



**IT IS ORDERED as set forth below:**

**Date: July 18, 2011**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

IN RE:	:	<b>BANKRUPTCY CASE</b>
	:	
<b>RICHARD LAMAR HORNER and SHERRY MARIE HORNER,</b>	:	<b>NO. 11-41012-MGD</b>
	:	
Debtors.	:	CHAPTER 13
	:	
<hr/>	:	
<b>GREEN TREE SERVICING, LLC,</b>	:	<b>CONTESTED MATTER</b>
	:	
Movant,	:	
	:	
v.	:	
	:	
<b>RICHARD LAMAR HORNER and SHERRY MARIE HORNER,</b>	:	
	:	
Respondents.	:	
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**ORDER OVERRULING OBJECTION  
TO CONFIRMATION OF CHAPTER 13 PLAN**

This case is before the Court on an evidentiary hearing on the Objection of Green Tree Servicing, LLC (“Green Tree”) to confirmation of Debtor’s Chapter 13 Plan. (Docket No. 15).

Sherry Marie Horner and Richard Lamar Horner (“Debtors”) filed their Chapter 13 case on March 28, 2011. Green Tree provided purchase money financing for the Debtors’ mobile home and retained a security interest in the mobile home. The mobile home is a 1999 Palm Harbor Home, model no. 6056. Green Tree’s security interest was perfected as evidenced on the Certificate of Title. Green Tree has filed a secured claim in the amount of \$47,756.11 (Claim No. 2). Debtors do not contest that Green Tree has a valid security interest in the mobile home (the “collateral”).

Debtors’ Plan provides for the treatment of Green Tree’s claim as a secured claim in the amount of \$12,000.00 with interest paid at five percent (5%). (Docket No. 5). Green Tree objects to the Plan on the grounds that the Plan does not comply with the Chapter 13 “cramdown” provisions of 11 U.S.C. § 1325(a)(5)(B), which require that the holder of a secured claim receive value, as of the effective date of the plan, that is not less than the allowed amount of its secured claim.

An evidentiary hearing was held on July 6, 2011, and the Court heard expert testimony with respect to the value of Green Tree’s collateral. Green Tree contended that its allowed secured claim under 11 U.S.C. § 506(a) should be \$30,900.40.<sup>1</sup> And Debtors contended the allowed secured claim should be \$9,500.00. Based upon the testimony of the witnesses, after weighing their qualifications, experience, and credibility, the Court **OVERRULES** Green Tree’s Objection.

The Court must first determine which party has the burden of proof with respect to the determination of the collateral’s value. Debtor’s counsel suggests that the matter is governed by Federal Rule of Bankruptcy Procedure 3012. That rule, which only provides that the court may determine the value of a claim secured by a lien on property of the estate, does not resolve the issue

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<sup>1</sup>Green Tree also objects to the Plan on the grounds that the balance of its claim should be treated as an unsecured claim. The Plan provides for treatment of unsecured claims generally and Green Tree’s objection appears to address the allowance of its claim, not the standards for confirmation of the Plan.

of who holds the burden of proof. The allocation of the burden of proof is determined by the context in which the valuation arises. Here, the valuation arises in the context of Green Tree's objection to confirmation.

As a general matter, the debtor has the burden to show that the Chapter 13 confirmation requirements are met. *In re Hill*, 268 B.R. 548, 552 (B.A.P. 9<sup>th</sup> Cir. 2001); *In re Weisser*, 190 B.R. 453 (Bankr. M.D. Fla. 1995); See Barry Russell, BANKRUPTCY EVIDENCE MANUAL § 301.76 (2010). Given this rule, it is reasonable to conclude that the debtor has the burden of proof in a collateral valuation hearing arising in the context of confirmation. But it is also reasonable to conclude, as some courts have, that a party who objects to confirmation has the burden of proof with respect to its objection. *In re Blevin*, 150 B.R. 444 (Bankr. W.D. Ark. 1982); *In re Segura*, 218 B.R. 166 (Bankr. N.D. Okla. 1998). Here, the two possible burdens of proof collide. Debtors have the burden of showing their Plan complies with the cramdown requirements of Chapter 13 and Green Tree has the burden of establishing its objection that the Plan does not comply. These colliding burdens must be harmonized.

