UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re: Case No. 3:14-bk-246-PMG

Diane J. Ricketts,

Debtor. Chapter 7

ORDER ON VERIFIED MOTION TO STRIP LIEN OF VILLA BEAUCLERC CONDOMINIUM ASSOCIATION, INC., AND FOR DETERMINATION THAT CLAIM IS UNSECURED

THIS CASE came before the Court for a final evidentiary hearing to consider the Verified Motion of the Debtor, Diane J. Ricketts, to Strip Lien of Villa Beauclerc Condominium Association, Inc., and for Determination that Claim is Unsecured. (Doc. 8).

In the Eleventh Circuit, a Chapter 7 debtor may "strip off" a junior lien on his homestead pursuant to §506 of the Bankruptcy Code, if the amount of the senior lien exceeds the value of the property. Under §718.116(5)(a) of the Florida Statutes, a lien asserted by a condominium association is junior to a first mortgage if the association's claim of lien was recorded after the recordation of the mortgage.

In this case, the Debtor asserts that Seterus Bank holds a first mortgage on her homestead, and that Villa Beauclerc Condominium Association, Inc. recorded a Claim of Lien on October 4, 2012. The amount of the Seterus Bank mortgage is approximately $141,950.00, and the value of the homestead property is approximately $37,000.00. Consequently, the Debtor's Motion to Strip Lien should be

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granted, provided the Debtor can supplement the record to establish that the Association's Claim of Lien was recorded after the Seterus Bank mortgage.

I. Background

The Debtor filed a petition under Chapter 7 of the Bankruptcy Code on January 21, 2014. On her schedule of assets filed with the petition, the Debtor listed certain real property located at 9536 Armelle Way, Unit #5, Jacksonville, Florida (the Property). The Property was listed with a scheduled value of $37,000.00.

On her schedule of liabilities, the Debtor listed Seterus, Inc. as a creditor holding a secured claim on the Property in the amount of $141,950.00, and Villa Beauclerc Condominium Association, Inc. (the Association) as a creditor holding a secured claim on the Property in the amount of $19,000.00.

On her schedule of exemptions, the Debtor claimed the Property as exempt homestead pursuant to article X, section 4(a)(1) of the Florida constitution.

On February 12, 2014, the Debtor filed a Verified Motion to strip the Association's lien and to determine that the claim is unsecured. (Doc. 8). In the Motion and supporting Affidavit, the Debtor asserts that the value of the Property is $37,000.00, as reflected in the Property Appraiser's detail page attached to the Motion. The Debtor also asserts that the Property is encumbered by a first mortgage held by Seterus Bank in the amount of $141,950.00.

II. Lien-stripping under §506

The lien-stripping process in Chapter 7 cases is based on the principle that a wholly unsecured junior lien is voidable under §506(d) of the Bankruptcy Code. In re McNeal, 735 F.3d 1263, 1265 (11th Cir. 2012)(citing Folendore v. United States Small Business Administration, 862 F.2d 1537 (11th Cir. 1989)). The principle is explained as follows:

> [A]s stated by the Court in *McNeal*, the pivotal fact . . . lies in whether or not the amount of the debt secured by a senior, first-priority mortgage lien exceeds the current fair market value of the property. If the amount of debt held by the first mortgagee exceeds the value of the collateral, a Chapter 7 debtor *may* have the "wholly unsecured" junior, second-priority lien *stripped off* as there is no value to which it can attach.

In re Campbell, 498 B.R. 370, 373 (Bankr. N.D. Ga. 2013)(Emphasis in original and supplied). The determination of whether a junior lien is "wholly unsecured" is governed by §506(a) of the Bankruptcy Code.

Section 506(a) of the Bankruptcy Code "defines the secured and unsecured components of debts according to the value of the underlying collateral." In re Tanner, 217 F.3d 1357, 1358 (11th Cir. 2000). The section provides:

> **§506. Determination of secured status**
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> (a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim.

11 U.S.C. §506(a). The section provides the framework to determine whether an allowed claim should be classified as a "secured" claim. In re Wong, 488 B.R. 537, 544 (Bankr. E.D.N.Y. 2013).

The classification of a claim as secured or unsecured under §506(a) is critical for the lien-stripping provision of §506(d) of the Bankruptcy Code. Section 506(d) provides:

> **§506. Determination of secured status**
>
> . . .
>
> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, . . .

11 U.S.C. §506(d)(Emphasis supplied). Under this provision, a claim that is not secured, or that is wholly unsecured, is subject to avoidance or "strip off" in a Chapter 7 case. In re Aliu-Otokiti, 2013 WL 1163782, at 2 (Bankr. M.D. Fla.); In re Bustamente, 2013 WL 1110886, at 1 (Bankr. M.D. Fla.).

