

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

In re:

Case No. 3:13-bk-04396-PMG

Sparkles A. Maisonet,
Debtor.

Chapter 7

**STIPULATED ORDER RESOLVING MOTION TO DETERMINE SECURED
STATUS OF BANK OF AMERICA AND STRIP LIEN EFFECTIVE
UPON DISCHARGE SUBJECT TO RIGHT OF APPELLATE REVIEW**

WHEREAS, Sparkles A. Maisonet, Debtor in the above-captioned Chapter 7 case (“Movant”) filed a motion (the “Motion”) [ECF No. 7] seeking an order voiding a junior lien held and/or serviced by Bank of America, N.A. (“Bank of America” or the “Respondent”) (Movant and Respondent are referred to collectively herein as the “Parties”).

WHEREAS the Parties do not dispute the material facts bearing on the Motion, and seek a ruling that will permit them to seek an expeditious resolution of the disputed question of law raised by the Motion,

THE PARTIES HEREBY STIPULATE AND AGREE, AND THE COURT SO ORDERS, THAT:

1. Jurisdiction over this matter is proper pursuant to 28 U.S.C. §§ 1334 and 157. Venue is proper pursuant to 28 U.S.C. § 1409. This matter is a core proceeding. Accordingly, the Court’s entry of this Stipulated Order shall constitute a final judgment in this contested matter.

2. Movant is a debtor in the above-captioned chapter 7 bankruptcy case, which was initiated by the Movant’s filing of a voluntary petition on July 18, 2013.

3. Movant owns real property located at 8965 Winrock Drive North, Jacksonville, Florida 32216 (the “Property”).

4. The Property is subject to two mortgage liens. As of the filing of the voluntary petition (and as of the date of this Order), the amount outstanding on the first-priority mortgage (approximately \$143,074.00) exceeds the fair market value of the Property.

5. Respondent is the holder and/or servicer in respect of a second-priority mortgage, in the approximate amount of \$36,147.00 (the "Second Lien").

6. Under the reasoning of the U.S. Court of Appeals for the Eleventh Circuit in *McNeal v. GMAC Mortgage, LLC*, No. 11-11352 (May 11, 2012), on the facts as stipulated above, the Second Lien may be "stripped off," or "voided," under 11 U.S.C. § 502(d).

7. Respondent disputes the correctness of the analysis in *McNeal* and expressly reserves its rights in respect thereof. The Parties agree, however, that unless and until *McNeal's* reasoning is rejected by the U.S. Court of Appeals for the Eleventh Circuit or the Supreme Court of the United States (including on appeal from the entry of this Stipulated Order), that reasoning is applicable to this contested matter.

8. For the foregoing reasons, effective upon effective upon the later of (a) the Debtor's receipt of a discharge, and (b) this order becoming final and not subject to further appeal or review:

- A. The Second Lien is void; and
- B. Respondent shall release the Second Lien.

9. Each party shall be responsible for its own fees and costs.

10. All parties reserve all rights to appeal (and/or seek certiorari in the Supreme Court of the United States) from this Order, and any order entered on appeal herefrom. The Parties expressly agree that the determination to proceed by means of this Stipulated Order reflects only

an agreement that the *McNeal* decision is applicable hereto, but that a genuine and concrete dispute remains with respect to the Movant's ultimate entitlement to the relief sought in this action. Unless and until this Order becomes final and non-appealable, the Parties agree that they will take no action that might render moot any appeal herefrom, or contend in any forum that such an appeal is or has become moot.

STIPULATED AND AGREED TO BY:

Bank of America, N.A.

By: /s/ Laudy Luna Perez

Dated: August 15, 2013

Laudy Luna Perez

FBN: 44544

E-mail: llp@lgplaw.com

Liebler, Gonzalez & Portuondo, P.A.

44 West Flagler Street – 25th Floor

Miami, Florida 33130

(305) 379-0400

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Sparkles A. Maisonet

By: /s/ Keith L. Maynard

Dated: August 14, 2013

Keith L. Maynard
Wood, Atter & Wolf, P.A.
333-1 East Monroe Street
Jacksonville, Florida 32202
(904) 355-8888

SO ORDERED this 5 day of September, 2013, in Jacksonville Florida.

Paul M. Glenn

PAUL M. GLENN
United States Bankruptcy Judge

* Attorney for Debtor shall serve a copy of this Order on interested parties and file proof of service within three days of the entry of the Order.

Copies furnished to:

Laudy Luna Perez
FBN: 44544
E-mail: llp@lgplaw.com
Liebler, Gonzalez & Portuondo, P.A.
44 West Flagler Street – 25th Floor
Miami, Florida 33130
Attorney for Bank of America, N.A.

Keith L. Maynard
Wood, Atter & Wolf, P.A.
333-1 East Monroe Street
Jacksonville, Florida 32202
Attorney for Debtor

RECORDED IN THE US BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
U.S. NO. 54 DC. 7798