IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 7
Thomas Bruce Wilmoth and Donna Marie Wilmoth,	Case No. 12-12259 (BLS)
Debtors.	Related to Docket Nos. 32 & 39

MEMORANDUM ORDER[1]

Upon consideration of the Motion to Avoid Judicial Lien on All the Debtors' Real and/or Personal Property and Goods and Chattels (the "Motion")[2] filed by Thomas Bruce Wilmoth and Donna Marie Wilmoth ("Debtors") and Memorandum in support[3]; and the Objection to the Motion (the "Objection")[4] and Submission in Opposition[5] filed by Eastern Savings Bank, F.S.B. ("Eastern Savings Bank"); and Debtors' Response thereto[6]; and the Court having held a hearing on the above referenced matter; and after due deliberation, the Court hereby FINDS as follows:

1. On August 1, 2012 (the "Petition Date"), Debtors filed a voluntary petition for relief under chapter 13 of title 11 of the United States Code. The case was converted to chapter 7 on September 14, 2012.

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[1] The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. § 1409(a). Consideration of this matter constitutes a "core proceeding" under 28 U.S.C. §§ 157(b)(2)(B) and (K).
[2] D.I. 32.
[3] D.I. 48.
[4] D.I. 39.
[5] D.I. 49.
[6] D.I. 50.

2. Prior to the Petition Date, in May 2012, Eastern Savings Bank obtained a judgment by default against Debtors in the Superior Court for the State of Delaware, New Castle County, in the amount of $369,622.62, plus interest at the rate of 10.75% on the principal from December 9, 2008, plus costs (the "Obligation").[7] The Obligation purportedly attached to all of Debtors' real and personal property, including their primary residence, located at 102 Edgewood Drive, Wilmington, DE 19809 (the "Property"). The record reflects that Chase Bank holds a first mortgage against the Property in the amount of $235,340.00.[8] Debtors' Schedule C lists the Property's value at $380,000, subject to a $125,000 exemption.[9] 10 Del. C. § 4914(c)(1).

3. On November 28, 2012, Eastern Savings Bank filed a proof of claim listing the Obligation as a secured claim in the amount of $475,328.10 for "money loaned."[10] On the same day, Debtors filed the Motion seeking to avoid the Obligation. The first hearing on the Motion was held on January 10, 2013. Finding the record insufficient as to the value of the Property and the nature and character of the Obligation, the Court declined to rule on the Motion and requested that the parties prepare for a second hearing with a full record. The second hearing was held on December 19, 2013, after which the parties submitted expert appraisals of the Property's value and supporting memoranda.

4. Eastern Savings Bank claims that the Obligation is a mortgage.[11] According to Eastern Savings Bank, the Obligation may not be avoided because it attaches to equity remaining in the Property after accounting for Chase Bank's first mortgage and the exemption. Debtors, on the other hand, characterize the Obligation as a judicial lien. They argue that because all of their real and personal property is

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[7] D.I. 32, Ex. A; New Castle County Superior Court Case No. N11C-11-214 CLS.
[8] D.I. 49, Ex. 2.
[9] D.I. 12.
[10] D.I. 32, Ex. B.
[11] Eastern Savings Bank says that the mortgage includes two lots in addition to the Property.

exempt pursuant to the Bankruptcy Code and Delaware law, the Obligation should be avoided for impairing the exemptions to which they are entitled. 11 U.S.C. §§ 522(b), (f); 10 Del. C. § 4914. The parties also dispute the value of the Property and have submitted competing expert appraisals on that issue.

5. The threshold question before the Court is whether the Obligation is a judicial lien or a mortgage, for "a judgment arising out of a mortgage foreclosure" cannot be avoided for impairing an exemption. 11 U.S.C. § 522(f)(2)(C). Bankruptcy Rule 3001 provides that "[a] proof of claim shall conform substantially to the appropriate Official Form"[12] and that a proof of claim filed in accordance with the Bankruptcy Rules is *prima facie* valid. Fed. R. Bankr. P. 3001(a), (f). Additionally, the holder of a claim must attach supporting information to the proof of claim, including but not limited to: the writing upon which the claim is based; an itemized statement of interest, fees, and expenses incurred prepetition; a statement of the amount necessary to cure any default; and evidence of perfection. Fed. R. Bankr. P. 3001(c), (d). The record reflects that Eastern Savings Bank has provided only the state court judgment and has not submitted any documents to prove that the Obligation arises from a mortgage foreclosure, despite the Court's specific reference to this evidentiary deficit at the January 2013 hearing. Accordingly, the Court concludes that Eastern Savings Bank has not carried its burden under Rule 3001 to support a finding that the Obligation is a "judgment arising out of a mortgage foreclosure." Therefore, the Obligation may be avoided to the extent it impairs the exemption.

