

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

|                        |   |                         |
|------------------------|---|-------------------------|
| IN RE:                 | ) | CHAPTER 7               |
|                        | ) |                         |
| DAN JOSIE SCARBOROUGH, | ) | CASE NO. 11-62565 - MHM |
|                        | ) |                         |
| Debtor.                | ) |                         |

**ORDER DENYING DEBTOR'S MOTION TO REOPEN**

On November 4, 2013, Debtor filed a *Motion to Re-Open [sic] Bankruptcy Case*, seeking to reopen the case and reimpose the stay in order to halt a foreclosure sale scheduled for November 5, 2013, and seeking an order of contempt for violation of the discharge injunction (Doc. No. 39) (the "Motion"). In the Motion, Debtor argues that his bankruptcy schedules listed the debt of Ocwen Loan Servicing, LLC ("Ocwen") as unsecured. Debtor asserts Ocwen did not attend the § 341 meeting of creditors, did not file a proof of claim, did not obtain relief from the automatic stay, did not file an adversary proceeding to determine the dischargeability of the debt, and did not dispute the unsecured nature of the debt as listed in the bankruptcy schedules. Thus, Debtor argues, the debt owed to Ocwen was "adjudicated" unsecured, and Debtor's discharge in this case extinguished Ocwen's claim. Debtor asserts that, because the debt was discharged, Ocwen's actions toward conducting the scheduled foreclosure sale violate the discharge injunction.

Ocwen's failure to take any action in this case does not eviscerate its security interest in Debtor's property. A secured lender need not file a proof of claim in order to maintain its security interest. *See In re Thomas*, 883 F.2d 991 (11<sup>th</sup> Cir. 1989) ("Section 501 permits, but does not require, a creditor to file a proof of claim."); *In re Folendore*, 862 F.2d 1537, 1539 (11<sup>th</sup> Cir. 1989) ("Because an unchallenged lien survives the discharge of the debtor in bankruptcy, a lienholder need not file a proof of claim under section 501."). Nor is Ocwen's failure to attend the § 341 meeting of creditors or object to Debtor's characterization of the claim significant in a Chapter 7. *See Cen-Pen Corp. v. Hanson*, 58 F.3d 89, 94 (4<sup>th</sup> Cir. 1995) ("Because an unchallenged lien survives the bankruptcy discharge of a debtor ... a creditor with a loan secured by a lien on the debtor's property is free to ignore the bankruptcy proceeding and look solely to the lien for satisfaction of the debt.") Rather, the onus is on Debtor to seek avoidance of a lien. *Id.* at 92-93. Finally, Ocwen did not need to move for relief from stay because the stay terminated when Debtor received his discharge. 11 U.S.C. § 362(c)(2)(C).


"[A] bankruptcy discharge extinguishes only one mode of enforcing a claim – namely, an action against the debtor *in personam* – while leaving intact another – namely, an action against the debtor *in rem*." *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S.Ct. 2150, 2154 (1991); *see, also In re Wrenn*, 40 F.3d 1162 (11<sup>th</sup> Cir. 1994) ("discharge does not affect liability *in rem*, and prepetition liens remain enforceable after discharge"). While Debtor's discharge extinguished his personal liability on Ocwen's

claim, it did not extinguish Ocwen's ability to enforce the security agreement against collateral. Because the issue was not properly raised during the pendency of the bankruptcy case, the Court will not make a determination of the validity of Ocwen's security interest. However, to the extent Ocwen held a valid security interest prior to Debtor's bankruptcy, that security interest survived Debtor's discharge. Because proceeding with a foreclosure sale of Debtor's property would *not* violate the discharge injunction, it is hereby

ORDERED that the Motion is *denied*.

The Clerk is directed to serve a copy of this Order upon Debtor, counsel for Ocwen, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 4<sup>th</sup> day of November, 2013.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE