



IT IS ORDERED as set forth below:

Date: March 08, 2010

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:	:	CASE NUMBERS
	:	
JAMES WILLIAM BEEDE and	:	BANKRUPTCY CASE
CAROL ANNETTE BEEDE,	:	NO. 09-44102-MGD
	:	
Debtors,	:	
	:	
JAMES WILLIAM BEEDE and	:	ADVERSARY CASE
CAROL ANNETTE BEEDE,	:	NO. 09-04109
	:	
Plaintiffs,	:	
	:	
v.	:	CHAPTER 13
	:	
REGIONS BANK,	:	
	:	
Defendant.	:	

ORDER GRANTING PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT IN PART

This case is before the Court on Plaintiffs' Motion for Entry of Default Judgment ("Motion") (Docket No. 5). James William Beede and Carol Annette Beede ("Plaintiffs") commenced the

underlying adversary proceeding against Regions Bank (“Defendant”) on October 15, 2009, to determine the value of Defendant’s security and allowed secured claim pursuant to 11 U.S.C. § 506(a) and Rule 3012 of the Federal Rules of Bankruptcy Procedure. Plaintiffs have requested entry of judgment against Defendant consisting of three parts: (1) a determination that Plaintiffs’ residential real estate lacks sufficient equity to secure Defendant’s loan that is secured by a second deed of trust on Plaintiffs’ property; (2) an order that Defendant cancel its second mortgage lien on Plaintiffs’ residential real estate upon the entry of the Plaintiffs’ discharge in the underlying bankruptcy case and to deliver the cancellation to Plaintiffs’ bankruptcy attorney within twenty (20) days of the entry of the discharge; (3) a determination that the Chapter 13 Trustee treat as unsecured Defendant’s timely filed proof of claim for the second mortgage; and (4) an award of reasonable legal fees, costs, and expenses to Plaintiffs and their attorney. As identified below, Plaintiffs have alleged sufficient facts to support an award of default judgment on the first three issues. Plaintiffs have not identified a theory under which Defendant should be responsible for Plaintiffs’ legal fees and expenses and therefore default judgment on that issue is denied.

According to the facts cited in the complaint, Plaintiffs have an interest in residential real estate that is subject to two mortgage liens. (Complaint at ¶10–11). Plaintiffs granted a first mortgage in favor of Wells Fargo Home Mortgage. (Complaint at ¶10). That mortgage is valued at \$217,839.87. *Id.* Plaintiffs granted a second junior mortgage for \$42,554 in favor of Defendant. (Complaint at ¶ 11). Plaintiffs’ real estate was valued at approximately \$213,500 when Plaintiffs filed their bankruptcy petition. (Complaint at ¶ 9). Plaintiffs’ real estate has no value beyond the amount owed on the first mortgage and therefore lacks equity to secure Defendant’s loan.

On October 15, 2009, a summons was issued commanding Defendant to file and serve an

answer to the Complaint. On October 19, 2009, Plaintiff served a summons and copy of the complaint on Defendant by first class mail postage pre-paid and by certified mail pursuant to Rule 7004(b) of the Federal Rules of Bankruptcy Procedure. (Docket No. 3). Rule 7012 of the Federal Rules of Bankruptcy Procedure requires a defendant to “serve an answer within 30 days after the issuance of the summons.” Defendant has neither answered nor filed a response to the Motion for Default Judgment. Consequently, the Motion for Default Judgment is deemed unopposed pursuant to Bankruptcy Local Rule 7007-1(c) for the Northern District of Georgia. Accordingly, it is

ORDERED that Plaintiffs’ Motion for Entry of Default Judgment is hereby **GRANTED** in part.

IT IS FURTHER ORDERED that Defendant has no secured interest for its loan secured by the second deed of trust on Plaintiffs’ residential real estate.

IT IS FURTHER ORDERED that Defendant shall, for no charge or fee to Plaintiffs, cancel its second mortgage lien on Plaintiffs’ residential real estate and deliver proof of its cancellation to Plaintiffs’ bankruptcy counsel within twenty (20) days of the entry of a discharge order in Plaintiffs’ bankruptcy case.

IT IS FURTHER ORDERED that any allowed, timely filed proof of Defendant’s claim for the second mortgage shall be treated as unsecured in Plaintiffs’ Chapter 13 Plan.

IT IS FURTHER ORDERED that Plaintiffs’ Motion for Entry of Default Judgment is **DENIED** in part as to Plaintiffs’ request for an award of reasonable legal fees, costs and expenses. Plaintiffs have fourteen (14) days to submit a brief identifying legal authority for granting their request or it shall stand as **DENIED**.

Judgment by Default shall be entered against Defendant by separate order.

The Clerk's Office is directed to serve a copy of this Order upon Plaintiffs, Plaintiffs' counsel, Defendant, and the Chapter 13 Trustee.

END OF DOCUMENT