UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

RICHARD THOMAS,

Chapter 7
Case No.: 6:13-bk-09525-CCJ

Debtor.
_____/

ORDER DENYING DEBTOR'S VERIFIED
MOTION TO DETERMINE SECURED STATUS

This case came before the Court for hearing on February 4, 2014, on the debtor's Verified Motion to Determine Secured Status of Junior Liens (Doc. No. 10; the "Motion"). Lake Forest Master Community Association ("Lake Forest") filed an Objection to the Motion (Doc. No. 22; the "Objection"). For the reasons set forth below, the Objection is sustained and the Motion is denied.

By the Motion, this Chapter 7 debtor seeks to strip what he alleges are two wholly-unsecured junior liens on his property. It is undisputed that the debtor owns the property as a tenancy by the entirety with his non-filing wife. (Doc. No. 1, at 8; *see* Doc. No. 22-3, at 1). By the Objection, Lake Forest argues that a debtor may not strip a lien on property held as a tenancy by the entirety ("TBE") with a non-filing spouse. The Court agrees with Lake Forest and follows the reasoning of Judge Jennemann in *In re Pierre*.[1]

In *Pierre*, a Chapter 13 debtor sought to strip a lien off of TBE property with her non-filing spouse.[2] The Court examined the "essential characteristics" of TBE ownership, which is that "each spouse owns an undivided and indivisible interest in the entire property" that no

[1] 468 B.R. 419 (Bankr. M.D. Fla. 2012), *aff'd sub nom. Pierre v. Citimortgage*, Case No. 6:12-cv-642-Orl-22 (M.D. Fla. Feb. 13, 2013).
[2] *Id.* at 426.

spouse may unilaterally sever.[3] The Court concluded that "one benefit, and perhaps sometime burden, of TBE ownership is that any type of ownership change requires joint action by both spouses. [The debtor] simply cannot reduce or eliminate a mortgage encumbering property she owns as TBE with [the non-filing spouse], unless he is a debtor in this Chapter 13 case . . . ."[4]

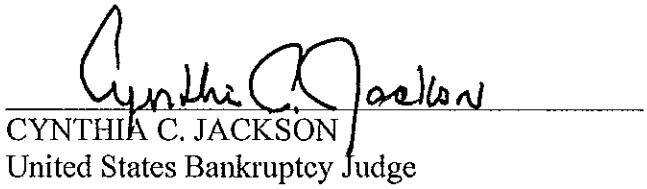
If the Court were to permit the debtor to strip the liens in question, "his non-filing wife would be granted the benefit of having filed for bankruptcy without having to carry any of the burdens. The Code does not permit this".[5] Although *Pierre* involved a Chapter 13 case, its reasoning applies equally to this Chapter 7 case.

For the reasons stated above it is ORDERED that:

1. The Objection is sustained.

2. The Motion is denied.

Done and Ordered in Orlando, Florida this 8th day of April, 2014.



CYNTHIA C. JACKSON
United States Bankruptcy Judge

Attorney Michael J. Merrill is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

[3] *Id.* at 427.
[4] *Id.*
[5] *In re Alvarez*, No. 11-44246-BKC-AJC, 2012 WL 1425097, at *3 (Bankr. S.D. Fla. April 24, 2012).