

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re:

Case No. 3:10-bk-667-PMG

MAURICE ARLINGTON-COLIN DOWNER,  
and THONYA LYNN DOWNER,

Debtors.

Chapter 13

MAURICE ARLINGTON-COLIN DOWNER,  
and THONYA LYNN DOWNER,

Plaintiffs,

vs.

Adv. No. 3:10-ap-207-PMG

HSBC MORTGAGE SERVICES, INC.,

Defendant.

**ORDER ON MOTION FOR SUMMARY JUDGMENT**

**THIS CASE** came before the Court for hearing to consider the Motion for Summary Judgment filed by the Defendant, HSBC Mortgage Services, Inc. (HSBC).

HSBC is the holder of a first mortgage on the homestead real property of the Debtors, Maurice Arlington-Colin Downer and Thonya Lynn Downer. In this adversary proceeding, the Debtors seek to equitably subordinate the undersecured portion of HSBC's claim pursuant to §510(c) of the Bankruptcy Code.

In response, HSBC asserts that there is no genuine issue as to any material fact, and that it is entitled to a determination as a matter of law that subordination of its claim is not warranted under the statute. HSBC's Motion for Summary Judgment should be granted.

### **Background**

The Debtor, Maurice Arlington-Colin Downer, is a "chemist/environmental assessor." The Debtor, Thonya Lynn Downer, is a registered nurse. The Debtors own and reside at 8700 Reedy Branch Drive, Jacksonville, Florida (the Property). (Main Case, Doc. 1).

The Debtors purchased the Property in January of 2000 for the sum of \$206,000.00. (Doc. 25, Exhibit A, ¶ 4).

According to the Debtors, the records of the Duval County Tax Assessor's Office reflect that the Property was valued at \$192,100.00 in November of 2005. (Doc. 1, ¶ 12, Exhibit B).

On June 26, 2006, the Debtors entered into a Loan Agreement with Beneficial Florida, Inc. to refinance the existing mortgage on the Property. According to the Loan Agreement, the principal amount of the loan was \$411,717.01. The loan was secured by a first mortgage on the Property. HSBC is the holder of the first mortgage. (Doc. 1, Exhibit A).

On January 29, 2010, the Debtors filed a voluntary petition under Chapter 13 of the Bankruptcy Code. On their schedule of assets filed with the petition, the Debtors listed the Property as their homestead, and listed the value of the Property as \$376,331.00. (Main Case, Doc. 1).

On March 11, 2010, HSBC filed a secured proof of claim in the Debtor's Chapter 13 case in the amount of \$431,489.33. (Claim Number 16).

On April 22, 2010, the Debtors filed a Complaint to equitably subordinate HSBC's claim pursuant to §510(c) of the Bankruptcy Code. (Doc. 1). Generally, the Debtors contend that the loan "should be subordinated because HSBC's inequitable conduct caused [them] to make a loan that was seriously undersecured on the day that it was made." (Tr. p. 21). Consequently, the Debtors seek to treat HSBC as an unsecured creditor in their Chapter 13 case to the extent of the undersecured portion of HSBC's claim. (Tr. p. 12).

### **Discussion**

In its Motion for Summary Judgment, HSBC contends that it had "obtained and reasonably relied on an appraisal" showing that the Property was valued at \$431,000.00 at the time that the loan was made in 2006. (Doc. 20, ¶ 8, Exhibit C). Even if the Tax Assessor's lower value of the Property is accepted, however, HSBC asserts that its claim should not be equitably subordinated under §510(c) as a matter of law. (Docs. 20, 21).

Section 510(c) of the Bankruptcy Code provides:

#### **11 U.S.C. § 510. Subordination**

...

(c) Notwithstanding subsections (a) and (b) of this section, after notice and a hearing, the court may—

(1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or

(2) order that any lien securing such a subordinated claim be transferred to the estate.

11 U.S.C. §510(c). The subsection serves to "prevent a claimant who has committed fraudulent or other inequitable acts from gaining advantage over or equality with other claimants." In re Elrod

Holdings Corp., 392 B.R. 110, 114 (Bankr. D. Del. 2008)(quoting In re Medical Equities, Inc., 83 B.R. 954, 962 (Bankr. S.D. Ohio 1987)).

In determining whether a claim should be subordinated under §510(c), courts generally apply a three-part test.

