

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
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In re:

WILLIAM CARROLL STRAHL,

Case No. 6:14-bk-10403-ABB  
Chapter 13

Debtor.

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**ORDER GRANTING DEBTOR'S VERIFIED MOTION TO VALUE CLAIM OF  
NATIONSTAR MORTGAGE, LLC (DOC. NO. 16)**

This matter came before the Court on the Verified Motion to Value Claim of Nationstar Mortgage, LLC (Doc. No. 16) (the "Motion to Value") filed by the Debtor seeking to value the secured claim of Nationstar Mortgage, LLC (the "Creditor") and the Creditor's Supplemental Response to the Motion to Value (Doc. No. 31) (the "Response"). The Motion to Value is due to be granted.

The Debtor filed the instant case on September 12, 2014 (Doc. No. 1). The Creditor filed a claim in the amount of \$179,924.75 secured by a first mortgage in real property located at 1238 S. Missouri Avenue, Apt. 103, Clearwater, FL 33756 (the "Property"). The Motion to Value was filed on October 20, 2014 asserting the fair market value of the Property is \$40,000.00 and seeking to pay the secured value of \$40,000.00 at an interest rate of 5.25% per Section 1325(a)(5)(B) of the Bankruptcy Code. The Response argues the claim cannot be "crammed down" because the Property is owned as tenants by the entirety with a non-filing spouse, Josefa Strahl ("Josefa"), and, even if Josefa was joined in the Debtor's bankruptcy case, the Property may not be valued because Josefa, individually, is not eligible for a chapter 13 discharge or, in

the alternative, the Property's fair market value should be determined to be \$80,000.00 pursuant to a certified appraisal (Doc. No. 31, Ex. A).

A hearing on the Motion to Value was held on February 18, 2015 (the "Hearing") at which counsel for the Debtor, counsel for the Creditor, and the Trustee appeared. The Parties agreed to fix the value of the Property at \$80,000.00 at the Hearing, but disagreed as to whether or not Josefa has an interest in the Property and, in turn, whether the Property is eligible for valuation at all.

The Debtor and Josefa were married and owned two pieces of marital property as tenants by the entirety: a homestead located at 6472 Crestmont Glen Lane, Windermere, FL 34876 (the "Homestead") and the Property in dispute, a condo. The Debtor and Josefa were divorced in 2009 and entered into a Marital Settlement Agreement (the "MSA") by which the Debtor would receive the Homestead as sole owner and Josefa would receive the Property as sole owner with both the Debtor and Josefa agreeing to be solely responsible for "all expenses and upkeep" associated with their respective properties (Doc. No. 29). The MSA directed Josefa to quitclaim her interest in the Property to give the Debtor complete and sole ownership of the Property and the Debtor to do the same for the Homestead.

Neither Josefa nor the Debtor conveyed their interest in the respective properties in accordance with the MSA, although the Debtor alleges Josefa abandoned her interest in the Property to the Debtor by way of a "new agreement" on an unspecified date (Doc. No. 39). Josefa filed a chapter 7 bankruptcy on April 20, 2011<sup>1</sup> listing both the Homestead and the Property in her Schedule "A" with a "fee simple" interest in both properties and listing no co-

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<sup>1</sup> In re Josefa M. Lins, Case No. 6:11-bk-05743-ABB.

debtors. Josefa surrendered both properties in her chapter 7 case and received a discharge on July 20, 2011. Josefa quitclaimed her interest in the Property to the Debtor on January 28, 2015 (Doc. No. 39). The Debtor has not quitclaimed or otherwise transferred his interest in the Homestead to Josefa and lists the Homestead as his residence on his bankruptcy petition (Doc. No. 1). Both the Debtor and Josefa are signatories to the note and mortgage executed in favor of the Creditor to which Josefa has discharged her personal liability thereunder in her chapter 7 case (Claim 6-1, Part 1 and 2).

The Debtor owned the Property as tenants in common with Josefa at the time of filing as the Debtor and Josefa initially owned the Property as tenants by the entirety and were subsequently divorced in 2009. *See Davis v. Dieujuste*, 496 So. 2d 806, 809 (Fla. 1986) (finding “upon dissolution of marriage, property held by the spouses as an estate by the entirety converts to a tenancy in common.”) (internal quotations omitted). “In the absence of a showing that one spouse should be awarded more than an equal share of entirety property, either as an award in lieu of lump sum alimony or because of a special equity in the property, the ownership interest of each is presumed equal.” *Id.* (internal quotations omitted). The Debtor and Josefa had equal interest in the Property at the time the Debtor filed this case.

The transfer of real property by quitclaim deed post-petition to a debtor becomes property of the estate pursuant to 11 U.S.C. Section 1306 which expands the definition of property of the estate under 11 U.S.C. Section 541 to include property acquired after the commencement of the case without limitation. *In re Pennino*, 211 B.R. 659, 661 (Bankr. W.D. Ark. 1997). The Debtor became the sole owner of the Property when Josefa quitclaimed her interest to the Debtor and, in turn, the Debtor’s bankruptcy estate includes the Debtor’s fee simple interest in the Property.

A debtor is limited or even prohibited from seeking cram down of a lien where a debtor is not the sole owner of the subject real property. *See In re Harris*, 494 B.R. 215 (Bankr. M.D. Pa. 2013) (holding a debtor owning real property as tenants in common with rights of survivorship with non-filing grandson may strip only one-half of the balance owed on a junior lien); *In re Pierre*, 468 B.R. 419, 428 (Bankr. M.D. Fla. 2012) (holding a debtor owning real property with a non-filing spouse as tenants by the entirety may not strip off a junior lien). The Debtor in this case does not own the Property with a non-filing party and he is permitted to determine the value of an “allowed claim of a creditor secured by a lien on property in which the estate has an interest.” 11 U.S.C. § 506. The Parties agree the value of the Property is \$80,000.00 and the Creditor’s claim is secured to that extent and is unsecured as to the remainder of its claim.

Accordingly it is,

**ORDERED, ADJUDGED and DECREED** that the fair market value of the Debtor’s real property located at 1238 S. Missouri Avenue, Apt. 103, Clearwater, FL 33756 is \$80,000.00; and it is further

**ORDERED, ADJUDGED and DECREED** that the Debtor’s Verified Motion to Value Claim of Nationstar Mortgage, LLC (Doc. No. 16) is hereby **GRANTED**.

Dated this 23rd day of March, 2015.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge