

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
*
AMALIA M. COFFIE, *
* CASE NUMBER 03-41988
*
Debtor. *
*

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AMALIA M. COFFIE, *
*
Plaintiff, *
*
vs. * ADVERSARY NUMBER 03-4122
*
FIRST PLUS CONSUMER FINANCE, *
INC., et al., *
*
Defendants. *
*

MEMORANDUM OPINION

On May 20, 2003, Debtor/Plaintiff, Amalia M. Coffie ("Plaintiff"), filed an adversary proceeding objecting to the secured status of Defendants, First Plus Consumer Finance, Inc. and HUD Title I Loans ("Defendants"), and seeking to avoid their respective mortgage liens on the Plaintiff's residence located at 1724 Shehy Street, Youngstown, Ohio 44506 (the "Complaint"). The Complaint was properly served. On May 28, 2003, the Court issued a notice and summons that required the Defendants to file a motion or answer to the Complaint within 35 days. Service of

summons was executed on June 2, 2003. The Defendants failed to file a motion or an answer. On August 14, 2003, the Plaintiff filed a motion for summary judgment (the "Motion"), which is currently pending before the Court and is the subject of this order. The Defendants failed to file a response.

The procedure for granting summary judgment is found in FED. R. CIV. P. 56(c), made applicable to this proceeding through FED. R. BANKR. P. 7056, which provides in pertinent part that

[t]he judgment sought shall be rendered forth-with if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

FED. R. BANKR. P. 7056. Summary judgment is proper if there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

In a motion for summary judgment, the movant bears the initial burden to establish an absence of evidence to support the nonmoving party's case. *Celotex*, 477 U.S. at 322; *Gibson v. Gibson (In re Gibson)*, 219 B.R. 195, 198 (B.A.P. 6th Cir. 1998). The burden then shifts to the nonmoving party to demonstrate the existence of a genuine dispute. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992). In addition, the evidence presented must be viewed in the light most favorable to the nonmoving

party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 (1970).

In the case at bar, the Plaintiff has failed to meet her initial burden to establish that there is no genuine issue of material fact in dispute. In addition to filing the Complaint and Motion, the Plaintiff included the following as exhibits to her Motion: (1) an affidavit of the Plaintiff in which she attested to facts, including the value of her residence, the homestead exemption she claimed in Schedule C of her bankruptcy petition and the amount she currently owes respectively on her first, second and third mortgages; and (2) a computer printout of the Mahoning County Auditor's valuation of the property at issue. However, the Plaintiff failed to file any billing records or other documentation to establish the outstanding value of the first, second and/or third mortgages. The Court cannot rely solely on the Plaintiff's attestation as to the outstanding value of each of the three mortgages for the purposes of summary judgment when all evidence must be viewed in the light most favorable to the nonmoving party, the Defendants. The corroboration of either the Defendants or written documents is needed. Because the Plaintiff failed to establish that there are no genuine issues of material fact in dispute, summary judgment is denied.

The court acknowledges that the Defendants failed to respond to both the Complaint and the Motion. In these circumstances, a motion for default judgment would be

appropriate. However, such a motion is not presently before the Court and therefore cannot be ruled upon.

An appropriate order shall enter.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**

UNITED STATES BANKRUPTCY COURT
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AMALIA M. COFFIE,

Debtor.

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AMALIA M. COFFIE,

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ADVERSARY NUMBER 03-4122

FIRST PLUS CONSUMER FINANCE,
INC., et al.,

Defendants.

*

O R D E R

For the reasons set forth in this Court's memorandum opinion entered this date, the motion of Debtor/Plaintiff, Amalia M. Coffie, for summary judgment is denied.

IT IS SO ORDERED.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
Memorandum Opinion and Order were placed in the United States

Mail this _____ day of January, 2005, addressed to:

AMALIA M. COFFIE, 1724 Shehy Street,
Youngstown, OH 44506.

WAYNE W. SARNA, ESQ., 11 Federal Plaza
Central, Metropolitan Tower, Seventh Floor,
Youngstown, OH 44503.

FIRST PLUS CONSUMER FINANCE, INC., 1 East Gay
Street, Columbus, OH 43215.

HUD TITLE I LOANS, 451 7th Street, S.W.,
Washington, DC 20410.

MICHAEL A. GALLO, ESQ., 20 Federal Plaza
West, Suite 600, Youngstown, OH 44503.

JOANNA M. ARMSTRONG