Proper exercise of the equitable subordination power can take place only where three elements are established:

- (1) The claimant must have engaged in some type of inequitable conduct,
- (2) The misconduct must have resulted in injury to the creditors or conferred an unfair advantage on the claimant,
- (3) Subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Act.

In re Lemco Gypsum, Inc., 911 F.2d 1553, 1556 (11<sup>th</sup> Cir. 1990)(quoting In re Mobile Steel Company, 563 F.2d 692, 700 (5<sup>th</sup> Cir. 1977)). All three conditions must be satisfied before a claim is equitably subordinated. In re Mobile Steel Company, 563 F.2d at 699-700.

Further, “[e]quitable subordination is an ‘extraordinary remedy’ that ‘should be invoked only in extreme circumstances and only where a clear inequity has been wrought.’” Grede v. Bank of New York Mellon, 441 B.R. 864, 886 (N.D. Ill. 2010)(quoting Aetna Bank v. Dvorak, 176 B.R. 160, 166 (N.D. Ill. 1994)).

The Court finds that equitable subordination is not appropriate in this case as a matter of law, and that HSBC’s Motion for Summary Judgment should be granted.

#### **A. Conduct**

For a claim to be equitably subordinated under §510(c), the Court must first find that the claimant “engaged in some type of inequitable conduct.” In re Lemco Gypsum, Inc., 911 F.2d at 1556.

Where the claimant is not an insider of the debtor, the “inequitable conduct” required by §510(c) is evaluated in accordance with a more rigorous standard than if the claimant is an insider or fiduciary of the debtor.

“Traditionally, equitable subordination has been limited to cases involving (1) fraud, illegality or breach of fiduciary duty, (2) undercapitalization, or (3) control or use of the debtor as an alter ego for the benefit of the claimant.” *In re Granite Partners, L.P.*, 210 B.R. 508, 514 (Bankr. S.D.N.Y. 1997)(citations omitted). “Where noninsider, non-fiduciary claims are involved, the level of pleading and proof is even higher.” *Id.* at 515. “Courts have described the degree of wrongful conduct warranting equitable subordination of an ordinary creditor’s claim as ‘gross and egregious’, ‘tantamount to fraud, misrepresentation, overreaching or spoliation’ or ‘involving moral turpitude.’” *Id.*

Grede v. Bank of New York Mellon, 441 B.R. at 886. If the claimant is not an insider or fiduciary of the debtor, therefore, the plaintiff “must prove more egregious conduct such as fraud, spoliation or overreaching, and prove it with particularity.” In re Rich Capitol, LLC, 436 B.R. 224, 232 (Bankr. S.D. Fla. 2010).

In this case, HSBC was not an “insider” of the Debtors as defined in §101(31) of the Bankruptcy Code, and was not the Debtors’ fiduciary for purposes of §510(c). Instead, HSBC acted only as a financial lending institution, and the Debtors borrowed funds from HSBC. There is no indication in the record that HSBC exercised dominion or control over the Debtors, that it overtook the Debtors’ decision-making ability, or that it owed any fiduciary obligation to the Debtors. Consequently, HSBC’s claim can be equitably subordinated under §510(c) only if its conduct was egregious and amounted to fraud or overreaching. In re Rich Capitol, LLC, 436 B.R. at 232-33.

HSBC’s conduct does not meet this heightened standard for equitable subordination.

To support their cause of action under §510(c), the Debtors state that: (1) they initially purchased the Property in 2000 for the sum of \$206,000.00; (2) the Tax Appraiser's records reflected that the market value of the Property was \$192,100.00 as of January 1, 2005; (3) they borrowed the "financed" amount of \$407,996.85 from HSBC on June 26, 2006; and (4) their annual income was \$90,000.00, and their monthly household expenses were \$7,000.00, at the time of the loan. (Doc. 25, Exhibit A, ¶¶ 4, 7, 9, 12, 13). At the hearing in this proceeding, the Debtors asserted that the claim "should be subordinated because HSBC's inequitable conduct caused [them] to make a loan that was seriously undersecured on the day that it was made." (Tr. p. 21).

Even if true, the Debtors' contentions do not satisfy the requirements for equitable subordination of HSBC's claim under §510(c) of the Bankruptcy Code. The conduct alleged by the Debtors does not amount to fraud or overreaching. The record does not show that HSBC made any material misrepresentations of fact to the Debtors, for example, or that HSBC took advantage of a superior bargaining position with respect to the Debtors.

