

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE BRENDAN LINEHAN SHANNON



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November 29, 2021

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Re: *In re Derek L. Robinson*
Case No. 19-11784 (BLS) (Chapter 13)
Robinson v. U.S. Bank, N.A.
Adv. No. 20-50533 (BLS)

Dear Counsel:

Before the Court is an adversary complaint filed by Derek L. Robinson (the “Debtor”) against U.S. Bank National Association, as Trustee for the Holders of the Citigroup Mortgage Loan Trust Inc. Assetbacked Pass-Through Certificates Series 2005-HE3 (the “Bank”), and Newrez LLC d/b/a Shellpoint Mortgage Servicing (“Shellpoint” and, together with the Bank, the “Defendants”). The Debtor’s complaint asks this Court to determine whether the Bank’s second mortgage lien against his primary residence is wholly unsecured and can be “stripped off” pursuant to Bankruptcy Code § 1322(b)(2) and the Third Circuit’s decision in *McDonald*.¹ The answer depends upon the value of the Debtor’s residence. For the reasons set forth herein, the Court concludes that the

¹ *McDonald v. Master Fin., Inc. (In re McDonald)*, 205 F.3d 606 (3d Cir. 2000).

Debtor's appraisal provides the best evidence of the Property's value as of the Petition Date and, therefore, the Bank's second lien is wholly unsecured and can be stripped off.

Facts

The Debtor filed a Chapter 13 petition for bankruptcy relief on August 9, 2019 (the "Petition Date"). On Schedule A attached to the petition, the Debtor listed his primary residence located in Claymont, Delaware (the "Property") valued at \$149,033 using Zillow.com.

The Property is encumbered by two mortgages which are both serviced by the Defendant Shellpoint. Shellpoint filed a proof of claim on February 20, 2020, asserting that the total amount due to the first mortgage lienholder as of the Petition Date was \$172,965.39.² Shellpoint also filed a separate proof of claim on February 24, 2020, asserting that the total amount due to the Bank on its junior mortgage lien as of the Petition Date was \$31,446.64.³

On August 9, 2019, the Debtor filed his original Chapter 13 Plan, which was subsequently amended twice on December 15, 2019, and June 19, 2021, respectively. All three plans indicated the Debtor's intent to strip off the Bank's junior lien. On February 23, 2020, the Debtor filed this adversary proceeding. The Bank filed an answer to the adversary complaint on April 23, 2020, and an objection to the Debtor's First Amended Chapter 13 Plan, disputing the Debtor's value of the Property.

The Bank obtained an interior access appraisal of the Property on May 13, 2021 (the "Defendant's Appraisal"), which valued the Property at \$198,000 as of May 13, 2021. The Debtor obtained his own interior access appraisal of the Property on June 8, 2021 (the "Debtor's Appraisal"), which valued the Property at \$162,000 as of August 9, 2019, the Petition Date.

² The amount set forth in the proof of claim filed on February 20, 2020 (Claim No. 4) amended the original proof of claim filed on October 18, 2019.

³ The amount set forth in the Bank's proof of claim filed on February 24, 2020 (Claim No. 5) amended the original proof of claim filed on October 18, 2019.

Discussion

Bankruptcy Code § 506 governs the determination of the secured status of a claim. This section provides that claims secured by a lien on property of the bankruptcy estate may generally be divided into secured and unsecured components.⁴ The secured component is the amount of the claim up to the value of the property at issue, and the remainder of the claim - - the amount in excess of the value of the property - - is unsecured.⁵

Bankruptcy Code § 1322(b)(2) sets forth an exception to § 506(a) by prohibiting the modification of “a claim secured only by a security interest in real property that is the debtor’s principal residence”⁶ In the *Nobleman* decision, the Supreme Court held that § 1322(b)(2) prohibits the bifurcation of an *undersecured* home mortgage holder’s claim.⁷ The Third Circuit, interpreting *Nobleman*, found an exception to this exception - - holding that “a *wholly unsecured* mortgage is not subject to the antimodification clause in § 1322(b)(2).”⁸ Phrased differently, the *McDonald* court held that a Chapter 13 plan can modify the rights of a junior lienholder on a principal residence if the junior lienholder is “entirely out of the money.”⁹ Thus, to determine whether a Chapter 13 plan can modify the rights of a junior lien holder, the Court must make two determinations: (i) that the property is the debtor’s principal residence, and (ii) that the junior lender is completely unsecured or “out of the money.”¹⁰

In this case, there is no dispute that the Property is the Debtor’s principal residence. However, the parties disagree about the Property’s value. Considering that the first lien against the Property is in the amount of \$172,965.39 (which appears to be undisputed), determining which

⁴ 11 U.S.C. § 506(a).

