

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re

REGINA BEAMON

Case No. 01-11162

Debtor

REGINA BEAMON

Plaintiff

-against-

Adversary No. 01-90256

LITTON LOAN SERVICING, LP

Defendant

APPEARANCES:

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Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

The current matter before the court is Litton Loan Servicing, LP's ("Creditor or "Defendant") motion to dismiss the adversary complaint filed by Regina Beamon ("Debtor" or "Plaintiff"). Plaintiff's adversary complaint requests modification of the secured claim of the

Creditor. The court has jurisdiction via 28 U.S.C. §§157(a), 157(b)(1), 157(b)(2)(B) and 1334(b).

FACTS

Based on the stipulation of facts and other pleadings filed, the court finds the following:

- 1) Debtor filed a Chapter 13 petition on March 2, 2001.
- 2) Defendant has a mortgage constituting a first lien on premises known as 968 Main Avenue, Schenectady, New York.
- 3) The premises is, and was at the time the mortgage was executed, a two family residence.
- 4) The Debtor resides in one of the residential units, rents the second residential unit and has done so since the issuance of the mortgage except for gaps between tenancies.
- 5) The fair market value of the property is \$43,500.
- 6) The Defendant is undersecured.

DISCUSSION

This court has recently addressed the issue presented in this case: does 11 U.S.C. § 1322(b)(2) prohibit the modification of claims secured by multi-family dwellings where the Debtor lives in one of the units? In *In re Ferrera*, Case No. 01-10575¹ (October 11, 2002) this court adopted the reasoning of the First Circuit Court of Appeals in *Lomas Mortgage v. Louis*, 82 F.3d 1 (1st Cir. 1996). In *Lomas*, the First Circuit established a bright line test deciding that multi-use dwellings are not subject to antimodification protection. *Id.* at 7.

The current case fits within the *Ferrera/Lomas* framework. The Creditor's claim is

¹ The court assumes familiarity with the *Ferrera* decision.

subject to modification.² The parties have stipulated that the value of the real property is \$43,500; the Creditor's claim is secured to that amount with any balance being unsecured.³

The Second Circuit has authorized a *sua sponte* award of summary judgment where, based on all the proof submitted, there is no disputed issue of material fact and where judgment, as a matter of law, for the non-moving party is appropriate. *Lowenschuss v. Kane*, 520 F.2d 255, 261 (2d Cir. 1975) (citations omitted). Because the parties have stipulated to value, there are no disputed material facts. Therefore, pursuant to *Lowenschuss*, the court *sua sponte* grants summary judgment for the Plaintiff.

It is so ORDERED.

Dated: October 18, 2002

Hon. Robert E. Littlefield, Jr.
U.S. Bankruptcy Judge

² Attached to the stipulation of facts is a copy of an assignment of rents the Creditor received from the Debtor. As in *Fererra*, because of the court's disposition of the matter, it need not review the question of whether such an assignment also entitles the Debtor to seek modification pursuant to 11 U.S.C. § 1322(b)(2).

³ On April 27, 2001, the Creditor filed a proof of claim in the amount of \$85,484.11.