On the contrary, the Loan Agreement includes a section entitled "Truth-in-Lending Disclosures," which includes the annual percentage rate, the finance charge, the amount financed, the total of payments, the monthly payment amounts, a monthly payment schedule, and a statement that the loan will be secured by the Property. (Doc. 1, Exhibit A). Additionally, according to the Debtors, HSBC had requested information regarding their income and obtained a "drive-by inspection" before the Loan was made. (Doc. 25, Exhibit A, ¶ 10). The "drive-by inspection" report, or Uniform Residential Appraisal Report, obtained by HSBC reflects a facsimile date five days prior to the Loan and shows a Property value of \$431,000.00. (Doc. 20, Exhibit C).

The Debtors do not contend that the disclosures on the Loan Agreement were false, that HSBC manipulated or falsified their income, or that HSBC did not actually obtain an appraisal of the Property. Instead, the Debtors allege that “if our financial information, including expenses, were considered together with an appropriate appraisal of the Collateral, we could not have borrowed the Amount Financed from an informed source.” (Doc. 25, Exhibit A, ¶ 15)(Emphasis supplied).

Essentially, therefore, the Debtors contend only that HSBC’s lending practices were improvident, and that the unsound practices resulted in a loan that ultimately defaulted. Improvident lending decisions by a financial institution, however, without any evidence of fraud or overreaching, are not sufficient to warrant subordination of the lender’s claim under §510(c). See In re Gluth Bros. Construction, Inc., 424 B.R. 379, 394-95 (Bankr. N.D. Ill. 2009)(A bank’s practice of continuing to loan money despite debtor’s poor financial condition is not “egregious conduct” to support a claim for equitable subordination); and In re Kentuckiana Truck & Trailer Repair, Inc., 291 B.R. 84, 95 (Bankr. W.D. Ky. 2002)(The bank’s “overlending” did not rise to the level of gross misconduct, overreaching, or spoliation for purposes of §510(c)).

The Debtors and HSBC entered the Loan Agreement on June 26, 2006, when the real estate market in Florida was at its peak and home loans were readily available. The Debtors filed their bankruptcy petition on January 29, 2010, after the national and state economy had plunged into recession. The economic climate of the last ten years is commonly known. See Rodriguez v. Rodriguez, 2010 WL 2342452, at 2 (Bankr. N.D. Ill.)(“October 2006 was at the tail-end of a real estate boom, and just before the market crashed.”).

Although the Debtors in this case are not farmers, the situation evokes the Court's evaluation of an equitable subordination claim by the debtors in In re Tinsley and Groom, 49 B.R. 85 (Bankr. W.D. Ky 1984):

During those years of good crop yield, market prices and escalating land values, the growth was sustained in large measure by leverage borrowing from the defendant. When adversity struck in the form of low crop prices, high interest rates, drought, and other factors beyond the control of either debtor or creditor, the undercapitalization of this venture and the resultant inability to service the debt load became apparent. Debtors now seek to avoid the consequences of its own actions by transfer of the unfortunate loss to the lender who financed the venture.

Giving the greatest weight to the most damaging testimony against the defendant's lending practices establishes only a lending policy which was liberal in approving renewal applications, accepting at face value debtors' projections, relying heavily on the character and ability of the debtors, and financing the debtors' over-zealous goals. Such policy, while perhaps not a sound or prudent lending practice, falls short of imposing culpability for the results which debtors' actions eventually occasioned.

In re Tinsley and Groom, 49 B.R. at 91. Based on these circumstances, the Court in Tinsley and Groom concluded that the creditor's claim should not be equitably subordinated under §510(c) of the Bankruptcy Code, because the debtors did not establish that the creditor had engaged in fraud, overreaching, or inequitable conduct. Id.

Similarly, the Debtors' allegation in this case that the loan from HSBC was "seriously undersecured" at its inception is insufficient to warrant the equitable subordination of HSBC's claim. Although HSBC's lending practices may have been improvident in hindsight, the Debtors have not shown that HSBC's conduct amounts to fraud or overreaching for purposes of §510(c) of the Bankruptcy Code.

**B. Injury or unfair advantage**

Second, for a claim to be equitably subordinated under §510(c), the Court must find that the misconduct “resulted in injury to the creditors or conferred an unfair advantage on the claimant.” In re Lemco Gypsum, Inc., 911 F.2d at 1556.

