



IT IS ORDERED as set forth below:

Date: July 30, 2015

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	:	CASE NUMBER:
	:	
CYNTHIA PERDUM,	:	15-50395-MGD
	:	
Debtor.	:	CHAPTER 13
	:	

**ORDER (1) DENYING DEBTOR'S MOTION TO STRIP LIEN, (2) DENYING
DEBTOR'S MOTION FOR RECONSIDERATION OF CLAIM, (3) DENYING
CONFIRMATION OF PLAN, AND (4) DISMISSING CHAPTER 13 CASE**

A confirmation hearing on Debtor's Chapter 13 Plan (Doc. 16) was held on July 29, 2015. Debtor Cynthia Perdum appeared *pro se*. Delaycee Shannon Rowland appeared on behalf of Wells Fargo Bank, N.A. in support of Wells Fargo's Objection to Confirmation (Doc. 13). K. Edward Safir appeared on behalf of the Chapter 13 Trustee in support of the Trustee's Objection to Confirmation (Doc. 21). At the hearing, the Court also took up the following matters: (i) Debtor's Motion to Determine Secured Status of Washington Mutual Bank FA, Wells Fargo Bank, N.A. and to Strip Lien Effective Upon Discharge (Doc. 37); and (ii) Debtor's Motion for Reconsideration (Doc 49). The Court denied both motions and denied confirmation

of Debtor's Chapter 13 plan. This Order memorializes the Court's decision and constitutes findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052(a). This matter is a core proceeding under 11 U.S.C. § 157(b)(2)(L) and venue is proper.

I. Background

Debtor filed her Chapter 13 petition *pro se* on January 6, 2015 (Doc. 1), and her Chapter 13 Plan on January 20, 2015 (Doc. 16). Wells Fargo filed its Objection to Confirmation on January 27, 2015 based on Debtor's failure to treat pre-petition arrearage and to provide it adequate protection. (Doc. 19).

Respondent filed Proof of Claim 4-1 ("Proof of Claim") on April 13, 2015. The amount of the claim was \$158,732.63, secured by a security deed for 5100 King Arthur Lane, Ellenwood, GA 30294, Debtor's residence. The Proof of Claim lists \$40,361.31 in arrearages. Respondent attached several supporting documents to the Claim, including (1) a Loan Modification Agreement between Respondent and Debtor dated March 14, 2011 ("Loan Modification"), (2) an Assignment of Mortgage/Deed dated December 2, 2006 between Respondent and Washington Mutual Bank ("Assignment"), (3) a Security Deed dated November 22, 2002 between Debtor and Washington Mutual Bank, and (4) a Note dated November 22, 2002 between Debtor and Washington Mutual Bank, with endorsements to Respondent.

Debtor filed her Objection to Proof of Claim 4-1 of Wells Fargo Bank, N.A. on May 12, 2015. (Doc. 33) ("Objection"). The Objection alleged that Debtor did not owe Wells Fargo a debt or alternatively that Wells Fargo's claim was unsecured. Wells Fargo filed a Response to the Objection on June 15, 2015 (Doc. 36), and an amendment to its Proof of Claim on June 16, 2015 (Claim 4-2). The Court heard and overruled the Objection on June 17, 2015. (Doc. 38).

Debtor filed her Motion to Determine Secured Status of Washington Mutual Bank FA, Wells Fargo Bank, N.A. and to Strip Lien Effective Upon Discharge on June 16, 2015. (Doc. 37) (the “Lien Strip Motion”). The Lien Strip Motion alleged that the U.S. Department of Housing and Urban Development held the first perfected security deed on Debtor’s residence, followed second by Washington Mutual Bank and third by Wells Fargo. (Doc. 37 at 2). Both Washington Mutual and Wells Fargo allegedly “appear[ed] not to hold [] validly perfected” security deeds. (*Id.*). The Court set the matter for hearing on July 29, 2015 (Doc. 43). The day before the hearing, Wells Fargo filed a Response to the Lien Strip Motion (Doc. 46). That same day, Debtor filed, among other documents, her Motion for Reconsideration (Doc. 49) of the Court’s June 17, 2015 Order overruling her objection.

