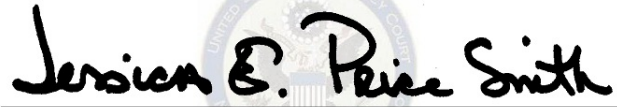


IT IS SO ORDERED.

Dated: 11 May, 2012 01:41 PM



Jessica E. Price Smith

JESSICA E. PRICE SMITH
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:

MARK MCCORKLE
TERESA MCCORKLE
Debtors.

In Proceedings Under Chapter 13

CASE NO: 11-16042

JUDGE JESSICA E. PRICE SMITH

ORDER

This matter before the Court is Debtors' Motion to Avoid Lien with PNC Bank ("Motion"). PNC objected to the Motion. Debtors sought to avoid the second mortgage held by PNC pursuant to 11 U.S.C. § 506(a) on the basis that there was no equity to which PNC's lien could attach. PNC objected on the basis that 1) there was equity in the property to support its lien; and 2) the lien stripping power of § 506 was unavailable to Debtors because their 2011 Chapter 7 discharge made them ineligible for a Chapter 13 discharge in this case, a requirement for avoiding the lien.

Prior to an evidentiary hearing on the matter, the parties filed Joint Stipulations of Fact wherein they agreed that the value of the property was \$117,000.00. (Docket No. 56). The

payoff figure for the first mortgage was not available at the evidentiary hearing and the matter was taken under advisement. A week later, the Debtors filed the payoff information, showing that \$110,332.12 was due on the first mortgage (Docket No. 57). Because that payoff figure showed equity in the property, the Court conducted a status conference regarding the Debtors' intent to continue prosecution of their Motion to Avoid Lien. At the status conference the Debtors indicated they still intended to prosecute the Motion. The Debtors' Motion was denied from the bench and PNC's objection was sustained, with a written order to issue.

In order to avoid a lien pursuant to 11 U.S.C. § 506, there must be no equity to which the lien can attach. *Nobleman v. American Sav. Bank*, 508 U.S. 324, 332 (1993). Here, the lien amount of the first mortgage on Debtors' property is \$110,332.12 and the value is \$117,000.00. Because there is equity in the property, Debtors are unable to avoid the second mortgage. The Court also finds that because the Debtors are ineligible for a discharge, they are unable to use 11 U.S.C. § 506 to value the collateral and avoid the second mortgage. The lien stays in place until discharge or payment of the underlying debt. *See* 11 § 1325(a)(5); *In re Orkwis*, 457 B.R. 243,252 (Bankr.E.D.N.Y. 2011)(“the lien remains on the property until the payments under the plan are completed. The lien is removed only upon satisfaction of the plan obligations and entry of the discharge pursuant to § 1325(a)(5).”)

Because 11 U.S.C. § 1328(f)(1) prevents the Debtors from receiving a discharge in this case, PNC's second mortgage lien will remain in place until payment of the underlying debt. Accordingly, the Debtors' Motion to Avoid Lien is overruled and PNC's objection is sustained. Each party is to bear its respective costs.

IT IS SO ORDERED.