

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

In re:

WILFRED OSAGIE ALIU-OTOKITI,

Case No. 6:12-bk-14850-ABB

Chapter 7

Debtor.

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**MEMORANDUM OPINION AND ORDER**

This matter came before the Court on the Debtor's Verified Motion to Determine Secured Status and Strip Lien of Citrus Oaks Landings Condominium Association, Inc. ("the Association") (Doc. No. 10). An evidentiary hearing was held on February 11, 2013. The parties submitted stipulated facts and post-hearing briefing pursuant to the Court's directive.

The Motion to Strip is due to be granted. The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing live testimony and argument, and being otherwise fully advised in the premises.

**FINDINGS OF FACT**

Debtor filed his Chapter 7 petition on October 31, 2012. He received a discharge on February 5, 2013.

Debtor own a condominium located at 1252 Melontree Court, Gotha, FL 32734 ("the Property"). The legal description of the Property is:

CONDOMINIUM UNIT NO. 5, IN BUILDING 3, OF  
CITRUS OAKS LANDINGS, A CONDOMINIUM, AND  
AN UNDIVIDED INTEREST OR SHARE OF THOSE

COMMON ELEMENTS APPURTENANT THERETO IN  
ACCORDANCE WITH AND SUBJECT TO THE  
COVENANTS, CONDITIONS, RESTRICTIONS,  
TERMS AND OTHER PROVISIONS ACCORDING TO  
THE DECLARATION THEREOF AS RECORDED IN  
OFFICIAL RECORDS BOOK 6314, PAGE 7105, AND  
ANY AMENDMENTS THERETO, OF THE PUBLIC  
RECORDS OF ORANGE COUNTY, FLORIDA.

The parties stipulate the value of the Property is \$90,147.00.

The Property is encumbered by a mortgage in favor of Washington Mutual Mortgage, recorded April 26, 2004. The Washington Mutual mortgage secures a debt of \$129,969.00. Washington Mutual has not foreclosed on the Property or accepted the deed in lieu of foreclosure.

The Debtor is delinquent in homeowners' fees and assessments due pre-petition to the Association. The Association recorded a lien against the Property on October 2, 2012 for \$17,132.79.

The priority of the Washington Mutual mortgage and the Association lien are in dispute.<sup>1</sup> The Association argues the condo declaration, which states the Association has all of the rights and remedies provided in the Florida Condominium Act, specifically Fla. Stat. Section 718.116 ("the Condo Act"), operates to give the Association's lien priority over Washington Mutual's mortgage.

The Association's lien was perfected on October 2, 2012 (the date it was recorded), according to the declaration and the Condo Act. The Association's lien is subordinate to the Washington Mutual mortgage recorded on April 26, 2004.

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<sup>1</sup> The Association originally conceded its lien is junior to the Washington Mutual mortgage (Doc. No. 14), but its supplemental briefing argues its lien is superior to Washington Mutual's security interest. (Doc. No. 41 ¶ 6).

The value of the Property (\$90,147.00) is exceeded by the \$129,969.00 security interest Washington Mutual has in the Property.

## **CONCLUSIONS OF LAW**

### ***11 U.S.C. Section 506***

Debtor seeks to strip off the Association's lien pursuant to 11 U.S.C. Section 506(a). That Section provides:

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, . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a). "Section 506(a) defines the secured and unsecured components of debts according to the value of the underlying collateral." Tanner v. FirstPlus Fin., Inc. (In re Tanner), 217 F.3d 1357, 1358 (11th Cir. 2000).

Where a lien is "wholly unsecured" it is subject to "stripoff" pursuant to 11 U.S.C. Section 506(d). In re McNeal, 477 Fed. Appx. 562, 563-64 (11th Cir. May 11, 2012) (citing Folendore v. United States Small Bus. Admin., 862 F.2d 1537 (11th Cir. 1989)). A wholly unsecured lien claim is void. 11 U.S.C. § 506(d); In re Sadala, 294 B.R. 180, 185 (Bankr. M.D. Fla. 2003).

### *The Association's Arguments*

The Association resists application of the general rule, arguing its lien is not unsecured because the condo declaration and the Condo Act together operate to make the Association's lien the first-priority lien on the Property and the Property value exceeds the debt secured by its lien. The Association relies on Fla. Stat. 718.116 to argue its lien is not unsecured because the Association has a right to payment by a purchaser at foreclosure.

### *Analysis*

The Condo Act, Florida Statutes 718.116, states in relevant parts:

(1)(b) 1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title is limited to the lesser of:

a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

b. One percent of the original mortgage debt.

....

(5)(a) . . . [A]s to first mortgages of record, the [association's] lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located.

Fla. Stat. Section 7118.116(1)(b)1 & (5)(a).

The Association's lien was perfected on October 2, 2012 (the date it was recorded), according to the declaration and the Condo Act. The Association's lien is subordinate to the Washington Mutual mortgage recorded on April 26, 2004.

The Florida statute creates for the Association a right to payment by a purchaser who acquires title at foreclosure or receives a deed in lieu of foreclosure. The payment is limited to the lesser of the unpaid assessments and expenses from the year prior to the foreclosure or 1% of the original mortgage debt if the purchaser is the first mortgagee.<sup>2</sup>

The Florida statute does not address the permissibility of lien stripping pursuant to the Bankruptcy Code. It does not give the Association a security interest in the Property, and it does not subordinate Washington Mutual's security interest to the lien interest of the Association.

The statute does not require condo association liens to be treated differently from any other liens with respect to Section 506. This Court finds no justification for such a distinction. The legal authority is to the contrary. Condominium association liens do not enjoy special status under the Bankruptcy Code. In re Plummer, 484 B.R. 882, at 889 & n.28 (Bankr. M.D. Fla. 2013) (citations omitted).

[C]ondominium assessment liens squarely fall within the Bankruptcy Code's definition of liens and are subject to the application of Bankruptcy Code section 506.

Id. at 889.

### ***Conclusion***

The value of the Property (\$90,147.00) is exceeded by the \$129,969.00 security interest Washington Mutual has in the Property. The Association's subordinate lien is wholly unsecured. No equity exists in the Property to support the Association's second-priority lien. The lien attaches to no collateral.

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<sup>2</sup> Nothing in this opinion affects the rights of the Association vis-à-vis a purchaser at foreclosure pursuant to the Florida statute. This right to payment is not implicated by the facts of this case, as Washington Mutual has not foreclosed on the Property or accepted the deed in lieu of foreclosure.

The Association's lien is void and extinguished automatically without further order pursuant to 11 U.S.C. Section 506(d). In re Tanner, 217 F.3d at 1360.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that Debtor's Verified Motion to Determine Secured Status and Strip Lien of Citrus Oaks Landings Condominium Association, Inc. ("the Association") (Doc. No. 10) is hereby GRANTED; and it is further

**ORDERED, ADJUDGED and DECREED** that the Association's second-priority lien on the Property is stripped-off as void pursuant to 11 U.S.C. Section 506(d); and it is further

**ORDERED, ADJUDGED and DECREED** that the Association's claim shall be treated as a general unsecured claim in this case.

Dated this 19th day of March, 2013.

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