II. Discussion

The Court first addresses Debtor’s Motion for Reconsideration. As noted above, Debtor alleges that Wells Fargo’s security deed is subordinate to a purported second-priority Washington Mutual Bank security deed. Wells Fargo asserts that “Washington Mutual Bank, FA conveyed its interest in the subject property to Respondent Wells Fargo Bank, N.A. through an assignment.” (Response to Lien Strip Motion ¶ 3, Doc. 46). The Court held in its June 17, 2015 Order Overruling Debtor’s Objection that Debtor lacked standing to contest the validity of Washington Mutual Bank’s assignment to Wells Fargo, and in any case was estopped to contest the assignment based on her entry into a loan modification with Wells Fargo. (Doc. 38 at 3). Through her Motion for Reconsideration, Debtor again seeks an order disallowing Wells Fargo’s claim. Attached to Debtor’s Motion for Reconsideration are a number of unauthenticated documents including purported conversations between Debtor and Wells Fargo and Debtor and

HUD. Even if the Court were to consider these unauthenticated documents, Debtor has not shown that these documents were unavailable to her at the time she made her Objection. Further, Debtor's allegations of lack of disclosure and unreasonable charges in her Motion for Reconsideration fail to overcome the prima facie validity of Wells Fargo's sworn Proof of Claim.

The Court next turns to confirmation of Debtor's Chapter 13 plan. The plan does not provide for the payment of Wells Fargo's allowed secured claim. (Doc. 16). Consequently, Wells Fargo asserts that Debtor's plan cannot be confirmed under Bankruptcy Code Section 1325(a)(5). (Objection to Confirmation ¶ 5, Doc. 19). In response, Debtor seeks to utilize Sections 1322(b)(2) and 506(a) to strip off Wells Fargo's lien and treat the claim as an unsecured claim. However, Section 1322(b)(2) provides that a Chapter 13 debtor's plan cannot modify the rights of a holder of a secured claim secured only by a security interest in real property that is the debtor's principal residence. The Supreme Court held in *Nobelman v. American Savings Bank*, 508 U.S. 324, 325–26 (1993) that “§ 1322(b)(2) prohibits a Chapter 13 debtor from relying on § 506(a) to reduce an undersecured homestead mortgage to the fair market value of the mortgaged residence.” Interpreting *Nobelman*, the Eleventh Circuit held in *In re Tanner*, 217 F.3d 1357, 1359 (11th Cir. 2000) that the “antimodification provision protects only undersecured, and not wholly unsecured, homestead lenders.”

From the face of the Lien Strip Motion, however, Debtor fails to demonstrate that Wells Fargo's claim is wholly unsecured. The Lien Strip Motion alleges that the value of Debtor's residence is \$35,000 and that HUD holds a first secured claim for \$5,710.18. Even if the Court were to accept Debtor's contention that Wells Fargo's security deed is subordinate to HUD's,

Wells Fargo's claim would still be partially secured and thus prohibited from modification by *Nobelman*.

III. Conclusion

Regardless of lien priority, because Wells Fargo holds an allowed secured claim, the Court cannot confirm a Chapter 13 plan that does not treat the claim. Accordingly, it is

ORDERED that Debtor's Lien Strip Motion (Doc. 37) and Motion for Reconsideration (Doc. 49) are both **DENIED**, confirmation of Debtor's Chapter 13 plan (Doc. 16) is **DENIED**, and the above-styled case is **DISMISSED**.

It is **FURTHER ORDERED** that the Trustee is **DIRECTED** to return to the Debtor the funds being held pursuant to the Court's April 15, 2015 Order (Doc. 30) unless Wells Fargo makes a claim to those funds within 10 days of the date of entry of this Order.

The Clerk's Office is directed to serve a copy of this Order upon Debtor, the Chapter 13 Trustee, and all creditors and other interested parties.