UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

VALERIE E. KURTZ,

Chapter 7
Case No.: 6:13-bk-12035-CCJ

Debtor.
_____/

ORDER GRANTING MOTION TO STRIP

This case came before the Court on March 26, 2014, for a final evidentiary hearing on the Debtor's motion to strip a lien held by Fifth Third Bank (Doc. No. 6; the "Motion to Strip"). Upon consideration of the evidence and the argument of counsel the Court grants the Motion to Strip.

FACTS

Fifth Third Bank, N.A. holds a second mortgage in the amount of $14,315 on the Debtor's principal place of residence (the "Property"). The legal description of the Property is as follows:

> **The West 31.31 feet of Lot 12, and all of Lot 13, Block 66 of Sandlando the Suburb Beautiful, Palm Springs Section, according to the Plat thereof, as recorded in Plat Book 3, Page 65 ½; of the Public Records of Seminole County, Florida**

The parties stipulated at the hearing that there is a first mortgage on the Property in the amount of $157,499.01 held by Select Portfolio Servicing, Inc.

On October 2, the Debtor filed the Motion to Strip arguing that the Property has a fair market value of $125,000 and that as such, the Fifth Third Bank claim is wholly unsecured and should be stripped off under the reasoning of *In re McNeal*. Fifth Third objects to the Motion to Strip.

Both the Debtor and Fifth Third Bank obtained appraisals of the Property and both appraisers testified at the hearing. The Debtor's appraiser testified that the fair market value of the Property as of the petition date was $156,000. The appraiser testified however, that as a result of information she recently received regarding a mold issue that the value should be adjusted down to $124,000. Fifth Bank's appraiser testified that the fair market value of the Property as of November 2013 is $173,000 but with the mold issue, should be reduced to $163,000. Both appraisers used the sales comparison approach.

The Court accepted both appraisers as experts and finds the Debtor's appraiser and appraisal to be the most credible. The Court will not however reduce the Debtor's appraisal to $124,000 based on the mold issue because neither party submitted evidence that such mold issue was present as of the petition date, which is the operable date. The Court therefore finds that the fair market value of the Property as of the Petition Date was $156,000. Because the first mortgage is undisputedly greater than $156,000, the Court concludes that the Fifth Bank's second mortgage is wholly unsecured. Accordingly it is ORDERED that:

1. The Motion to Strip is granted.

2. The Creditor's claim shall be treated as a general unsecured claim in this case. Upon entry of a discharge, pursuant to 11 U.S.C. § 727, the Creditor's lien is avoided and extinguished automatically without further order of the Court, provided the Eleventh Circuit Court of Appeals or the Supreme Court has not, at the time of the discharge, vacated the opinion

or otherwise overruled or limited the holding of *In re McNeal*, 477 Fed. Appx. 562 (11th Cir. 2012).

Done and Ordered in Orlando, Florida this 9th day of April, 2014.

CYNTHIA C. JACKSON
United States Bankruptcy Judge

Attorney Lewis Roberts 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.