

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
RICHARD P. ALLENBAUGH JR. and)
MARY JANE ALLENBAUGH,) CASE NO. 08-23224 jpk
) Chapter 13
Debtors.)

ORDER DETERMINING "STRIP DOWN" OF SECURITY INTEREST OF OCWEN

On May 2, 2009, the debtors, by counsel initiated a contested matter pursuant to Fed.R.Bankr.P. 3012 against OCWEN. In this contested matter the debtors sought to "strip down" the second mortgage interest of OCWEN in the debtors' principal residence located at 112 Leanna Lane, Valparaiso, Porter County, Indiana, on the basis that OCWEN did not have a "secured claim" in that property within the provisions of 11 U.S.C. §1322(b)(2), because the value of liens and security interests having priority in that property over the second mortgage interest of OCWEN exceeded the value of the property, thus leaving no "value" for OCWEN's lien which would give rise to a secured claim under 11 U.S.C. § 506(a). Service of process of the contested matter was properly made upon OCWEN, and OCWEN neither appeared at any hearing regarding the debtors' motion nor sought to defend against the motion in any manner. Pursuant to docket record order entered on July 20, 2009 as record entry No. 95, the court scheduled a hearing for August 24, 2009 pursuant to Fed.R.Bankr.P. 7055/Fed.R.Civ.P. 55(b)(2) to provide the debtor with an opportunity to satisfy the requirements of those rules as to default of OCWEN with respect to relief requested by the contested matter. At that hearing, the debtor appeared by counsel George P. Galanos and the Chapter 13 trustee appeared by attorney Julia M. Hoham; OCWEN did not appear. Based upon the evidence submitted at that hearing, the court finds that the debtors established their claim for the relief requested in this contested matter. In doing so, the debtors apparently have relied upon judicial decisions under 11 U.S.C. § 1322(b)(2) which had determined that the protection with respect to modification of

security interests under that provision is predicated upon the holder of a security interest having an “allowed secured claim” under 11 U.S.C. § 506(a). These decisions hold that if the amount of the debt subject to allowed secured claims having priority over the security interest of a creditor in residential property comprising the debtors’ principal residence, equals or exceeds the value of the property, then the security interest of the subordinate creditor may be avoided completely (“stripped off”). The court finds that this contested matter invokes this principle, and that as a result the debtors’ plan is not required to provide for OCWEN’s interest in the property pursuant to 11 U.S.C. § 1322(b)(2)/1322(b)(5)/1325(a)(5), and that upon successful completion of the debtors’ plan and receipt by the debtors of discharge pursuant to 11 U.S.C. § 1328(a), the security interest held by OCWEN in the debtors’ residence will have been fully and effectively avoided. As a result, upon the debtors’ obtaining a discharge pursuant to 11 U.S.C. § 1328(a), any indebtedness owed by the debtors to OCWEN will be discharged, and any security interest/mortgage held by that entity will be void and of no effect.

IT IS ORDERED, ADJUDGED AND DECREED that upon successful completion of the debtors’ Chapter 13 plan and upon the debtors’ obtaining of a discharge pursuant to 11 U.S.C. § 1328(a) in this case, the following will result:

1. All *in personam* indebtedness owed by the debtors to OCWEN shall be discharged.
2. Any security interest, mortgage, or other lien held by OCWEN with respect to the real property located at 112 Leanna Lane, Valparaiso, Porter County, Indiana shall be void.
3. Upon request by the debtors, OCWEN or its successor in interest, assignee, or servicer – shall take all necessary action to terminate OCWEN’s mortgage or other lien interest in the property located at 112 Leanna Lane, Valparaiso, Porter County, Indiana, and to remove that mortgage interest/lien as an encumbrance with respect to that property from the property records maintained by the recorder of Porter County, Indiana.

Dated at Hammond, Indiana on October 22, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee