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Legal Developments in Restructuring and Creditors' Rights

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# New York Bankruptcy Court Prohibits Stripping of Mortgage Lien Against Debtor's Multi-Family Residential Real Estate, Setting Up Split of Authority With District of Connecticut

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In both Chapter 13 consumer bankruptcy cases and individual Chapter 11 cases, a debtor is prohibited from modifying a claim that is "secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. § §1322(b)(2), 1123(b)(5). In the typical case, when property does not qualify for protection under this so-called "anti-modification" provision, the debtor will seek to strip down the lien of the secured creditor to the value of its collateral, and deal only with that portion of the debt as a "secured claim" under the reorganization plan.

There is a long line of cases in Connecticut holding that real estate that serves as the debtor's principal residence, but that also contains rental units, does not constitute "real property that is the debtor's principal residence" on the theory that the property is not "only" the debtor's residence because it has other uses. *See In Maddaloni*, 225 B.R. 277 (D. Conn. 1998) (affirming bankruptcy ruling that multi-unit property could be lien stripped even though one of the units was the debtor's principal residence); *In re Del Valle*, 186 B.R.. 347 (Bankr. D. Conn. 1995) (allowing stripping of lien secured by a duplex where the debtor lived in one side and rented the other): *In re Adebanjo*, 165 B.R. 98 (Bankr. D. Conn. 1994) (allowing stripping of lien secured by a three-unit apartment building, one unit of which was the debtor's principal residence).

In a ruling issued on March 9, 2017, Judge Alan S. Trust of the U.S. Bankruptcy Court for the Eastern District of New York disagreed with this Connecticut line of authority and ruled that for purposes of the anti-modification provision, real

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property is the debtor's principal residence as long as at mortgage loan inception the property was used by the debtor as a principal residence, even if a portion of it could also be used for other purposes, such as renting to tenants. *In re Addams*, 2017 WL 944190 (Bankr. E.D.N.Y. Mar. 9, 2017). This decision follows and agrees with another recent decision, *In re Brooks*, 550 B.R. 19 (Bankr. W.D.N.Y. 2016), which described its take on the controversial question as "an emerging view." *Id.* at 25.

It is noteworthy that the Connecticut bankruptcy judges who handed down the decisions in *Maddaloni* (Judge Dabrowski), *Del Valle* (Judge Krechvesky) and *Adebanjo* (Judge Shiff) are no longer on the bench and have been replaced by three relatively new Bankruptcy judges. Thus, it is possible that the Connecticut line of authority on this question could be revisited in light of what one court has characterized as a countervailing "emerging view."