


ORDERED.

Dated: March 16, 2016


Cynthia C. Jackson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

LANCE A. BREMER,

Chapter 13

Case No.: 6:14-bk-00348-CCJ

Debtor.
_____ /

ORDER VALUING COLLATERAL
SECURING FIRST LIEN AND STRIPPING SECOND LIEN

This case came before the Court for final evidentiary hearing on June 18, 2015, on the Debtor's motions to (i) value the collateral securing the first mortgage lien of Karen Chana (Doc. No. 69; the "Motion to Value") and (ii) to strip Ms. Chana's second mortgage lien (Doc. No. 70; the "Motion to Strip"). For the reasons set forth below, the Motion to Value is granted in part, and the Motion to Strip is granted.

Background

Ms. Chana holds a first lien on the Debtor's property located at 621 N. Elder Road, Sanford, Florida (the "Property") in the amount of \$698,114 (the "First Lien"). Ms. Chana also

holds a second lien on the Property in the amount of \$104,014.82 (the “Second Lien”). The Debtor has made no payments on either mortgage lien for more than 5 years.

Ms. Chana has twice obtained foreclosure judgments but has been thwarted each time by the Debtor filing for Chapter 13. The Property consists of 5 acres of land in an industrial area and is vacant except for an old house. By the Motion to Value, the Debtor asks the Court to value the Property at \$125,000, based upon the “Debtor’s real estate experience.” By the Motion to Strip, the Debtor argues that based upon his \$125,000 valuation, the Second Lien has no value and should be stripped off completely.

At trial, the Debtor produced an appraisal of the Property which was admitted into evidence without objection (the “Appraisal”). The Debtor’s appraiser was also present and testified. Ms. Chana produced no evidence. The appraiser appraised the value of the Property at \$695,000, “less a contingent liability for a removal of debris of \$3,427,700, thereby rendering a negative value.”

As testified by the Debtor and the appraiser, the reason for the “contingent liability” is that prepetition, the Debtor operated a mulching business on the Property and the local county forced him to stop and to remove all debris from the Property. Instead of removing the debris from the Property as required by the county, however, the Debtor buried it on the Property.

The Debtor and the appraiser both testified that any purchaser of the Property would have to remove the debris from the Property. The appraiser further testified that the old house on the Property would need to be demolished and that the Property’s highest and best use would be for “warehouse condominiums.”

At the hearing, counsel for the Debtor argued that the Court should value the Property in the negative and that Ms. Chana would therefore have no secured claim for either her first or

second lien. In the alternative, the Debtor argued that the Court should value the Property at \$125,000 as first suggested by the Debtor based on his “real estate experience.” Ms. Chana argued that the Debtor failed to meet his burden of proof and as such, both motions should be denied.

Discussion

Section 506 of the Bankruptcy Code allows a debtor to have his secured property valued as of his petition date.¹ If the property is worth less than the secured claim, Section 506 permits a debtor to bifurcate the claim as secured to the extent of the property’s value and unsecured as to the remainder.²

In addition, in Chapter 13 cases within the Eleventh Circuit, where there is no value left for a second lien, Bankruptcy Courts are authorized to strip such liens such that the second lienholder’s claim is completely unsecured.³ There is a split of authority as to whether a debtor or creditor has the burden of proof as to the value of property under Section 506.⁴ This Court need not decide the issue in this case however, because the *creditor here submitted no evidence*. Accordingly in this case, the Debtor has met his burden of proof.

Section 506(a)(1) of the Bankruptcy Code provides that in deciding the value of the property the Court should make its determination “in light of the purpose of the value and the proposed use of such property, and in conjunction with any hearing on such disposition or use or a plan affecting such creditors interest.”⁵

¹ See 11 U.S.C. § 506(a).

² See 11 U.S.C. § 506(d).

³ See *e.g.*, *In re Sadala*, 294 B.R. 180 (Bankr. M.D. Fla. 2003) (a party moving to value collateral securing a junior lienholder’s claim, and to “strip off” its lien as wholly unsupported by any equity in encumbered property, may do so by motion).

⁴ See *In re Heritage Highgate, Inc.*, 679 F.3d 132, 139 (3d Cir. 2012) (acknowledging a three-way split of authority regarding the burden of proof as to the value of secured claims under Section 506(a)).

⁵ 11 U.S.C. § 506(a)(1).

The purpose of the Court's valuing of the Property here is to determine the amount of the first lien claim as bifurcated and to determine whether the second lien may be stripped off. If the Court were to grant both of the Debtor's motions as amended at the hearing, Ms. Chana would have no secured claim on either her first or second claim. And the reason she would have no secured claim is because, by his own admissions, the Debtor damaged the Property after Ms. Chana's liens were in place to the tune of in excess of \$3 million.

This Court is one of equity and will not let that happen. The Court accepts the only evidence of valuation (the Debtor's appraisal), on its face, except for the cost of removal of debris (which the Court questions as to the amount). The Court finds that for purposes of bifurcating and stripping a secured claim, the value is \$695,000. For purposes of this valuation, the Court will not allow this Debtor to use his bad acts of damaging the Property--and Ms. Chana's collateral--to completely eviscerate Ms. Chana's first and second lien. But for the Debtor's bad acts and by the Debtor's own evidence, the Property has a value of \$695,000.

Based upon that valuation, the allowed amount of Claim No. 22 is secured at \$695,000 and unsecured at \$3,114.50. The Court accepts the Debtor's proposed interest rate of 5.25%. The Court finds that because of this valuation, the second lien is completely unsecured and is stripped upon entry of an order of discharge.

Conclusion

For the reasons set forth above, it is ORDERED that:

1. The Motion to Value is granted in part, to the extent that the Property is valued at \$695,000. Claim No. 22 is allowed as a secured claim in the amount of \$695,000 at an interest rate of 5.25%, with the balance allowed as an unsecured claim in the amount of \$3,114.50.

2. The Motion to Strip is granted as set forth above. The Second Lien is wholly unsecured and will be stripped upon entry of a Chapter 13 discharge order.

Attorney Charles W. Price 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.