The Court holds that it is more appropriate for Debtors to have the burden of proof in the context of confirmation. If a debtor has the burden absent an objection to confirmation, that burden is not relieved by the filing of an objection. See *In re Brown*, 244 B.R. 603, 609-10 (Bankr. W.D. Va. 2000). Otherwise, a nonsensical situation would arise: the debtor would have the burden to show compliance with the cramdown provisions except when a creditor objects that the Debtor has not complied with those provisions. *Id.* And because Green Tree's rights as a secured creditor are being negatively affected for the benefit of Debtors, it is even more appropriate to place the burden on Debtors. *Id.* at 610-11. Thus, the Court must weigh the evidence to determine if Debtors have met their burden of showing that their Chapter 13 Plan complies with 11 U.S.C. § 1325(a)(5)(B)(ii).

Based upon the evidence presented at the hearing, the Court finds that Debtors met their burden and that Green Tree failed to rebut Debtor's showing.

The Court heard the testimony of Debtors' expert, Mr. E. Michael Cantrell, who is licensed as an appraiser by the state of Georgia and who has been appraising properties for thirty years, including properties with mobile homes. Mr. Cantrell provided the Court with an appraisal as of March 5, 2011 that indicated a value of \$9,500.<sup>2</sup> The appraisal was admitted into evidence without objection. Mr. Cantrell testified that this value was derived from the cost approach, which set an upper limit on value, and the market approach. The three sales comparables utilized by Mr. Cantrell were all sales that had closed within six months of the appraisal date. All involved sales of real estate and mobile homes located on the real estate. Mr. Cantrell adjusted the comparables for the value of the land as well as for variations in living space.

On cross examination, Mr. Cantrell stated that he did not know the purchase price of the home. Green Tree introduced a copy of the sales contract, dated April 12, 2000, as Exhibit C1. The sales contract indicated an initial purchase price of \$60,743.00 and a trade-in value for a 1986 mobile home of \$10,000.00. Finally, Mr. Cantrell testified that he does not rely on the NADA valuation for mobile homes because it does not adequately account for the economic conditions in the marketplace.

Green Tree offered the testimony of Mr. Todd Long of Field Services, Inc. Mr. Long is not licensed as an appraiser but has experience buying and selling mobile homes and has been a real estate agent for fourteen years. Mr. Long inspected the collateral and prepared an inspection report

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<sup>2</sup>Mr. Cantrell also stated that he thought that the Debtors would be "lucky" to get \$7,500.00 for the mobile home at the date of the hearing because of what he perceived as further deterioration in the housing market. However, he offered no additional comparables to support this conclusion and the court does not rely on this comment.

that is a part of Exhibit C3. He testified that the collateral was in great condition and was well taken care of. He indicated that it was in need of minor repairs only.

While Mr. Mr. Long testified credibly as to the condition of the mobile home, he gave no verbal testimony as to his opinion of the value of the collateral. Green Tree's contention as to the collateral's value was based on a NADA valuation report attached to Exhibit C3. This valuation report valued the collateral at \$30,900.40. Mr. Long testified that he did not prepare the valuation report, which specifically states that it is not an appraisal form. And Mr. Long did not explain the basis of the valuation report. Consequently, the documentary evidence is not persuasive since the author of the valuation report was not in court and no testimony was offered as to the methodology by which the valuation was produced. The valuation report was admitted without objection, but the evidentiary weight of the valuation report is minimal.

Based on the above, Debtors have met their burden with respect to 11 U.S.C. §1325(a)(5)(B)(ii), and Green Tree has failed to rebut Debtors' showing. Accordingly, it is

**ORDERED** Green Tree's Objection to Confirmation is **OVERRULED**.

The Clerk's Office shall serve a copy of this Order on Debtors, counsel for Debtors, Movant, counsel for Movant, the Chapter 13 Trustee, and all creditors and parties-in-interest.