

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

In re:

REVA MAE WATSON,

Case No. 6:10-bk-04706-ABB

Chapter 13

Debtor.

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**ORDER**

This matter came before the Court on the Motion to Vacate (Doc. No. 152) filed by GMAC Mortgage, LLC (“GMAC”) requesting the Order entered on August 25, 2010 (Doc. No. 64) be vacated. An evidentiary hearing was held on January 18, 2011 at which the Debtor Reva Mae Watson, her counsel, the Chapter 13 Trustee Laurie K. Weatherford, and counsel for GMAC appeared. GMAC’s Motion to Vacate is due to be denied for the reasons set forth herein.

***Event Chronology***

The Debtor filed this case on March 23, 2010. The Law Offices of David J. Stern, P.A. (“Stern”) filed a Notice of Appearance as counsel for GMAC on March 31, 2010 (Doc. No. 14). GMAC, through Stern, filed Claim No. 10-1 on April 22, 2010 and Claim No. 10-2 on April 30, 2010 asserting a secured claim of \$77,833.59.

The Debtor filed a Motion to Value Claim (Doc. No. 47) seeking to value GMAC’s claim at \$40,855.00 pursuant to 11 U.S.C. Section 506(a). The Motion to Value Claim contains a negative notice provision pursuant to Local Rule 2002-4 giving GMAC twenty-one days to respond. The Debtor, on July 29, 2010, mailed a copy of the Motion to Value Claim to Stern at its address of record in Plantation, Florida and to “an officer or agent of GMAC Mortgage, LLC, Mail Code 507-345-110, 3451 Hammond

Ave, Waterloo, IA 50702,” which address is contained on page one of GMAC’s claim. GMAC did not respond to the Motion to Value Claim and the August 25, 2010 Order was entered: (i) granting the Motion to Value Claim and valuing GMAC’s secured claim at \$40,855.00, with the balance to be treated as an unsecured claim; and (ii) reamortizing the loan for thirty years with interest at the rate of 6.00%. The Court, on August 27, 2010, issued the August 25, 2010 Order to Stern at his address of record and GMAC at its Waterloo, Iowa address in its proof of claim (Doc. No. 72). GMAC did not timely seek reconsideration or appeal of the August 25, 2010 Order.

GMAC, through Stern, filed a Notice of Withdrawal on November 11, 2010 (Doc. No. 136) withdrawing GMAC’s stay relief motion it had filed on July 8, 2010 (Doc. No. 29). GMAC engaged new counsel and the law firm of Phelan Hallinan, PLC filed a Notice of Appearance as counsel for GMAC on December 1, 2010 (Doc. No. 150).

GMAC—more than four months after the entry of the August 25, 2010 Order—now seeks to vacate that Order. GMAC, through its new counsel, asserts: (i) the Debtor did not properly serve the Motion to Value Claim on an agent or corporate officer of GMAC pursuant to Federal Rule of Bankruptcy Procedure 7004; and (ii) the reamortization of the loan exceeds the scope of allowable relief pursuant to 11 U.S.C. Section 506(a).

### ***Motion to Vacate***

The Motion to Vacate constitutes a motion for reconsideration and is governed by Federal Rule of Civil Procedure 59, which is applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 9023. Sussman v. Salem, Saxon & Nielson, P.A., 153 F.R.D. 689, 694 (M.D. Fla. 1994). “[R]econsideration of a previous

order is an extraordinary remedy to be employed sparingly.” Id. The only grounds for granting a motion for reconsideration pursuant to Federal Rule of Bankruptcy Procedure 9023 “are newly-discovered evidence or manifest errors of law or fact.” Kellogg v. Schreiber (In re Kellogg), 197 F.3d 1116, 1119 (11th Cir. 1999).

GMAC has been actively involved in the Debtor’s bankruptcy case since its inception. The Debtor served her Motion to Value on GMAC’s counsel of record and on GMAC at its Iowa address listed in its proof of claim. GMAC received the Debtor’s Motion, but failed to respond in compliance with Local Rule 2002-4, which resulted in the entry of the August 25, 2010 Order.

Relief sought relating to the avoidance or cramdown of liens and determination of collateral valuation pursuant to 11 U.S.C. Section 506 is brought by motion, not by an adversary proceeding complaint. In re Sadala, 294 B.R. 180, 182 (Bankr. M.D. Fla. 2003) (“Bankruptcy Rule 3012 specifically permits 506(a) collateral valuations to be requested on motion provided notice and an opportunity for hearing is given to the affected party.”); FED. R. BANKR. P. 3012; LOCAL RULE 2002-4. This Court has adopted a negative notice procedure in Chapter 7, 11, and 13 cases for these types of motions.<sup>1</sup>

Federal Rule of Bankruptcy Procedure 2002(g) and Local Rule 2002-4(b) govern the service of such motions filed pursuant to the negative notice procedure. Federal Rule of Bankruptcy Procedure 2002(g)(1) requires notice to be “addressed as such entity or an authorized agent has directed in its last request filed in the particular case.” FED. R. BANKR. P. 2002(g)(1).

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<sup>1</sup> <http://www.flmb.uscourts.gov/procedures/documents/negativenotice-ori.pdf>.

Stern, as counsel and the agent for GMAC, filed a Notice of Appearance requesting all matters requiring notice in this case be served on Stern at its office address in Plantation, Florida pursuant to Federal Rule of Bankruptcy Procedure 2002(g). The Debtor served the Motion to Value on Stern, as GMAC's agent, pursuant to Stern's directive in the Notice of Appearance. The Debtor also served the Motion to Value on GMAC at its address listed in its proof of claim.

Stern continued to be counsel of record for GMAC and his service directive was in full force and effect when the Debtor filed and served her Motion to Value Claim on Stern. The Debtor properly served GMAC with the Motion to Value pursuant to Federal Rule of Bankruptcy Procedure 2002(g) and Local Rule 2002-4. Stern continued to be counsel of record for GMAC and his service directive was in full force and effect when the August 25, 2010 Order was issued to him.

GMAC was provided notice and an opportunity for hearing on the Motion to Value to Claim. It was served with the August 25, 2010 Order and had an opportunity to timely seek appeal or reconsideration of the Order. GMAC was afforded due process. The relief granted to the Debtor in the August 25, 2010 Order is consistent with the relief allowable pursuant to 11 U.S.C. Section 506(a).

GMAC has presented no newly-discovered evidence or manifest error of law or fact warranting the reconsideration or amendment of the August 25, 2010 Order pursuant to Federal Rule of Civil Procedure 59 and Federal Rule of Bankruptcy Procedure 9023. GMAC's Motion to Vacate is due to be denied.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that GMAC's Motion to Vacate  
(Doc. No. 152) is hereby **DENIED**.

Dated this 3rd day of February, 2011.

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