

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:08-bk-07628-ABB
Chapter 13

STEVEN P. DECK,

Debtor.

ORDER

This matter came before the Court on the unopposed Motion to Strip Lien of Countrywide Home Loans and for Determination that Claim No. 7 is Unsecured (Doc. No. 38) ("Motion") filed by Steven P. Deck, the Debtor herein ("Debtor"). An evidentiary hearing was held on April 28, 2009 at which the Debtor, counsel for the Debtor, and counsel for the Chapter 13 Trustee appeared.

The Debtor filed a Chapter 7 petition on August 29, 2009. The case was converted to Chapter 13 on October 16, 2008. His homestead located at 13253 Daniel's Landing Circle, Winter Garden, Florida 34787 (the "Property") is encumbered by first and second priority mortgages held by Countrywide Home Loans Servicing LP, a/k/a Countrywide Home Loans, Inc. ("Countrywide").

Countrywide filed a secured proof of claim, Amended Claim No. 6-2, for \$149,584.39 for the indebtedness relating to its first priority lien. The Debtor, on behalf of Countrywide pursuant to the Notice of Claim Filed by Debtor (Doc. No. 41), filed an unsecured proof of claim, Claim No. 7, for \$31,402.00 for the indebtedness relating to Countrywide's second priority lien.

The Debtor listed the Property in Schedule A as having a value of \$135,000.00 on the Petition Date. He believes the Property has a current value of no more than \$135,000.00 based upon the Orange County Property Appraiser's valuation. The Debtor has established the Property has a value of \$135,000.00.

"Stripdowns," or cramdowns, of homestead mortgage claims are barred pursuant to Nobleman v. Am. Savs. Bank, 508 U.S. 324 (1993), but "stripoffs" are allowed where the lien is "wholly unsecured." Tanner v. FirstPlus Fin., Inc. (In re Tanner), 217 F.3d 1357, 1360 (11th

Cir. 2000) (holding any claim that is wholly unsecured is not protected from modification pursuant to 11 U.S.C. Section 1322(b)(2)). A wholly unsecured lien claim is void. 11 U.S.C. § 506(d) (2007); In re Sadala, 294 B.R. 180, 185 (Bankr. M.D. Fla. 2003).

Countrywide's first priority lien is partially secured given the Property's value is slightly less than the debt balance of \$149,584.39. Its second priority lien of \$31,402.00 is wholly unsecured pursuant to 11 U.S.C. Section 506(a)(1). No equity exists in the Property to support Countrywide's second priority homestead mortgage loan—the lien attaches to no collateral.

Claim No. 7 is an unsecured claim. Countrywide's second priority lien is void pursuant to 11 U.S.C. Section 506(d) and may be stripped off pursuant to Section 1322(b)(2).¹ Tanner, 217 F.3d at 1360. The Debtor's Motion is due to be granted.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Motion (Doc. No. 38) is hereby **GRANTED**; and it is further

ORDERED, ADJUDGED and DECREED that Claim No. 7 is unsecured and Countrywide's second priority mortgage lien is hereby **VOID** pursuant to 11 U.S.C. Section 506(d).

Dated this 5th day of May, 2009.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

¹ Section 1322(b)(2) of the Bankruptcy Code provides:

Subject to subsections (a) and (c) of this section, the plan may—

...
(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.

11 U.S.C. § 1322(b)(2) (2007).