



IT IS ORDERED as set forth below:

Date: May 29, 2010

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

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

IN THE MATTER OF:

MESFIN BELACHEW TESSEMA
and TERHAS BERHANE TEKLE,

Debtors.

MESFIN BELACHEW TESSEMA
and TERHAS BERHANE TEKLE,

Movants

v.

CHASE HOME FINANCE, LLC,

Respondent.

CASE NUMBER: A10-64124-PWB

IN PROCEEDINGS UNDER
CHAPTER 13 OF THE
BANKRUPTCY CODE

ORDER

The Debtors' "Motion to Determine the Secured Status of Claim" came before the Court for hearing on May 26, 2010. At the call of the calendar, no appearance was made by any party.

Although the Court typically would dismiss such a motion for want of prosecution, the Court notes a substantive problem with the motion that prevents granting the relief requested.

The Debtors seek a determination that the second priority deed to secure debt on their residence held by the Respondent is completely unsecured and that, because there is no value in the residence to which its junior lien can attach, its claim is unsecured and the lien is void pursuant to 11 U.S.C. §§ 506(d). The Debtors' plan does not provide for the treatment of the Respondent's claim.

Section 506(a) provides that "[a]n 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." Section 506(d) provides, "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void" unless either the "claim was disallowed only under section 502(b)(5) or 502(e)" or "such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title."

In *In re Tanner*, 217 F.3d 1357 (11th Cir. 2000), the Eleventh Circuit recognized a debtor's right to "strip off" a wholly unsecured lien on a residence in a chapter 13 case. *Tanner* analyzed the interplay between § 506(a) and § 1322(b)(2), which permits a chapter 13 debtor's plan to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence." The *Tanner* court held that a creditor whose lien is wholly unsecured under § 506(a) does not have a secured claim and, therefore, is not entitled to the protection of § 1322(b)(2) even if the creditor has a lien on the

debtor's residence and no other collateral.

The chapter 13 plan, through the applicability of §1322(b)(2), provides a mechanism for the strip-off a wholly unsecured lien. *See* 11 U.S.C. § 1322(b)(2) (“the *plan* may modify the rights of holders of secured claims . . .”). Sections 506(a) and (d) do not provide an independent mechanism for this result. Because the Debtors seek to modify a secured creditor’s rights, a motion or adversary proceeding is appropriate. But the relief sought by motion or complaint must be predicated on a chapter 13 plan that provides for such a modification. Because the Debtors’ plan is silent as to the treatment of the Respondent’s claim, the Court cannot grant the relief requested. Accordingly, it is

ORDERED that the motion to determine the secured status of claim (Doc. 17) is denied without prejudice.

End of Order

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