

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

In re:

LUTHER RAY SLATE,

Case No. 6:11-bk-15737-ABB

Chapter 13

Debtor.

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ORDER

This matter came before the Court on the Motion to Determine Secured Status and Strip Second Mortgage Lien (Doc. No. 21) seeking to strip-off the secured claim, Claim No. 2-1, filed by PNC Bank, N.A. The Motion is due to be denied for the reasons set forth herein.

The Debtor filed the above-captioned Chapter 13 case on October 18, 2011. He filed a Chapter 7 bankruptcy case captioned *In re Luther Ray Slate*, Case No. 6:10-bk-05001-ABB, on March 26, 2010 and received discharge on July 15, 2010 pursuant to 11 U.S.C. Section 727(a). The Chapter 7 case was closed as a no asset case on August 27, 2010.

The Debtor owns real property located at 1695 Kingston Road, Longwood, Florida 32750 ("Property") encumbered by a first-priority mortgage held by PNC Bank in the amount of approximately \$325,250.67 (*see* Claim No. 4-1) and a second-priority mortgage held by PNC Bank in the amount of approximately \$33,089.26. This Property and its encumbrances were listed in the Debtor's Chapter 7 case.

The Debtor, pursuant to 11 U.S.C. Sections 506(a) and 1322(b)(2), seeks to value the Property at \$190,000.00, strip-off PNC Bank's junior mortgage lien as wholly unsecured, and treat Claim No. 2-1 as a general unsecured claim. The Debtor filed a

Chapter 13 Plan setting forth it intends to pay PNC Bank \$0.00 on Claim No. 2-1. PNC Bank objects to the Plan (Doc. No. 17).

This matter is governed by Section 1328(f)(1) of the Bankruptcy Code, as enacted by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Section 1328(f)(1) provides:

(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter

11 U.S.C. § 1328(f)(1). The filing of a petition constitutes an “order for relief” pursuant to 11 U.S.C. Section 301(b). The four-year look-back period of Section 1328(f)(1) runs from the date of filing of the debtor’s prior bankruptcy case and ends upon the filing of the Chapter 13 petition. Carroll v. Sanders (In re Sanders), 551 F.3d 397, 399-400 (6th Cir. 2008); Branigan v. Bateman (In re Bateman), 515 F.3d 272, 277-78 (4th Cir. 2008) (addressing Section 1328(f)(2)). The “four-year embargo begins on the date of filing, not the date of discharge.” In re Sanders, 551 F.3d at 400.

The Debtor filed this Chapter 13 case within four years of the petition date of his Chapter 7 case. The Debtor is precluded from receiving a discharge in the pending case pursuant to 11 U.S.C. Section 1328(f)(1).

This Court has held in numerous decisions a debtor requires a Chapter 13 discharge to carry out an intended strip off or cramdown of a mortgage lien. Where a debtor is ineligible to receive a discharge in a Chapter 13, any modifications to the creditor’s rights are not permanent and have no binding effect once the plan ends. In re

Lilly, 378 B.R. 232, 236 (Bankr. C.D. Ill. 2007). Because the Debtor is precluded from receiving a discharge in his Chapter 13 case, his Motion to strip off PNC Bank's junior mortgage lien is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor Luther Ray Slate is not eligible for a discharge in the above-captioned case pursuant to 11 U.S.C. Section 1328(f)(1); and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's Motion to Determine Secured Status (Doc. No. 21) is hereby **DENIED**.

Dated this 2nd day of February, 2012.

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