⁵ *Id.*

⁶ 11 U.S.C. § 1322(b)(2).

⁷ *Nobleman v. Am. Sav. Bank*, 508 U.S. 324, 332, 113 S. Ct. 2106, 2111, 124 L.Ed.2d 228 (1993).

⁸ *McDonald*, 205 F.3d at 615.

⁹ *DiMauro v. Wilmington Trust Co. (In re DiMauro)*, 548 B.R. 685, 687 (Bankr. D. Del. 2016).

¹⁰ *Id.*

appraisal best represents the value of the Property controls the outcome of this matter. If the Debtor's appraisal of the Property at \$162,000 is the best evidence of value, then the Bank is wholly unsecured. Conversely, if the Bank's appraisal of \$198,000 represents the best evidence of value, then the Bank is at least partially secured and § 1322(b)(2)'s antimodification provision prevents the strip off of the Bank's junior lien.

The two appraisals value the Property on different dates. The Debtor's appraisal valued the Property as of August 9, 2019, which is the Petition Date. The Bank's appraisal valued the Property as of May 13, 2021. The Debtor argues that the valuation dispute is easily resolved by applying this Court's decision in *DiMauro*, which held that the *petition date* is the operative date for valuing residential property for the purpose of determining whether a junior mortgage is completely unsecured and, thus, subject to strip off.¹¹ The Debtor argues that the Bank's appraisal relies on comparable sales that occurred long after the Petition Date - - from one that sold 10 months after the Petition Date to others that sold 16 months, 19 months, and three sales that occurred 20 months after the Petition Date. Because the Debtor's appraisal is "as of" the Petition Date, the Debtor asserts that the Court should rely upon its valuation here.

The Bank, however, attacks the Debtor's appraisal on other grounds. The Bank argues that the comparable sales used in the Debtor's appraisal are not a fair representation of homes in the area and do not accurately reflect the sale trends near the Petition Date. In particular, the Bank points out that one comparable sale relied on in the appraisal occurred in 2017, almost two years before the Petition Date. Further, the Bank asserts that other comparable sales involve smaller homes on Woodfield Drive - with only two bedrooms instead of three - which would also skew prices lower.

¹¹ *DiMauro*, 548 B.R. at 689.

The Debtor responds that his appraiser used industry standards in completing the appraisal and used an older sale comparable due to the trouble with finding comparable sales in the limited geographic location at the time of the Petition Date. The Debtor also noted that the Bank's argument regarding the use of smaller homes on Woodfield Drive rings hollow since the Bank's own appraiser also relied upon two comparable sales on Woodfield Drive that were the same size and in the same development as those used in the Debtor's appraisal. Finally, the Debtor argues that the Zillow.com valuation of the Debtor's home at \$149,033 as of August 6, 2019 (three days prior to the Petition Date) provides independent evidence to support the Debtor's appraisal.

The Court relies on *DiMauro* and, upon further review of the two appraisals, concludes that the Debtor's appraisal is the best evidence of the Property's value as of the Petition Date. The Court agrees that the Zillow.com valuation (while certainly not dispositive) supports a lower Property value as of the Petition Date.¹² The Bank's arguments criticizing the Debtor's appraisal do not diminish its usefulness in providing the appropriate valuation for this case.

The Bank, alternatively, asks for an opportunity to allow parties to revise their appraisals to assess the Property's value closer to the Petition Date or to hold an evidentiary hearing with both appraisers to allow an in-depth analysis of the factors relied on their respective appraisals. The record reflects that the issue of whether the Bank's junior lien could be stripped off was raised by the Debtor on the Petition Date. The Debtor also filed this adversary proceeding challenging the Bank's lien on February 23, 2020. The Court finds that allowing either of the alternatives sought by the Bank will only serve to further delay this matter and increase costs. The Court is satisfied that it

¹² The Court recognizes anecdotally that real estate values have increased nationally and in Delaware since 2020. While this is not probative of the precise value of the Property and does not weigh heavily in the analysis, it lends support that a 2021 valuation could substantially inflate the Property's value after the Petition Date .

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has sufficient evidence before it to make a complete and fair analysis and determination on the issue of valuation.

For these reasons, the Court holds that the Bank's second lien is wholly unsecured and can be "stripped off" pursuant to Bankruptcy Code § 1322(b)(2) and the Third Circuit's decision in *McDonald*.

The parties should confer and promptly submit an order consistent with the foregoing.

Very truly yours,


Brendan Linehan Shannon
United States Bankruptcy Judge

cc: Michael B. Joseph, Esquire

BLS/jim