



Dismiss") (Doc. # 12) filed by Defendant Bank of America, N.A. as successor by merger to BAC Home Loans Servicing, L.P. on August 15, 2011. Debtor/Plaintiff John J. Edwards did not file a response to the Motion to Dismiss.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

#### **I. FACTUAL AND PROCEDURAL BACKGROUND**

The Debtor filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code on March 7, 2011. On June 3, 2011, the Debtor filed Complaint to Determine Secured Status of Claims and to Void Liens to they [sic] Extent They Secure Claims Which Are Not Allowed Secured Claims ("Complaint") (Doc. # 1), which commenced the instant adversary proceeding.

In the Complaint, the Debtor asserts that he is the owner of real property known as 14413 Washingtonville Road, Salem, Ohio 44460 ("Real Property"), which has a fair market value of \$77,200.00. (Compl. at 1.) The Debtor alleges that the Defendant<sup>1</sup> has (i) a valid and perfected first mortgage lien on the Real Property in the

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<sup>1</sup>The Debtor refers to the Defendant as "BAC Home Loans." For purposes of this Order, the Court will treat Bank of America, N.A. as successor by merger to BAC Home Loans Servicing, L.P. and "BAC Home Loans" as the same entity.

approximate amount of \$99,886.00; and (ii) a valid and perfected second mortgage lien on the Real Property in the approximate amount of \$13,869.00 ("Second Mortgage"). (*Id.*) The Debtor argues that the Second Mortgage "has a secured value of \$0.00 and is unsecured for \$13,869.00 as provided for in 11 U.S.C. 506(a) [sic]" and "should be voided pursuant to 11 U.S.C. 506 [sic] to the extent that there is a balance owing on the second mortgage lien [sic] which exceeds the fair market value of \$77,200.00 of the [Real Property]." (*Id.* at 1-2.)

The Defendant filed the Motion to Dismiss on August 15, 2011. The Defendant moves to dismiss this adversary proceeding for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6). The Defendant contends that the Complaint does not contain a cause for relief because "Section 506(d) does not allow a Chapter 7 debtor to cram down a secured lien, even if the amount of the debt exceeds the fair market value of the property securing the debt." (Mot. to Dismiss at 5 (citing *Dewsnup v. Timm*, 502 U.S. 410 (1992))). The Defendant also asserts that only the chapter 7 trustee has standing to pursue claims on behalf of the estate. (*Id.* at 7-9.)

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6), made applicable to the instant adversary proceeding by Federal Rule of Bankruptcy Procedure 7012(b), requires that a pleading containing a claim for relief "state a claim upon which relief can be granted." FED. R.

Civ. P. 12(b)(6) (West 2011); FED. R. BANKR. P. 7012(b) (West 2010). A claim will be dismissed if it fails to allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). In determining whether a claim alleges enough facts to survive a motion to dismiss, the court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007); see also *Twombly*, 550 U.S. at 555.

### III. ANALYSIS AND CONCLUSION

The Debtor requests the court to void or "strip off" the Second Mortgage pursuant to § 506. Section 506(a)(1) states, in pertinent part,

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim.

11 U.S.C. § 506(a)(1) (West 2010). Section 506(d) states, in pertinent part, "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless- . . . ." 11 U.S.C. § 506(d) (West 2010).

As this Court has expressly ruled in the past, "Although these subsections may appear, when read in conjunction with each other, to permit [a chapter 7] Debtor to avoid a lien that is more than the value of the property, this is not the case." *Shuster v. JP Morgan Chase Bank, N.A. (In re Shuster)*, Adv. No. 08-4014, at 5 (Bankr. N.D. Ohio Apr. 28, 2008) (unpublished). This Court explained:

The Supreme Court has held, "Ordinarily, liens and other secured interests survive bankruptcy." *Farrey v. Sanderfoot*, 500 U.S. 291, 297 (1991). "Rather, a bankruptcy discharge extinguishes only one mode of enforcing a claim - namely, an action against the debtor *in personam* - while leaving intact another, namely an action against the debtor *in rem* . . . ." *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991). As a consequence, "even after [a] debtor's personal obligations have been extinguished, the mortgage holder still retains a 'right to payment' in the form of its right to the proceeds from the sale of the debtor's property." *Id.* The Supreme Court expressly rejected the argument Debtor attempts to make in this Adversary Proceeding, *i.e.*, that subsections (a) and (d) of section 506, when read together, eliminate a lienholder's right to foreclose on real property post-discharge. See *Dewsnup v. Timm*, 502 U.S. 410 (1992).

Although *Dewsnup* applies to a "strip down" of a partially secured lien, the Sixth Circuit Court of Appeals rejected the same argument with respect to a debtor's attempt to "strip off" a junior creditor's lien. In *Talbert v. City Mortgage Services (In re Talbert)*, 344 F.3d 555 (6th Cir. 2003), the junior lien was wholly unsecured because the senior lien exceeded the fair market value of the real property that secured both liens. The Sixth Circuit held:

The Supreme Court's reasoning for not permitting "strip downs" in the Chapter 7 context applies with equal validity to a debtor's attempt to effectuate a chapter 7 "strip off." . . . [T]o permit a "strip off" would mark a departure from the . . . rule that real property liens emerge from bankruptcy unaffected, [and] would rob the mortgagee of the bargain it struck with the mortgagor. . . .

“‘[T]he fresh start’ policy cannot justify an impairment of [creditors’] property rights, for the fresh start does not extend to an *in rem* claim against property but is limited to a discharge of personal liability.”

*Id.* at 560-61 (citations omitted).

*Id.* at 5-6.

Principles of *stare decisis* preclude the Court from rejecting the rulings made by the Sixth Circuit Court of Appeals in *In re Talbert* and this Court in *In re Shuster*. Moreover, the Debtor has offered absolutely no support for his argument that § 506 permits the Court to strip off the Second Mortgage. As a result, this Court hereby finds that the Debtor has failed to state a claim upon which relief can be granted.<sup>2</sup> Accordingly, the Motion to Dismiss is hereby granted.

**IT IS SO ORDERED.**

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<sup>2</sup>Because the Court finds that the Debtor may not strip off the Second Mortgage in this chapter 7 proceeding, the Court will not address the Defendant’s contention that the Debtor lacks standing to pursue this adversary proceeding.