In In re McNeal, 735 F.3d 1263 (11th Cir. 2012), the Eleventh Circuit Court of Appeals concluded that a Chapter 7 debtor may "strip off" a wholly unsecured junior lien on his homestead pursuant to §506(a) and §506(d), where the senior lien exceeds the value of the property. See In re Sroka, 2014 WL 2808101, at 3 (Bankr. M.D. Fla.)(A Chapter 7 debtor may strip off a wholly unsecured junior lien.); and In re Presta, 2014 WL 2448444, at 2 (Bankr. M.D. Fla.)(Section 506 of the Bankruptcy Code permits a Chapter 7 debtor to strip off a wholly unsecured junior mortgage lien.).

III. Condominium Association Liens

In In re Plummer, 484 B.R. 882 (Bankr. M.D. Fla. 2013), the Court considered the lien-stripping process in the specific context of a condominium association lien. The issue was whether a condominium assessment lien encumbering a debtor's homestead could be stripped off in a bankruptcy case where the amount of the first mortgage exceeded the value of the condominium. In re Plummer, 484 B.R. at 885.

In Plummer, the Court first evaluated the issue in relation to Florida condominium law. As explained in Plummer, §718.116 of the Florida Statutes governs condominium assessments and an association's right to a lien for the assessment.

> Under subsection (5), an association has a lien on each condominium parcel to secure the payment of assessments. The lien is generally effective from and relates back to the recording of the original declaration of condominium. However, with respect to the first mortgage holder, the lien is effective "from and after recording of a claim of lien. . . ."

In re Plummer, 484 B.R. at 886(quoting Fla. Stat. §718.116(5)(a))(Emphasis supplied). Under Florida law, therefore, the first mortgage holder's lien is superior to an association lien, unless the first mortgage was recorded after the recording of the association's claim of lien. Id. at 887.

In Plummer, the first mortgage was recorded before the association's claim of lien was recorded, and the amount of the first mortgage exceeded the value of the condominium. Accordingly, the association's lien was wholly unsecured and could be stripped off in the bankruptcy case. Id. at 890.

Similarly, in Stonebridge Gardens Section Two v. Campbell, 2014 WL 229191 (S.D. Fla.), the Court recently found that a condominium association's lien could be stripped off pursuant to §506(d) of the Bankruptcy Code. In reaching this conclusion, the Court first determined that the association's lien was subordinate to the first mortgage on the condominium, because it was recorded after the recordation of the mortgage, and then determined that the association's lien was wholly unsecured because the amount of the first mortgage was greater than the value of the condominium.

See also In re Aliu-Otokiti, 2013 WL 1163782 (Bankr. M.D. Fla.)(The condominium association's subordinate lien was wholly unsecured and could be stripped off pursuant to §506(d)); and In re Bustamente, 2013 WL 1110886 (Bankr. M.D. Fla.)(Condominium association liens are not provided any special status under the Bankruptcy Code, and wholly unsecured subordinate liens are subject to strip off under §506(d)).

IV. Subsequent purchasers

In this case, the Association primarily contends that its lien may not be "stripped off," because §718.116 of the Florida Statutes "provides a unique tool to associations, and that tool is joint and several liability as to subsequent purchasers." (Transcript, p. 8). In other words, if the property is

transferred either to a prior lienholder or to a third party, the transferee is obligated to the association for unpaid assessments in accordance with the formula set forth in the Statute. (Transcript, pp. 8-9).

The Association's contention has been addressed in a number of decisions in the Middle District and the Southern District of Florida, and in each case the Court granted the debtor's motion to strip the association's lien in the bankruptcy case, with the proviso that nothing in the lien-stripping order affected the association's right to be paid from a subsequent purchaser in accordance with the statute.

The decisions in the Southern District of Florida include Stonebridge, in which the District Court stated:

> Although the statute allows a condominium association to hold subsequent purchasers liable for past-due assessments, including a first mortgagee if it acquires title through foreclosure, it does not give the association priority lien rights. Significantly, once title is transferred, the association must record a new claim of lien if the person to whom title was transferred fails to pay the past-due assessment within thirty days. Fla. Stat. §718.116(1)(c). Thus, although the association preserves its right to payment, it does not necessarily acquire a superior lien.

Stonebridge Gardens Section Two v. Campbell, 2014 WL 229191, at 2(Emphasis supplied). Another decision from the Southern District is Sain, in which the Court recognized a debtor's right to strip a condominium association's junior lien, but added that "the elimination of the lien on a debtor's interest in property does not avoid the obligations for assessments for which the mortgagee may become responsible" as a subsequent purchaser under §718.116 of the Florida Statutes. In re Sain, 2013 WL 5852496, at 3(citing In re Gonzalez, 2010 WL 1571172, at 3 (Bankr. S.D. Fla.)).

