



**SO ORDERED.**

**SIGNED this 24th day of September, 2013.**

Robert E. Nugent  
United States Chief Bankruptcy Judge

NOT DESIGNATED FOR ONLINE OR PRINT PUBLICATION

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

**IN RE:**

**PATRICIA ANN LITTLE,  
  
Debtors.**

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**Case No. 12-12650  
Chapter 13**

**ORDER SUSTAINING 21<sup>ST</sup> MORTGAGE CORPORATION'S  
OBJECTION TO CONFIRMATION AND DENYING  
CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN**

Section 506(a)(2) of the bankruptcy code provides that when a secured claim is allowed in a chapter 7 or 13 case, the value of the security is the property's replacement value on the date of the petition "without deduction for costs of sale or marketing." If the debtor acquired the property for personal or household use, the replacement value is determined at the time value is determined and the property's

age and condition can be considered.<sup>1</sup> This case involves a manufactured home that is debtor's place of residence, and her claim that the home is worth far less than what 21st Mortgage Corporation, her purchase money lender, claims. If she's correct, her chapter 13 plan is feasible and can be confirmed. If the home is worth substantially more as the lender claims, it cannot.

*Facts*

Ms. Little's home is a 1996 Fleetwood model. She purchased it used in 2007 and testified that it looked good then, but that it had been damaged in transit to the community where it is presently set. The debtor assigned what appears to be a somewhat arbitrary value of \$8,000 to the home, but offered no actual appraisal evidence. Ms. Little notes, and her photographs support, that the home has sustained interior water damage that she attributes to problems with the roof. She also says that there are plumbing issues and that the home needs to be leveled. She testified that replacing the roof would cost between \$3,000 and \$4,000 while leveling the home would cost \$2,000 to \$3,000. She noted on cross examination that she had done some repairs to the roof that were paid for by insurance. She subsequently had the ceilings repaired as well, but new stains appeared. She believes there has been further roof damage, and until the repair work is completed, the home is worth only \$8,000.

21st Mortgage presented an appraiser, Dan Pate, who testified that the home,

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<sup>1</sup> 11 U.S.C. § 506(a)(2).

net of necessary repairs, was worth \$23,400.<sup>2</sup> He arrived at this amount by applying the N.A.S. manual guidebook<sup>3</sup> to the base model of the mobile home (\$18,900), considering the size, age, make and model of the home and giving a location and condition adjustment. Mr. Pate then added about \$6,200 to the base value to recognize the value of “options” the home came with. These options include “house-type” roofing, storm windows, full baths, certain appliances and fixtures, heating and air conditioning units, window treatments, and skirting. The value of all of these “options” is reduced for the age of the home. He deducted needed repair costs of \$315 from the home value as follows: \$200 which represents his estimate of the cost of roof repairs (replacing the roof cap); \$45 for other necessary exterior repairs; and \$70, the cost of removing the water stains from the ceiling using the product “Kilz.” Mr. Pate also made a deduction to the base value for missing running gear components.

Mr. Pate’s testimony was reliable and credible, though the photographs both he and Mrs. Little offered suggest that the interior water stain damage might cost more than \$70 to repair. While he agreed that a new roof might cost between \$3,000 and \$3,500, he stated that replacing the ridge cap at significantly lower expense might be all that was necessary. He stated that he used the NADA cost guide to value the repairs.

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<sup>2</sup> Ex. A.

<sup>3</sup> Pate stated that the National Appraisal System (N.A.S.) is a product of NADA and a recognized value guide in the industry.

*Analysis*<sup>4</sup>

Section 506(a)(2) governs both the timing and the method of evaluating personal property owned by an individual debtor.<sup>5</sup> The statute provides that a chapter 7 or 13 individual debtor's property is to be valued at "replacement value" as of the date of the petition without deduction for sale or marketing costs. But, the replacement value of property that is acquired for personal, family or household purposes is what a retail merchant would charge considering the age and condition of the property at the time it is valued.<sup>6</sup> Ms. Little undoubtedly acquired her home for personal use, so we must value her property as of the hearing date, June 18, 2013, and consider its age and condition in the process.

In *In re Kollmorgen*, I noted that other courts determine a mobile home's value using the NADA retail guide.<sup>7</sup> That guide is "based on the general specifications of the subject home and 'is considered a Depreciated Replacement Cost in Retail Dollars. By

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<sup>4</sup> This is a core proceeding under 28 U.S.C. § 157(b)(2)(L) over which the Court has jurisdiction pursuant to 28 U.S.C. §§ 157(a), (b)(1) and 1334(b). David Lund appeared as attorney for the debtor Ms. Little. Tyson C. Langhofer appeared as attorney for 21<sup>st</sup> Mortgage. Karin N. Amyx appeared as attorney for the chapter 13 trustee, Laurie B. Williams.

<sup>5</sup> Under Kansas law, a manufactured home is deemed to be personal property unless its certificate of title has been eliminated in accordance with the statutory process. See KAN. STAT. ANN. §§ 58-4204(a) (2012 Supp.) and 58-4214(2005).

<sup>6</sup> See *In re Cook*, 415 B.R. 529, 533-34 (Bankr. D. Kan. 2009) (section 506(a)(2) valuation of motor vehicle is as of the date of valuation hearing).

<sup>7</sup> *In re Kollmorgen*, Case No. 11-10904, 2012 WL 195200 at \*3 (Bankr. D. Kan. Jan. 20, 2012) (cases cited in footnote 19).

definition the Depreciated Replacement Cost is the cost to replace and [sic] item less accrued depreciation.... Unlike cars, the NADA value as to mobile homes tells what the [mobile home] will actually sell for.’”<sup>8</sup> In *Kollmorgen*, I also noted that the value guide is the starting point for mobile homes and that the adjustments are based on replacement costs to “adjust the retail value to address the specific components and condition of the subject manufactured home as § 506(a)(2) requires for personal use property.”<sup>9</sup>

As in *Kollmorgen*, the debtor did not challenge the amounts of the adjustment costs; instead she claims the mobile home requires more repair. But she offered nothing in evidence to support a different finding as to the cost of the interior stain repairs and we are left with only her testimony that replacing the roof rather than the ridge cap is necessary. Courts place weight on value evidence that is supported by testimony of the actual appraiser.<sup>10</sup> The debtor provided no such evidence. Because the evidence to support her proposed value of \$8,000 is outweighed by the credible expert evidence offered by 21st Mortgage, I conclude that it is more likely than not that the value of the home is \$23,400 as the lender asserts. 21st Mortgage’s objection to confirmation is sustained.<sup>11</sup>

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<sup>8</sup> *Id.* at \*3, citing and quoting *In re Coleman*, 373 B.R. 907, 913 (Bankr. W.D. Mo. 2007).

<sup>9</sup> *Id.* at \*4.

<sup>10</sup> *In re Tucker*, 2013 WL 3230615 at \*6 (Bankr. M.D. Ga. June 25, 2013).

<sup>11</sup> Dkt. 24 and 12.

In light of that conclusion, the debtor's plan is not feasible at its current proposed payment level of \$275 per month. The Trustee's counsel stated at the hearing that the payment would need to be increased to \$597 per month if the home were valued at \$23,400. Confirmation is therefore denied, but the debtor is granted 28 days to offer an amended plan.

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