**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF COLORADO**
**The Honorable A. Bruce Campbell**

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| In re: | DENNIS LYNN ANDERSON | ) | CASE NO. 03-24723 ABC |
| | SSN: XXX-XX-1028 | ) | CHAPTER 13 |
| | JUSTINA ALYCE ANDERSON | ) | |
| | SSN: XXX-XX-9064 | ) | |

ORDER DENYING DEBTORS' MOTION TO CONFIRM

This matter is before the Court on the Debtors' Motion to Confirm their Chapter 13 plan. A provision of the Debtors' plan proposes to strip down the lien of Beneficial Mortgage Company against their residence. The Debtors assert in their plan:

> Beneficial Mortgage Company has recorded a second deed of trust against the Debtors' residence. That claimant is, however, completely unsecured as the property is now, as was the case when the second deed of trust was recorded, inadequate to fully collateralize the note secured by the first deed of trust. Having thus made essentially an unsecured loan, the Debtors' discharge shall release the deed of trust of Beneficial Mortgage Company.

The Debtors further represent that they will seek a determination of that issue by a separate motion. To date, Debtors have not done so but determination by separate motion is unnecessary. See 11 U.S.C. §506(a).[1] Regardless, what Debtors propose is contrary to the holding of the United States Supreme Court in ***Nobelman v. American Savings Bank, et al.***, 508 U.S. 324, 113 S.Ct. 2106 (1993). Thus, Debtors' plan violates 11 U.S.C. §§ 1322(b)(2) and 1325(a)(1).

The Court recognizes there is authority from circuit courts, other than the Tenth Circuit, which support the position of the Debtors, see ***e.g.Tanner v. Firstplus Financial, Inc.*** 217 F.3d 1357 (11th Cir. 2000). This Court has carefully considered those cases and is not sufficiently persuaded by their rationale to depart from the holding of ***Nobelman*** or distinguish its facts to conclude that Debtors can cram down the lien of Beneficial Mortgage Company to zero. Accordingly, it is

ORDERED that the Debtors' Motion to Confirm is DENIED; and it is

FURTHER ORDERED that the Debtors are afforded twenty (20) days from the entry of this Order within which to file an amended plan which does not modify the rights of Beneficial

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[1] 11 U.S.C. §506(a) provides that "an allowed claim of a creditor secured by a lien on property in which the estate has an interest, . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . Such value shall be determined in light of the purpose of the valuation . . . and in conjunction with any hearing . . . on a plan affecting such creditor's interest."

Mortgage Company and serve it in accordance with F.R.Bankr.P. 7004, failing which this case will be dismissed.

DATED: BY THE COURT:

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A. Bruce Campbell, Judge