

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:07-bk-05041-ABB
Chapter 13

KEITH C. SMITH and
SHARI D. SMITH,

Debtors.

ORDER

This matter came before the Court on the Verified Motion to Strip Lien of Option One and for Determination that Claim is Unsecured (Doc. No. 17) ("Motion") filed by Keith C. Smith and Shari D. Smith, the Debtors herein (collectively, "Debtors"), and Option One's response thereto (Doc. No. 28). Hearings were held on January 23 and February 5, 2008 at which the Debtor Keith Smith, counsel for the Debtors, counsel for Option One, and counsel for the Chapter 13 Trustee appeared.

The Debtors filed this joint Chapter 13 case on October 16, 2007. Their homestead located at 23917 Oak Tree Drive, Sorrento, Florida ("Property") is encumbered by first and second priority mortgages held by Option One. Option One filed a secured proof of claim, Claim No. 6, for \$228,156.73 for the indebtedness relating to its first priority lien.¹ Option One filed a secured proof of claim, Claim No. 3, for \$66,086.04 for the indebtedness relating to its second priority lien.

Each party presented a written valuation of the Property. Neither party presented any expert witnesses in support of the valuations. No objections to the written valuations were made and the parties stipulated to their admissibility.

The Debtors listed the Property in Schedule A as having a value of \$220,000.00 on the Petition Date. Mr. Smith testified he

¹ Claim No. 6 names "Deutsche Bank National Trust Company, et al c/o Option One Mortgage Corporation" as the creditor. The Adjustable Rate Note attached to the claim names Option One Mortgage Corporation as the lender.

believed the Property has a current value of \$200,000.00. The valuation is based upon his observations of the number of properties for sale in the Debtors' neighborhood, the length of time the properties have remained unsold, and overall local real estate market conditions.

Option One presented a Comparative Market Analysis prepared by a real estate agent, which sets forth three figures: (i) market value \$307,000.00; (ii) quick sales \$293,000.00; and (iii) suggested list \$314,900.00. The figures are apparently based upon comparables, including three property sales and three listings. The sales comparables are for property sales in November 2006, February 2007, and July 2007, with the highest sales price of \$345,000.00 in July 2007 and the comparables located more than two miles from the Property. The "List Comp" information provides listing prices and not actual sales.

The Debtors presented a Uniform Residential Appraisal Report prepared by a Florida licensed residential appraiser. The Report values the Property at \$224,000.00 based upon a sales comparison approach and the appraiser's visual inspection of the interior and exterior of the Property. The Report values the Property at \$222,198.00 based upon the cost approach.

Option One's Analysis is entitled to minimal weight. It is not a formal appraisal conducted by a licensed residential property appraiser and no inspection of the Property was conducted. It contains no basis for the selection of the alleged comparables or the calculation of the alleged value. The real estate market has taken a substantial downturn since the July 2007 sale comparable. The Debtors established the Property has a value of \$224,000.00.

"Stripdowns," or cramdowns, of homestead mortgage claims are barred pursuant to Nobleman v. Am. Savs. Bank, 508 U.S. 324 (1993), but "stripoffs" are allowed where the lien is "wholly unsecured." Tanner v. FirstPlus Fin., Inc. (In re Tanner), 217 F.3d 1357, 1360 (11th Cir. 2000) (holding any claim that is wholly unsecured is not protected from modification pursuant to 11 U.S.C. Section 1322(b)(2)). A wholly unsecured lien claim is void. 11 U.S.C. § 506(d) (2007); In re Sadala, 294 B.R. 180, 185 (Bankr. M.D. Fla. 2003).

Option One's first priority lien is partially secured given the Property's value is slightly less than the debt balance of \$228,156.73. Its second priority lien of \$66,086.04 is wholly unsecured pursuant to 11 U.S.C. Section 506(a)(1). No equity exists in the Property to support Option One's second priority homestead mortgage loan—the lien attaches to no collateral.

Claim No. 3 is an unsecured claim. Option One's second priority lien is void pursuant to 11 U.S.C. Section 506(d) and may be stripped off pursuant to Section 1322(b)(2).² Tanner, 217 F.3d at 1360. The Debtors' Motion is due to be granted.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtors' Motion (Doc. No. 17) is hereby **GRANTED**; and it is further

ORDERED, ADJUDGED and DECREED that Claim No. 3 is unsecured and Option One's second priority lien is hereby **VOID** pursuant to 11 U.S.C. Section 506(d).

Dated this 21st day of February, 2008.

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

² Section 1322(b)(2) of the Bankruptcy Code provides:

Subject to subsections (a) and (c) of this section, the plan may—

...

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.

11 U.S.C. § 1322(b)(2) (2007).