

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
JENNIFER RENEE GREENAWALT,)	CASE NO. 09-34407 HCD
)	CHAPTER 7
)	
DEBTOR.)	
)	
)	
JENNIFER RENEE GREENAWALT,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 09-3128
)	
PERSONAL FINANCE COMPANY LLC and)	
HSBC BANK NEVADA, N.A.,)	
DEFENDANTS.)	

Appearances:

Loraine P. Troyer, 121 North Third Street, Goshen, Indiana 46526.

MEMORANDUM OF DECISION

At South Bend, Indiana, on June 30, 2010.

Before the court is the Motion for Default Judgment filed by the plaintiff Jennifer Renee Greenawalt, chapter 7 debtor (“plaintiff” or “debtor”), against the defendants Personal Finance Company LLC and HSBC Bank Nevada, N.A. (“defendants”).

The plaintiff commenced this adversary proceeding with a Complaint to Determine Dischargeability of Debt and Validity and Extent of Lien. See R. 1; *see also In re Forrest*, 424 B.R. 831, 833 (Bankr. N.D. Ill. 2009) (stating that an adversary proceeding is necessary to determine the validity and extent of junior liens). She duly served the summons and Complaint on the defendants. See Fed. R. Bankr. P. 7004(b)(3); 7004(h). The defendants did not respond within the 30-day period required by the summons.

The plaintiff then filed an Application for Entry of Default, which was accompanied by an Affidavit verifying that the defendants were duly served, that the summons and Complaint were received (as shown by the return of service filed), and that the defendants had failed to answer or otherwise defend. The requirements of Federal Rule of Civil Procedure 55(a) having been met, the Clerk's Entry of Default was issued and the defendants were found in default. *See* R. 7, 8, 9; *see also* Fed. R. Bankr. P. 7055; Fed. R. Civ. P. 55(a).

Once the Clerk entered the default, the plaintiff filed a Motion for Default Judgment. *See* R. 12; *see also* Fed. R. Civ. P. 55(b). In the Motion, the plaintiff provided facts to demonstrate that the underlying allegations in the Complaint justified a request for the court's determination that the debts owed to the defendants are unsecured and dischargeable pursuant to 11 U.S.C. § 506(d). *See Stewart v. JP Morgan Chase Bank (In re Stewart)*, 408 B.R. 215, (Bankr. N.D. Ind. 2009) (requiring debtor to establish a *prima facie* case evidencing her entitlement to strip off junior mortgage liens). She stated that the real estate, located on Sun Valley Boulevard in Goshen, Indiana, is valued at \$100,000 and is encumbered by a first mortgage owing to Chase in the amount of \$133,265. She further stated that the two defendants hold state court judgments against the debtor. However, the Complaint alleged, there is no equity in the real estate to which the two judgments can attach, and therefore "[t]he secured status of the claims of [the defendants] should be completely stripped away pursuant to 11 U.S.C. § 506(d)." R. 1, ¶ 7; *see also* R. 12, ¶ 2. The defendants holding the junior mortgages on the real estate were unresponsive to the Complaint and to the Motion for Default Judgment; they did not object to the plaintiff's allegation that their liens should be stripped.

The court finds that the Complaint's allegations were well pled and unchallenged; they thus were sufficient to support the cause of action and to entitle the debtor to the relief sought. *See Target Nat'l Bank v. Redmond (In re Redmond)*, 399 B.R. 628, 633 (Bankr. N.D. Ind. 2008); *In re Taylor*, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003). It is undisputed that the amount owed on the first mortgage, \$133,265, exceeds

the estimated value of the property, \$100,000. The plaintiff set forth a *prima facie* case that the claims of the defendants, junior mortgage lienholders, are wholly unsecured and that their liens should be stripped off and avoided pursuant to § 506(d).

The court concludes, therefore, that the plaintiff has followed the requirements necessary to claim relief under Federal Rule of Civil Procedure 55, made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7055. The court grants the Motion for Default Judgment and enters judgment upon the Complaint in favor of the plaintiff Jennifer Renee Greenawalt, chapter 7 debtor, and against the defendants Personal Finance Company LLC and HSBC Bank Nevada, N.A., pursuant to 11 U.S.C. § 506(d).

SO ORDERED.

/s/ HARRY C. DEES, JR.

HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT