex. 6, and Ex. A.

⁷ Ex. 5.

⁸ Ex. 4.

debtor and before debtor filed bankruptcy.⁹ According to the Hopkins Appraisal, the total value of the Property on a cost basis, and after depreciating the improvements by 10 percent, was \$69,835. Of this cost, the land contributed value of \$6,000. The depreciated value of the improvements (which included the mobile home, a detached garage, and other site improvements) was \$63,335. Subtracting the value of the garage and other site improvements in which the trustee claimed no interest, the cost basis value of the mobile home alone was \$58,655. After subtracting depreciation of 10%, the cost basis value of the mobile home was fixed at \$53,509.50.¹⁰ Under the Hopkins Appraisal, then, the value of the mobile home contributes 76.62% of the total cost-basis value of the Property.¹¹

This percentage allocation is consistent with the Sedgwick County Appraiser's proportionate values for the land and improvements for tax purposes. According to the property data listing for tax year 2000, the improvements contributed 75.38% of the total appraised value of the Property.¹²

After this adversary proceeding was filed, the Trustee and Citifinancial each commissioned current appraisals of the Property. The Trustee's appraisal is dated January 25, 2003 ("the Kelly Appraisal")¹³ and Citifinancial's appraisal is dated January 31, 2003 ("the Bannon Appraisal").¹⁴ The Kelly Appraisal fixed a total cost basis value of the Property at \$68,567. Employing a cost basis approach, Kelly valued the land at \$15,000. The cost basis of the mobile home alone was \$55,955

⁹ Debtor executed the note and security agreement in favor of Citifinancial on August 9, 2000 (Ex. 1) and filed bankruptcy on August 29, 2000.

¹⁰ The Court has included the depreciated value of the gas fireplace (\$720) in the total value of the mobile home. The Hopkins Appraisal valued the fireplace separately as one of the site improvements. *See* Ex. 4.

¹¹ $\$53,509.50 \div \$69,835 = .7662$.

¹² *See* Ex. 5 ($32,470 \div 43,070 = .7538$).

¹³ Ex. 6.

¹⁴ Ex. A.

and the net value, less a depreciation rate of 33%, was \$37,321.98 on a cost basis.¹⁵ Under the Kelly Appraisal, the value of the mobile home amounts to 54.43% of the total cost-basis value of the Property.¹⁶

Both the Hopkins and Kelly appraisals were made by licensed appraisers and presented on the Uniform Residential Appraisal Report form (“URAR”) which this Court routinely sees in its day to day work. The Bannon appraisal, however, was presented as a letter from Mr. Bannon, who is also a licensed appraiser, and three fax transmissions from mobile home dealers. No attempt to “cost out” the whole property as is customarily done on the URAR was made. In fairness, this approach is consistent with the Court’s order in the Memorandum Opinion that the parties appear and present evidence concerning the “relative value of the mobile home as if it had been severed from the realty and the realty itself after such hypothetical removal.”¹⁷ Apparently using the data received from the three dealers, Bannon estimated the value of the Property based upon three alternative scenarios,¹⁸ ultimately valuing the Property as a whole at \$30,000 and the value of the Property minus the mobile home at \$15,000, thus yielding a 50% allocation of value to the mobile home.

In fixing the value of the avoided lien, this Court must be guided by the Bankruptcy Code and the teachings of *Associates Commercial Corp. v. Rash*.¹⁹ 11 U.S.C. § 506(a) directs that in determining the amount of an allowed secured claim, the court is to determine the value of the property

¹⁵ See Ex. 6 ($\$55,955 \times .667 = \$37,321.98$).

¹⁶ $\$37,321.98 \div \$68,567 = .5443$.

¹⁷ Dkt. 60, p. 13.

¹⁸ Ex. A.

¹⁹ 520 U.S. 953, 117 S.Ct. 1879, 138 L.Ed. 2d 148 (1997) (Value of secured claim in context of chapter 13 case where debtor intended to retain Kenworth tractor truck for use in freight hauling business was replacement value standard).

securing the claim. Both *Rash* and the Code recognize that there will be instances, as here, where there will be only a partial interest in the property pledged as collateral.²⁰ Section 506 requires the Court to consider certain factors: “Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property”²¹ *Rash*, in turn, states that the proposed use or disposition of the property is of “paramount importance” to the valuation question.²²

Based on the record presented, the court finds that the debtor intends to retain possession and use of the Property as his primary residence. He makes regular payments on the indebtedness and as near as the Court can tell, is not in default. The value of the property to be retained should be determined as of August 29, 2000, the date of filing bankruptcy.²³ The Court previously instructed counsel to appear and present evidence concerning the value of the mobile home and real estate as if the mobile home had been severed. Nothing in the record at that time suggested that the debtor intended to retain the Property, although the debtor had claimed the mobile home as his homestead.²⁴ Because the parties now stipulate that the debtor intends to retain the Property, the Court believes the *Rash* valuation principles employed in determining the value of collateral to be retained in a chapter 13 plan should be applied here. Thus, the Hopkins appraisal, having been made shortly before the case was filed, is the best evidence upon which to base this determination. Buttressing this conclusion is the fact that an apportionment of values using the tax appraisal figures yields a virtually identical

²⁰ 520 U.S. at 961.

²¹ 11 U.S.C. § 506(a).

²² 520 U.S. at 962.

²³ Under *Rubia*, the value of the avoided lien (*i.e.* the mobile home) is limited by the amount of Citifinancial’s claim against the debtor on the petition date. 257 B.R. at 328.

²⁴ Dkt. 51.

allocation between the Property and the mobile home (76.62 % v. 75.38%). These appraisals are simply more relevant to the issue for decision than are the Kelly or Bannon offerings.

Therefore, the value of the mobile home comprises 76% of the total value of the Property. The Court concludes that the value of the avoided lien preserved for the benefit of the estate is **\$27,710.15** ($\$36,460.72 \times 76\% = \$27,710.15$). Citifinancial is ordered to turnover to the Trustee 76% of any payments received on its claim after the date of the debtor's bankruptcy petition, and the Trustee shall be entitled to collect 76% of the scheduled payments made thereafter until the Trustee has collected the principal amount of \$27,710.15. The value of Citifinancial's mortgage on the real estate shall be reduced by the sum of \$27,710.15 so that its claim (secured by the debtor's real property) is secured by the remaining \$8,750.57, plus interest accruing thereon until paid.

A Judgment on Decision rendering final relief as set forth in the Court's Memorandum Opinion and this Supplemental Memorandum Opinion will issue this day.

IT IS SO ORDERED.

Dated this 12th day of March, 2003.

ROBERT E. NUGENT
CHIEF BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the **Supplemental Memorandum Opinion** were deposited in the United States mail, postage prepaid on this 12th day of March, 2003, to the following:

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