In the Middle District of Florida, as in the Southern District, the Court in Plummer found that §718.116 gives a condominium association the right to claim past-due assessments against a mortgage holder that acquires title to the property through foreclosure, but does not give the association any lien rights. In re Plummer, 484 B.R. at 888. Consequently, an association's lien may be stripped in a

debtor's bankruptcy case if the amount of the first mortgage exceeds the value of the condominium, but nothing in the lien-stripping order can affect the association's right to be paid from a mortgage holder that later acquires title to the property. Id. at 890.

Other decisions in the Middle District of Florida that address the obligations of a subsequent purchaser include In re Aliu-Otokiti, 2013 WL 1163782, at 2(The condominium association's lien was stripped, but the order did not affect any of the association's rights as against a purchaser at foreclosure), and In re Bustamante, 2013 WL 1110886, at 2(The order stripping the condominium association's lien does not affect the liability of a purchaser at foreclosure for unpaid assessments, fees, and costs).

For the reasons discussed above, the Court finds that the Association's lien may be stripped in the Debtor's Chapter 7 case, if the Association's claim of lien was recorded after the recordation of the Seterus Bank mortgage, and the amount of the Seterus Bank mortgage exceeds the value of the property. Based on §718.116 of the Florida Statutes and the decisions interpreting the statute, however, the order stripping the Association's lien may not affect the Association's right to be paid the amounts provided by §718.116(1)(a) from a subsequent purchaser of the property.

V. Evidence of priority

As shown above, a Chapter 7 debtor is generally permitted to strip a second priority lien from his homestead property pursuant to §506(a) and §506(d) of the Bankruptcy Code, if the first priority lien exceeds the value of the property. In re Brantley, 2014 WL 1847834, at 1 (Bankr. M.D. Fla.). The two primary elements that the debtor must establish in order to succeed on a lien-stripping motion are (1) that the lien to be stripped is junior in priority, and (2) that the amount of the senior lien is greater than the value of the property. See In re Almeida, 2013 WL 1163777, at 2 (Bankr. M.D. Fla.).

In this case, the Debtor has submitted an Affidavit asserting that the value of her homestead Property is $37,000.00, as reflected in the Property Appraiser's detail page attached to her Motion. (Doc. 8). The Association has not challenged the value of the Property asserted by the Debtor.

The Debtor's evidence is insufficient as to the first element required to strip the Association's lien, however, because the record does not clearly show that the Seterus mortgage was recorded before the Association's Claim of Lien. Under Florida law, a first mortgage holder's lien is superior to an association lien, unless the first mortgage was recorded after the recording of the association's claim of lien. In re Plummer, 484 B.R. at 887.

The record shows that the Association's Claim of Lien was recorded on October 4, 2012. (Claim of Lien attached to the Association's Proof of Claim No. 1). There is no evidence, however, as to the date on which the Seterus mortgage was recorded, and the Association contends that "there may be some dispute as to priority." (Transcript, pp. 7-8). The Debtor asserts that the Seterus mortgage has "been registered for years," but acknowledges that the mortgage has not been introduced into evidence. (Transcript, pp. 19-20). Accordingly, the Court has no information from which to determine the date on which the Seterus mortgage was recorded, or to determine whether it was recorded prior to the Association's Claim of Lien. In re Sain, 2013 WL 5852496, at 2.

Consequently, the Debtor should be permitted to supplement the record to establish the date on which the Seterus mortgage was recorded in order to meet her burden to show that the Seterus mortgage is senior in priority to the Association's lien.

VI. Conclusion

In the Eleventh Circuit, a Chapter 7 debtor may "strip off" a junior lien on his homestead pursuant to §506 of the Bankruptcy Code, if the amount of the senior lien exceeds the value of the property. Under §718.116(5) of the Florida Statutes, a lien asserted by a condominium association is junior to a first mortgage if the association's claim of lien was recorded after the recordation of the mortgage.

In this case, the Debtor asserts that Seterus Bank holds a first mortgage on her homestead, and that Villa Beauclerc Condominium Association, Inc. recorded a Claim of Lien on October 4, 2012. The amount of the Seterus Bank mortgage is approximately $141,950.00, and the value of the homestead property is approximately $37,000.00. Consequently, the Debtor's Motion to Strip Lien should be granted, provided the Debtor can supplement the record to establish that the Association's Claim of Lien was recorded after the Seterus Bank mortgage.

Accordingly:

IT IS ORDERED that:

1. The Debtor, Diane J. Ricketts, may supplement the record within twenty-one (21) days of this Order by providing evidence to establish the date on which the mortgage held by Seterus Bank was recorded.

2. In the event that the Debtor supplements the record, Villa Beauclerc Condominium Association, Inc., may object to the Debtor's evidence within fourteen (14) days after service of the supplement.

3. If the record is supplemented, and no Objection is filed, the Debtor may submit a proposed Order granting her Verified Motion to Strip Lien of Villa Beauclerc Condominium Association, Inc., consistent with this Opinion.

DATED this 6 day of August, 2014.

BY THE COURT

PAUL M. GLENN
United States Bankruptcy Judge