In other words, even if the Court had found that HSBC’s conduct amounted to fraud or overreaching, it must also find that the conduct resulted in harm to the Debtors’ other creditors. “The presence of inequitable conduct alone is not sufficient as the second prong requires the bankruptcy court to identify how the inequitable conduct affected or was unfair to other creditors.” In re 201 Forest Street LLC, 409 B.R. 543, 572 (Bankr. D. Mass. 2009).

The Debtors contend that the second element under §510(c) is satisfied because unsecured creditors will receive less under their Chapter 13 Plan if HSBC’s claim is not subordinated. Specifically, the Debtors contend that they have proposed to pay the total sum of \$232,532.92 to the Chapter 13 Trustee under their Plan. If HSBC’s claim is not subordinated, the Debtors assert that unsecured creditors will receive distributions of 1.3% of the total payments made under the Plan. If HSBC’s claim is subordinated, however, the Debtors assert that unsecured creditors will receive distributions of 20% of the total payments made under the Plan. (Doc. 25, Exhibit A, ¶¶ 18, 19).

The harm alleged by the Debtors is not sufficient to establish the second element required under §510(c). The Debtors entered the Loan Agreement with HSBC approximately three and one-half years before the Chapter 13 case was filed. The Loan enabled the Debtors to refinance an existing mortgage on the Property, and may have provided the Debtors with substantial additional funds. The record does not indicate whether the claims that are entitled to receive distribution in the Debtors’ Chapter 13 case arose before or after the Loan Agreement was entered. Any claimants who extended credit after the

Debtors incurred the debt to HSBC, for example, may not claim that they were injured as a result of HSBC's conduct in making the loan. In re AtlanticRancher, Inc., 279 B.R. 411, 441 (Bankr. D. Mass. 2002)(Trustee did not prove "harm to creditors" in a §510(c) action, where the challenged loan existed prior to "run-up" of debt, and creditors were on notice of prior lender's security interest.).

Under these circumstances, the Court finds that the Debtors have not shown that the HSBC's conduct in extending the loan "resulted in injury to the creditors or conferred an unfair advantage" on HSBC. In re Baker & Getty Financial Services, Inc., 974 F.2d 712, 719 (6<sup>th</sup> Cir. 1992); In re Hyperion Enterprises, Inc., 144 B.R. 228, 236 (Bankr. D. R.I. 1992) aff'd 158 B.R. 555 (D. R.I. 1993); In re Giorgio, 862 F.2d 933, 939 (1<sup>st</sup> Cir. 1988).

### **C. Consistency with the Bankruptcy Code**

Third, for a claim to be equitably subordinated under §510(c), the Court must find that subordination of the claim will not be inconsistent with the provisions of the Bankruptcy Code. In re Lemco Gypsum, Inc., 911 F.2d at 1556.

The Fifth Circuit Court of Appeals included this third requirement in its Mobile Steel decision in 1977. In re Mobile Steel Company, 563 F.2d at 700. At the time that the Mobile Steel decision was issued, equitable subordination was a judicially created doctrine that Bankruptcy Courts applied in order to avoid rewarding inequitable conduct in their allowance of claims in bankruptcy. The reason for requiring that equitable subordination be applied consistently with the Bankruptcy Act was to prevent Bankruptcy Courts from ignoring the language of the bankruptcy laws in the interest of achieving equity. In re Racing Services, Inc., 340 B.R. 73, 78 (8<sup>th</sup> Cir. BAP 2006).

In 1978, however, the doctrine of equitable subordination was codified in the Bankruptcy Code. “When Congress passed the current Bankruptcy Code in 1978, it expressly authorized equitable subordination.” In re Racing Services, Inc., 340 B.R. at 78. Consequently, the equitable subordination of a claim under §510(c) is not generally considered to be inconsistent with the Bankruptcy Code unless it disregards the Code’s specific language. Id.

In this case, HSBC’s claim is secured by a first mortgage on the Debtor’s homestead real property. The Debtors seek to use §510(c) to treat HSBC as an unsecured creditor in their Chapter 13 case to the extent of the undersecured portion of HSBC’s claim. (Tr. p. 12). In other words, the Debtors assert that HSBC’s claim should be secured only to the extent of the Property’s value as of the loan date. (Tr. p. 21). To the extent that the amount of the loan exceeded the Property’s value as of that date, the Debtors assert that the claim should be “subordinated” or treated as an unsecured claim in their Chapter 13 case.

