



IT IS ORDERED as set forth below:

Date: June 28, 2010

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: 10-67569-PWB
	:	
KEVIN DEMETRIUS BAKER,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE
_____	:	
	:	
KEVIN DEMETRIUS BAKER,	:	
	:	
Movant	:	CONTESTED MATTER
	:	
v.	:	
	:	
PNC BANK, N.A.,	:	
a/k/a NATIONAL CITY BANK	:	
c/o HOME LOAN SERVICES, INC.,	:	
Loan Number Ending 6532,	:	
	:	
Respondent.	:	

ORDER

The Debtor's "Motion to Determine Value of Real Property, to Strip Junior Mortgage Held by PNC Bank, N.A. a/k/a National City Bank Care of Home Loan Services, Inc., Loan Ending

6532” (Doc. 25) came before this Court for hearing on June 23, 2010. The Debtor seeks a determination that the second priority deed to secure debt on the residence, located at 30 Lamar Lane, Covington, Newton County, Georgia, held by the Respondent, is completely unsecured and that, because there is no value in the residence to which its junior lien can attach, its claim is unsecured and the lien is void pursuant to 11 U.S.C. §§ 506(d) and 1322(b)(2). There being no opposition to the motion, it is

ORDERED that the motion is granted as set forth herein. It is

FURTHER ORDERED that, for purposes of the Debtor’s chapter 13 case, the claim of PNC Bank, N.A. a/k/a National City Bank c/o Home Loan Services, Inc., Loan Ending 6532, is allowed as a general, nonpriority unsecured claim. It is

FURTHER ORDERED that, effective upon entry of discharge in the Debtor’s chapter 13 case, the lien of PNC Bank, N.A. a/k/a National City Bank c/o Home Loan Services, Inc., Loan Ending 6532, evidenced by a security deed recorded in the Superior Court of Newton County, Georgia, shall be avoided with respect to the Debtor’s interest in the residence¹ without further order pursuant to 11 U.S.C. § 506(d). In the event the Debtor’s case is dismissed or converted to

¹ The Court’s lien-stripping analysis in a chapter 13 case begins with 11 U.S.C. § 506(a) which provides that “[a]n 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.” The Eleventh Circuit has held that a creditor whose lien is wholly unsecured under § 506(a) does not have a secured claim and, therefore, is not entitled to the protection of § 1322(b)(2) even if the creditor has a lien on the debtor’s residence and no other collateral. *In re Tanner*, 217 F.3d 1357 (11th Cir. 2000). The Debtor’s Schedule A reflects that he owns this property with his spouse, from whom he is separated. The security deed attached to the Respondent’s proof of claim lists Alesha Baker as a co-grantor. Thus, only the Debtor’s (presumably) one-half interest is property of the estate. Because Ms. Baker’s one-half interest is not property of the estate, the lien continues to exist on her interest in the property.

chapter 7, the lien of PNC Bank, N.A. a/k/a National City Bank c/o Home Loan Services, Inc., Loan Ending 6532, shall not be affected by this Order in accordance with 11 U.S.C. § 349(b)(1)(C) or § 348(f)(1)(B), as applicable.

End of Order

Distribution List

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