



SO ORDERED.

SIGNED this 02 day of March, 2006.

ROBERT E. NUGENT
UNITED STATES CHIEF BANKRUPTCY JUDGE

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

IN RE:

**CHARLES LAWRENCE BORN,
LORRAINE ANNE BORN,**

Debtors.

**Case No. 04-14382
Chapter 7**

EDWARD J. NAZAR, Trustee

Plaintiff,

v.

Adversary No. 05-5067

**NORTH AMERICAN SAVINGS BANK
CHARLES LAWRENCE BORN,
LORRAINE ANNE BORN,**

Defendants.

JUDGMENT ON DECISION

In this adversary proceeding, the chapter 7 trustee invoked his 11 U.S.C. § 544 hypothetical lien creditor powers to avoid North American Savings Bank's ("NASB") lien in the debtors' mobile

home as being unperfected under the Kansas Manufactured Housing Act.¹ The parties stipulated that the lien was not properly perfected and that the trustee succeeds to it for the benefit of the creditors as provided for in 11 U.S.C. § 551.² The parties tried the remaining issue of the value of the estate's interest in the mobile home and the manner of allocating that interest and NASB's in the debtors' homestead.

Applying the principles of *In re Rubia*,³ the Court concludes that the mobile home is worth no more than \$5,000 and that the land and other building value is \$20,000. The total value of the property is therefore \$25,000 and the mobile home contributes 20 per cent of the value.

The trustee is allowed a \$5,000 secured claim in rem, the value of the mobile home. NASB is allowed a \$20,000 secured claim secured by the land. NASB's allowed claim is \$53,000 per debtors' Schedule D. As the debtors desire to retain the home and pay the allowed claim, the trustee shall be permitted to recover 20 per cent of each monthly payment, the same to be applied to the \$5,000 secured claim, until the trustee has collected the principal sum of \$5,000. NASB's allowed secured claim shall be reduced by the value of the mobile home, \$5,000, and it shall be permitted to collect 80 per cent of each monthly payment until its allowed claim (less \$5,000) is paid in full.

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¹ KAN. STAT. ANN. § 58-4202 *et seq.* (2004 Supp.).

² *See* Journal Entry, Dkt. 22.

³ *Morris v. Vulcan Chem. Credit Union (In re Rubia)*, 257 B.R. 324 (10th Cir. BAP 2001), *aff'd* 23 Fed. Appx. 968 (10th Cir. 2001).