**1. Section 1322(b)(2)**

Subordination of a portion of HSBC’s claim as requested by the Debtors is inconsistent with the Bankruptcy Code. The clear effect of the relief sought by the Debtors is to bifurcate HSBC’s claim into secured and unsecured components for purposes of payment under their Chapter 13 plan. The Debtors expressly seek to “subordinate the undersecured portion of HSBC’s claim to the claims of all the debtor’s secured creditors and treat HSBC as the holder of an unsecured claim for that unsecured portion of its claim.” (Tr. p. 12).

Such bifurcation of a residential mortgage in a Chapter 13 case is prohibited by §1322(b)(2) of the Bankruptcy Code. Section 1322(b)(2) of the Bankruptcy Code provides:

**11 USC § 1322. Contents of plan**

...

(b) 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)(Emphasis supplied). Although Chapter 13 debtors may generally modify creditors' claims pursuant to their plans, this section "expressly prohibits modification of claims secured only by a mortgage on the debtor's principal residence." PNC Mortgage Company v. Dicks, 199 B.R. 674, 677 (N.D. Ind. 1996). "This anti-modification provision was intended to make home mortgage funds more accessible to homeowners by assuring lenders that their expectations would not be frustrated." PNC Mortgage Company v. Dicks, 199 B.R. at 677. The "section was enacted to protect the traditional home mortgage lender," to "encourage the flow of capital into the home lending market," and to "provide stability in the residential long-term home financing industry." In re Bosch, 287 B.R. 222, 226-27 (Bankr. E.D. Mo. 2002)(quoting Nobelman v. American Savings Bank, 508 U.S. 324, 332 (1993) and United Companies Fin. Corp. v. Brantley, 6 B.R. 178, 189 (Bankr. N.D. Fla. 1980)).

It is generally accepted that the bifurcation of a home mortgage into secured and unsecured components is a "modification" that is prohibited by §1322(b)(2). In re Larios, 259 B.R. 675, 677 (Bankr. N.D. Ill. 2001)(citing Nobelman v. American Savings Bank, 508 U.S. at 329). In fact, the Debtors in this case expressly acknowledge the prohibition:

We know that Section 1322(b)(2) of the Code protects home mortgage loans from modification. And as interpreted by the Supreme Court in the Nobelman case, no

modification means no bifurcation; therefore, claims secured only by a mortgage on the debtor's home cannot be split into secured and unsecured portions.

(Tr. pp. 16-17). The Debtors contend, however, that subordination of HSBC's claim is not inconsistent with the anti-modification provision of §1322(b)(2) for two primary reasons: (1) HSBC's claim was undersecured from its inception, and not because of a subsequent decline in value (Tr. p. 18), and (2) the undersecured status of the claim is the result of HSBC's inequitable conduct, which Congress did not intend to protect when it enacted §1322(b)(2). (Tr. p. 21).

## 2. Inconsistency

Even if the loan was undersecured when made, the Court finds that subordination of HSBC's claim would be inconsistent with §1322(b)(2) of the Bankruptcy Code. The Court reaches this conclusion for two reasons.

First, as found by the United States Supreme Court in Nobelman, §1322(b)(2) deals specifically with "the rights of holders of secured claims." 11 U.S.C. §1322(b)(2)(Emphasis supplied). According to the Supreme Court, the creditor's "rights" are determined by the parties' loan documents.

The bank's "rights," therefore, are reflected in the relevant mortgage instruments, which are enforceable under [state] law. They include the right to payment of the principal in monthly installments over a fixed term at specified adjustable rates of interest, the right to retain the lien until the debt is paid off, the right to accelerate the loan upon default and to proceed against petitioners' residence by foreclosure and public sale, and the right to bring an action to recover any deficiency remaining after foreclosure. . . . These are the rights that were "bargained for by the mortgagor and the mortgagee," *Dewsnup v. Timm*, 502 U.S. 410, 417, 112 S.Ct. 773, 778, 116 L.Ed.2d 903 (1992), and are rights protected from modification by §1322(b)(2).

Nobelman v. American Savings Bank, 508 U.S. at 329. Based on the Supreme Court's analysis, therefore, the rights that may not be modified in a Chapter 13 case are the rights established by the debtor and creditor in their loan agreement.

