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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:)
)
LEROY GILBERT CAREY) CASE NO. 10-40232
)
)
Debtor)

DECISION

At Fort Wayne, Indiana, on March 16, 2011.

Is the debtor's residence worth more or less than \$173,558.56? That is not the proverbial \$64,000 question, but it is a \$56,000 question: \$56,031.38 to be precise. That is the amount due on account of a second mortgage held by Lafayette Community Bank. Debtor contends that the value of his home is such that – given the amounts due on account of the first mortgage (\$169,948.89) and the liens for real estate taxes (\$3,609.67) – the second mortgage has no value whatsoever. He has proposed a Chapter 13 plan that would strip the bank's junior mortgage and treat it as an unsecured creditor. The bank has objected. Although acknowledging it is not fully secured, it claims its lien has some value and so its rights cannot be modified. The matter is before the court following trial of the issues raised by confirmation and the bank's objection thereto.

The only issue is the value of the debtor's residence. If that value does not exceed the amounts due on account of prior liens – the first mortgage and real estate taxes – so that there is no value left for the bank's second mortgage, its lien may be stripped entirely and it can be treated as an unsecured creditor. See, 11 U.S.C. §§ 506(a); 1322(b)(2). See also, In re Brenneke, 441 B.R. 625 (Bankr. E.D. Mo. 2010); In re Fenn, 428 B.R. 494 (Bankr. N.D. Ill. 2010); In re Brown, 2010

WL 2859346 (Bankr. D. Neb. 2010); In re Robert, 313 B.R. 545, 550 (Bankr. N.D. N.Y. 2004). If, however, the value of the residence exceeds the amounts due on account of prior liens, so that there is any value left for the second mortgage – even as little as one dollar – the bank’s rights cannot be modified and, absent its agreement, the debtor’s plan must pay it in full, according to the terms of the original note, or surrender the property. See, 11 U.S.C. §§ 1322(b)(2), (5); 1325(a)(5). See also, Nobelman v. American Savings Bank, 508 U.S. 324, 113 S.Ct. 2106 (1993). There is no middle ground, as there often is under other chapters or with other types of collateral, which would allow a plan to “cram down” a mortgage lien to the actual value of the lien itself. When dealing with residential mortgage liens in Chapter 13, it is an all or nothing approach.

Debtor’s property has been valued for tax purposes at \$179,400. The court also received evidence from four appraisers, all of whom are well qualified, concerning their opinions as to the value of the property. Their differing appraisals ranged from a low of \$170,000 to a high of \$193,000. Despite their differing opinions, the parties’ appraisers do not differ in their competence, methodologies, or the valuation standards to be applied. Instead, the primary reason for the differences between them concerns the data – the comparable sales – each of them used to formulate their opinions. As a result, much of the questioning at trial was directed to the issue of whose comparables were better than whose.

Having considered the evidence presented at trial, with due regard for the credibility of the various witnesses that testified, their experience, expertise and the information they used in formulating their opinions, the court finds that the value of debtor’s residence is \$177,700. Since this exceeds the amounts due on account of prior liens, the bank’s second mortgage has some value, it may not be stripped and the bank may not be treated as an unsecured creditor. Confirmation of

the debtor's proposed plan will therefore be denied. An order doing so will be entered.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court