

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

IN RE:

**DARRELL AND ANGELA SMITH,
Debtor(s)**

**CASE NO.: 10-11026
CHAPTER 13**

**AMENDED ORDER GRANTING DEBTOR'S THIRD AMENDED VERIFIED MOTION TO
DETERMINE SECURED STATUS OF BANK OF AMERICA AND TO BIFURCATE AND
STRIP DOWN LIEN EFFECTIVE UPON DISCHARGE**

THIS MATTER came on for consideration at a hearing before the Court on September 14, 2011 at 9:00AM on the Debtor's Third Amended Verified Motion to Determine Secured Status of Bank of America and to Bifurcate and Strip Down Lien Effective Upon Discharge (the "Motion") [Docket # 81] at which time no one was present on behalf of Bank of America, but counsel for the Debtor was present. The Court, considering the Motion, and the relief requested,

Accordingly, hereby ORDERED as follows:

1. That the Debtors' Motion is hereby GRANTED.
2. The Debtor's Motion alleged that at the time the Debtor filed the instant bankruptcy petition, the Debtor had a joint tenancy with right of survivorship interest in non-homestead real property located 22 Locust Loop Dr., Ocala, FL 34472 ("Property") subject to a second mortgage security instrument held by Bank of America Account # XXXX6009; and said mortgage having been recorded on January 12, 2004 in Official Records Book 4374 at Page 1665 in Public Records of Marion County, Florida. The Property is more particularly described in the public records of Marion County, Florida as follows:

PARCEL IDENTIFICATION NUMBER: 9033-1078-14

**SORT LEGAL DESCRIPTION: NEIGHBORHOOD 2033 - SILVER SPRINGS SHORES
UNIT 33**

TAX FOLIO NUMBER: R9033-1078-14

3. The Debtor's Motion further alleged that 11 U.S.C. §506(a)(1) permits a Chapter 13 Debtor to value collateral and bifurcate claims providing: "An allowed claim of a creditor secured by a lien on property in which the estate has an interest,..., is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property,...and is an unsecured claim to the extent that the value of such creditor's interest... is less than the amount of such claim." Nobelman v. American Sav. Bank, 508 U.S. 324, 328 (U.S. 1993).

4. The Debtor's Motion further alleged that Bank of America's mortgage lien, which encumbers the Debtor's primary residence, is subject to modification because Bank of America also took an interest in property other than the real property which is the debtor's principal residence and therefore may be modified. Hammond v. Commonwealth Mortgage Corp. of Am. (In re Hammond), 27 F.3d 52, 56 (3d Cir. Pa. 1994); Thomas v. Countrywide Home Loans, Inc. (In re Thomas), 344 B.R. 386, 390 (Bankr. W.D. Pa. 2006).

5. Therefore, the Court rules that bifurcation of Bank of America's claim is proper subject to the value of Debtor's Property.

6. The current fair market value of the Property and EMC 's collateral is \$62,000.00 pursuant to 11 U.S.C. §506. The value of the Property was determined by an appraisal dated October 14, 2011 by Melissa Moore, License number 7619, of Barfield & Associates, P.O. Box 4338, Ocala, FL 34478. This appraisal has been previously sent to the Chapter 13 trustee for review. Therefore Proof of Claim #14 shall be an allowed secured claim in the amount of \$6,000.00 and an unsecured claim in the amount of \$30,484.00 for purposes of distribution through the Debtors' Chapter 13 Plan. Bank of America's allowed secured claim shall be paid through the Debtors' Plan with interest at the rate of 5% over a period of time not to exceed sixty (60) months.

7. Bank of America shall retain its lien in a secured amount consistent with this Order until its allowed secured claim as described in paragraph number six (6) herein above is cured or the Debtor receives a discharge in this Chapter 13 case.

8. There shall be no prepayment penalties, nor late charges for Bank of America's allowed secured claim as described in paragraph number six (6) herein above.

9. Except as modified herein by this Order, all other terms and conditions of Bank of America's security instrument shall remain the same and in full force and effect.

10. The mortgage on the Property held by Bank of America recorded in Official Records Book 4374 at Page 1665 in Public Records of Marion County, Florida shall be deemed satisfied and void, and shall be extinguished automatically, without further court order, upon entry of the Debtor's discharge in this Chapter 13 case, provided however, that the Court reserved jurisdiction to consider, if appropriate, the avoidance of Bank of America's mortgage lien prior to the entry of the Debtor's discharge.

11. This order does not prohibit Bank of America from asserting, at any time prior to the time when the lien is avoided by this order upon entry of the Debtor's discharge, any rights it may have as a defendant in any foreclosure proceeding brought by a senior or junior mortgagee, including the right to claim excess proceeds from any foreclosure sale.

12. The value of the Property, the corresponding interest rate and this Order shall survive the termination of this Chapter 13 case upon entry of the Debtor's discharge in this Chapter 13 case.

13. Attorneys fees shall be granted to Stamatakis + Thalji, P.L. in the amount of \$350.00.

DONE AND ORDERED in Jacksonville, Florida on December 7, 2011.



Paul M. Glenn
Chief United States Bankruptcy Judge

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RECORDED IN THE US BANKRUPTCY COURT
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