Allowing the Debtors in this case to bifurcate HSBC's undersecured claim for purposes of their Chapter 13 plan effectively reduces the total indebtedness due under the Loan Agreement. Such a reduction amounts to an impermissible modification of the rights that HSBC contracted for when it entered the Loan Agreement.

Second, the Court cannot determine that the subordination provision constitutes an exception to the anti-modification provision, or that the policies underlying §510(c) outweigh the policies underlying

§1322(b)(2). The Debtors are asking the Court to equitably subordinate the undersecured portion of HSBC's claim under §510(c), even though the modification of HSBC's rights as the holder of a home loan is prohibited by §1322(b)(2).

The particular circumstances of this case reveal a tension between the two provisions. In other words, if the Court had found that HSBC's residential mortgage otherwise satisfied the requirements for equitable subordination under §510(c), is the mortgage nevertheless protected against subordination by the anti-modification provision of §1322(b)(2)?

There are two requirements to qualify for protection under §1322(b)(2): (1) the claim must be secured only by real property, and (2) the property must be the debtor's principal residence. In re Jordan, 403 B.R. 339, 345 (Bankr. W.D. Pa. 2009). Assuming that a residential mortgage meets these requirements, the Court finds that it cannot be bifurcated and equitably subordinated under §510(c).

As set forth above, §1322(b)(2) was intended to "encourage the flow of capital into the home lending market" by protecting the traditional residential mortgage lender. Consequently, it is appropriate to remain "faithful to the intent of Congress" by applying a "literal reading of the text of the statute." Nobelman, 508 U.S. at 332(J. Stevens, concurring).

Section 510(c), on the other hand, provides the Court with a discretionary power based on the doctrine of equitable subordination, and "does not detail the requirements of such subordination." Citicorp Venture Capital, Ltd. v. Committee of Creditors Holding Unsecured Claims, 323 F.3d 228, 233 (3d Cir. 2003)("In the exercise of its powers as a court of equity, the bankruptcy court may subordinate claims for cause, applying traditional principles of equitable subordination."). Other remedies may be available to a debtor, of course, if it is determined that a lender has engaged in the

type of fraud or overreaching that could otherwise result in subordination under §510(c). See In re Daniels, 350 B.R. 619 (Bankr. S.D. Fla. 2006).

After considering the purposes and application of both §510(c) and §1322(b)(2) of the Bankruptcy Code, the Court cannot find that the subordination provision was intended to constitute an exception to the anti-modification provision. See Nobelman, 508 U.S. at 332 (The valuation and bifurcation provisions of §506(a) were given no effect where they would result in a violation of §1322(b)(2)). Under the circumstances of this case, therefore, the subordination of HSBC's claim would be inconsistent with the provisions of §1322(b)(2) of the Bankruptcy Code.

### **Conclusion**

The Debtors seek to equitably subordinate the undersecured portion of HSBC's claim pursuant to §510(c) of the Bankruptcy Code. In response, HSBC asserts that there is no genuine issue as to any material fact, and that it is entitled to a determination as a matter of law that subordination of its claim is not warranted under the statute.

HSBC's Motion for Summary Judgment should be granted. Equitable subordination of the undersecured portion of HSBC's claim is not appropriate because the record does not show (1) that HSBC's conduct amounted to fraud or overreaching; (2) that HSBC's conduct resulted in injury to creditors or conferred an unfair advantage on HSBC; or (3) that subordination of the claim was not inconsistent with §1322(b)(2) of the Bankruptcy Code.

Accordingly:

**IT IS ORDERED** that:

1. The Motion for Summary Judgment filed by HSBC Mortgage Services, Inc. is granted.

2. The first mortgage held by HSBC Mortgage Services, Inc. on the real property located at 8700 Reedy Branch Drive, Jacksonville, Florida, is not subordinated to the claims of other secured creditors pursuant to §510(c) of the Bankruptcy Code, or treated as an unsecured claim in the Chapter 13 case of the Debtors, Maurice Arlington-Colin Downer and Thonya Lynn Downer.

3. A separate Final Summary Judgment in favor of HSBC Mortgage Services, Inc., and against the Debtors, will be entered in this proceeding.

**DATED** this 1 day of August, 2011.

**BY THE COURT**

Paul M. Glenn

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PAUL M. GLENN  
Chief Bankruptcy Judge