

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

IN RE:

**KENNETH JEFFREY BRADLEY, and  
MICHELLE ANN BRADLEY,**

**Case No.: 3:12-bk-00724-JAF  
Chapter 7**

**Debtor(s).**

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**KENNETH JEFFREY BRADLEY, and  
MICHELLE ANN BRADLEY,**

**Plaintiff(s),**

**Adversary No.: 3:12-ap-599-JAF**

vs.

**121 FINANCIAL CREDIT UNION, fka  
FLORIDA TELCO CREDIT UNION**

**Defendant.**

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**FINAL JUDGMENT AVOIDING MORTGAGE LIEN  
AND FOR DECLARATORY JUDGMENT**

This proceeding came before the Court on Plaintiff's Complaint to Avoid Mortgage Lien and for Declaratory Judgment. Upon the evidence and representations before it, and upon the Stipulation to Judgment executed between the parties and filed with the court on November 28, 2012 [AP Docket No.: 9] the Court makes the following findings of facts and conclusions of law in support of its ruling.

**Findings of Fact**

Plaintiff is the owner of real property located located in St. Johns County Florida at 3120 Banister Rd. E., Saint Augustine, Florida 32092, and more particularly described as:

Lot 639, SOUTH HAMPTON UNIT FOUR – A, according to the map or plat thereof, as recorded in Map Book 48 Page 63, of the Public Records of St. Johns County, Florida.  
(the “Property”).

On or about October 3, 2005, Plaintiffs granted Beazer Mortgage Corporation (“Beazer”) a mortgage lien on the Property which was recorded at Book 2550, Page 1834, Document #2005082055, public records of St. Johns County, Florida (the “First Mortgage”). On or about December 12, 2011 Beazer assigned their First Mortgage interest to GMAC Mortgage, LLC (“GMAC”) as outlined by that certain assignment of mortgage which was recorded at Book 3503, Page 1085, Document #2011062314, public records of St. Johns County, Florida (the “First Mortgage Assignment”).

On or about July 3, 2007, Plaintiffs granted Defendant a mortgage lien on the Property which was recorded at Book 2943, Page 1873, Doc. 2007045188, public records of St. Johns County, Florida (the “Second Mortgage”).

On February 8, 2012 the Plaintiff filed a voluntary petition under Chapter 7 of Title 11 of the United State Code, case number 3:12-bk-00724-JAF.

As of the date of the filing of the Plaintiff’s Chapter 7 case, the amount due and owing on Plaintiff’s First Mortgage was \$243,733.00 plus arrearages. (the “First Mortgage Balance”). As of the date of the filing of the Plaintiff’s Chapter 7 case, the current value of the Property is \$189,848.00 (the “Property Value”).

#### **Conclusions of Law**

Section 506 of the Bankruptcy Code provides that the secured claims of creditors that are secured by property of the debtor are considered allowed secured claims to the extent of the value of the property in which they retain a security interest, and considered allowed unsecured claims to the extent that the value of the debtor’s property is less than the amount of the total

claim. 11 U.S.C. § 506(a)(1). To the extent that a lien secures a debt to a creditor for a debt that does not constitute an allowed secured claim, such lien is void. 11 U.S.C. § 506(d).

Allowed claims, secured by an otherwise valid lien, which are wholly unsecured pursuant to the terms of 11 U.S.C. § 506, are voidable. Folendore v. United States Small Bus. Admin., 862 F.2d 1537 (11<sup>th</sup> Cir. 1989) and McNeal v. GMAC Mortgage, LLC, et al., Case No.: 11-11352 (11<sup>th</sup> Cir. May 11, 2012).

As the Property Value is less than the first Mortgage Balance, Defendant's lien on the Property is voidable under 11 U.S.C. § 506(d).

Based upon the preceding Findings of Facts and Conclusions of Law, and the consent of the Parties, it is:

**ADJUDGED:**

1. The value of the Property is \$189,848.00.
2. The value of that portion of the Defendant's mortgage secured by the Property is \$0.00.

*The balance of this claim shall be treated as unsecured.*

3. The mortgage held by the Defendant on the Property recorded on July 3, 2007 at Book 2943, Page 1873, Doc. 2007045188, public records of St. Johns County, Florida shall be deemed null and void and shall be extinguished automatically, without further court order, upon entry of the Debtor's discharge in the above referenced Chapter 7 case, wherein Defendant shall have no claim or interest to the Property described herein.
4. In the event the Debtors' Chapter 7 Case is dismissed or discharge denied, Defendant's lien and security interest shall not be affected by this judgment in accordance with 11 U.S.C. 349(1)(C) or 348(f)(1)(B), as applicable.

5. Each Party is to bear their own attorney's fees and costs in relation to this adversary proceeding.

DATED this 4 day of December 2012 at Jacksonville, Florida.



**Jerry A. Funk**  
United States Bankruptcy Judge

Copies to:  
All interested parties.

FILED IN THE US BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA,  
JACKSONVILLE DIVISION  
NOV 24 2012