

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

WILMAR CUENCA and
OLGA GONZALEZ,

Case No. 6:09-bk-04414-ABB
Chapter 13

Debtors.

ORDER

This matter came before the Court on the: (i) Motion to Determine Secured Status (Doc. No. 23) (“Motion”) filed by the Debtors Wilmar Cuenca and Olga Gonzalez (collectively, “Debtors”) seeking to strip the lien of Saxon Mortgage Services, Inc. (“Saxon”); (ii) Saxon’s Response thereto (Doc. No. 24); (iii) Debtors’ Second Amended Plan (Doc. No. 31); and (iv) Saxon’s Objection to Confirmation (Doc. No. 19). A hearing was held on October 27, 2009 at which the Debtors, their counsel, and the Chapter 13 Trustee Laurie K. Weatherford appeared.

The Debtors filed a this case on April 5, 2009 (“Petition Date”). Their homestead located at 4518 Misty Morn Circle, Orlando, Florida 32812 (the “Property”) is encumbered by a first-priority mortgage held by Litton Loan Servicing, L.P. (“Litton”) and second-priority mortgage held by Saxon. Litton filed a secured proof of claim, Claim No. 5-2, for \$164,657.71. Saxon filed a secured proof of claim, Claim No. 21-1, for \$58,475.61.

The Debtors listed the Property in Schedule A as having a value of \$160,000.00 on the Petition Date and believe it has a current value of \$160,000.00 (Doc. Nos. 1, 23) based upon their personal knowledge of the Property, their neighborhood, and overall

local real estate market conditions. They propose in their Plan to cure the Litton mortgage arrearage and continue to make regular monthly payments to Litton. They treat Saxon's claim as wholly unsecured in their Plan.

Saxon objects to such treatment asserting its claim is secured by at least \$1.00 of equity based upon its "drive by" evaluation of the Property. Saxon's agent prepared a Broker's Price Opinion dated May 25, 2009 valuing the Property as \$165,000.00 to \$165,950.00 based upon listing and sale prices of alleged comparables. The listing comparables are not actual sales and the sale comparables are not within or near to the Debtors' neighborhood. The Debtors established the Property's value is \$160,000.00.

"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).

Litton's lien is partially secured given the Property's value is slightly less than the debt balance of \$164,657.71. Saxon's lien of \$58,475.61 is wholly unsecured. 11 U.S.C. § 506(a)(1). No equity exists in the Property to support Saxon's second-priority homestead mortgage loan—the lien attaches to no collateral. Claim No. 21-1 is an unsecured claim.

Saxon'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 Debtors' Motion is due to be granted and their Plan is due to be confirmed.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtors' Motion (Doc. No. 23) is hereby **GRANTED**; and it is further

ORDERED, ADJUDGED and DECREED that Claim No. 21-1 is unsecured and Saxon's second-priority mortgage lien is hereby **VOID** pursuant to 11 U.S.C. Section 506(d); and it is further

ORDERED, ADJUDGED and DECREED that Saxon's Objection to Confirmation (Doc. No. 19) is hereby **OVERRULED** and the Trustee is directed to submit to the Court a proposed Order confirming the Debtors' Second Amended Chapter 13 Plan (Doc. No. 31).

Dated this 28th day of October, 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).