6. Impairment of exemptions is governed by section 522(f) of the Bankruptcy Code, which provides, in pertinent part, that "the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is (A) a judicial lien…" 11 U.S.C. § 522(f)(1). Whether and to

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[12] Official Form 10 is used for proofs of claim.

what extent a lien impairs an exemption is determined by section 522(f)(2)(A):

> For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of –
>
> (i) the lien;
>
> (ii) all other liens on the property; and
>
> (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;
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> exceeds the value that the debtor's interest in the property would have in the absence of any liens.

11 U.S.C. § 522(f)(2)(A). Section 522(a)(2) instructs that "value" in this instance is to be determined as of the Petition Date. 11 U.S.C. § 522(a)(2).

7. The sole contested factor is the value of the Debtors' interest in the Property in the absence of liens. In this regard, the parties have submitted competing professional appraisals of the Property's value as of the Petition Date: Debtors' appraisal values their interest at $340,000, while Eastern Savings Bank's appraisal values Debtors' interest at $365,000.[13] After a close analysis of the two competing appraisals, the Court concludes that Debtors' appraisal most accurately reflects the Property's value. Most significantly, Debtors' appraisal provided a substantially more accurate measurement of the Property. The county records of the Property's square footage are a persuasive benchmark, and the Court notes that Debtors' appraisal came within 50 square feet of the county records. In contrast, Eastern Savings Bank's

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[13] Eastern Savings Bank's appraiser, Mr. Falkowski, first stated a value of $365,000.00 as of December 16, 2012. In its post-hearing submission, Eastern Savings Bank included an affidavit of Mr. Falkowski stating that he had "reviewed [his] findings and the value of the property as stated in [his] December 16, 2012 appraisal would be the same value as of August 1, 2012." D.I. 49, Ex. B.

appraisal was more than 700 square feet higher than the county records.[14] The Court concludes that the value of Debtors' interest in the Property in the absence of liens is $340,000.

8. Applying this last factor to the section 522(f) formula yields the following calculation: the sum of (i) the Obligation: $475,328.10; (ii) the Chase Bank mortgage: $235,340; and (iii) the amount of the exemption: $125,000; is $835,668.10. This sum exceeds the value of Debtors' interest in the Property ($340,000) by $495,668.10 — in other words, the Obligation impairs the Debtors' exemption to the extent of $495,668.10.

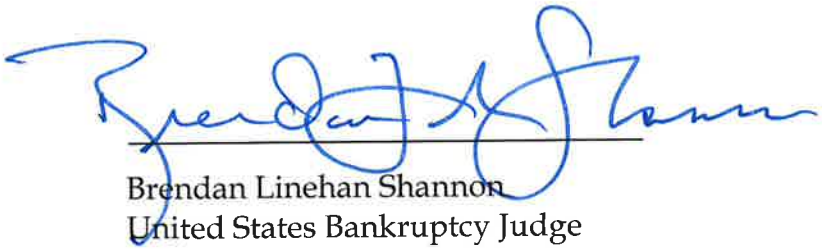
9. Pursuant to section 522(f)(1), Debtors may avoid the Obligation to the extent that it impairs an exemption. The extent of the impairment, calculated above, is $495,668.10, which exceeds the amount of the Obligation. Therefore, under section 522(f)(1), Debtors may avoid the Obligation in its entirety.

Accordingly it is hereby

ORDERED, that the Motion is **GRANTED**.

BY THE COURT:

Dated: April 15, 2014
Wilmington, Delaware



Brendan Linehan Shannon
United States Bankruptcy Judge

[14] The Court also expresses reservations about the accuracy of Mr. Falkowski's interior measurements because they show the second floor as having a larger footprint than the first floor, a curious architectural design which is not corroborated by the photographs of the Property.