

United States Bankruptcy Court
District of Delaware

CHIEF JUDGE BRENDAN LINEHAN SHANNON



824 N. MARKET STREET
WILMINGTON, DE 19801
(302) 252-2915

October 11, 2016

Cynthia L. Carroll, Esquire
262 Chapman Road
Suite 108
Newark, DE 19720

Stephanie Noble Tickle, Esquire
New Castle County Office of Law
Government Center
87 Read's Way
New Castle, DE 19720

Re: In re: Shafonda Harmon
Case No. 16-10314 (BLS)
Shafonda Harmon v. New Castle County
Adv. Proc. No. 16-50994 (BLS)

Dear Counsel:

This letter follows upon an argument held on August 30, 2016 regarding the above adversary proceeding. The Debtor has filed a complaint seeking to strip-off second and third liens against her home held by New Castle County.

The threshold issue presented by the parties relates to whether the Court should use (i) the figures from the proof of claim filed by the first lien holder, or (ii) the first lien payoff figure recently obtained from the first lien lender. In this case, the payoff figure for the first lien is higher than the proof of claim and thus would impact whether New Castle County's second and third liens are in the money.

This Court recently ruled that the petition date is "the operative date for valuation of residential property under § 1322(b)." *In re DiMauro*, 548 B.R. 685, 689 (Bankr. D.Del. 2016). Consistent with this "bright line" rule, the Court ruled in *In re Roca*, Case No. 10-13808, Adv. Pro. 15-50899 (BLS) that the petition date may remain the operative valuation date even where there is a substantial delay "between the commencement of [the] bankruptcy case and the filing of the Complaint." *Roca*, Adv. Proc. 15-50899 (BLS), at Docket No. 24.

Here, the question is whether to use the first lien lender's proof of claim or the payoff amount. The Court concludes that the proof of claim submitted by the lender is the proper valuation tool, rather than the payoff. First, the proof of claim is typically filed early in the case, and is submitted under penalty of perjury. The payoff amount may be a moving target, and is subject to adjustment as a result of post-petition events such as post-petition arrearages, missed payments, late charges and fees. The interests of certainty and predictability that animated the Court's holding in *DiMauro* support the determination that the first lien lender's proof of claim, and not the payoff figure, is and should be an appropriate metric used in determining the valuation of the Debtor's home for purposes of strip-off.

This Court will conduct a further status conference in this matter on October 25, 2016 at 10:00 a.m.

Very truly yours,

Brendan Linehan Shannon
Chief United States Bankruptcy Judge

BLS/jmw

cc: Michael B. Joseph, Esquire