


Dated: July 25, 2014
The following is ORDERED:




Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re LARNARD O. JOYNER and
MIA Y. JOYNER,
Debtors

Case No. 14-21863-L
Chapter 13

LAYNARD O. JOYNER and
MIA Y. JOYNER,
Plaintiffs

v.

Adv. Proc. No. 14-00130

OCWEN LOAN SERVICING, LLC, and
WELLS FARGO BANK MINNESOTA, N.A.,
Defendants

**ORDER GRANTING MOTION TO DISMISS
AS TO OCWEN LOAN SERVICING, LLC**

BEFORE THE COURT is the Motion to Dismiss filed by Defendant, Ocwen Loan Servicing, LLC, on May 30, 2014 (Adv. Proc. Dkt. No. 7). Ocwen asserts that, as to it, the complaint fails to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6), made applicable in bankruptcy by Fed. R. Bankr. P. 7012. The deadline to file a response to the Motion to Dismiss

was June 30, 2014. No response has been filed and the matter is ready for decision.

FACTS

The Debtors filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on February 20, 2014, and filed their “Complaint to Change Creditor Ocwen Loan Servicing, LLC, and Wells Fargo Bank, N.A., From Secured to Unsecured and Remove Lien,” on April 17, 2014. Summonses were issued and served upon both defendants. Ocwen filed its Motion to Dismiss on May 30, 2014. Wells Fargo has filed no motion or answer.

As to Ocwen, the complaint alleges that the Debtors are the owners of real property in Germantown, Tennessee, which is encumbered by a deed of trust held by Ocwen. They allege that the debt owed to Ocwen is \$414,265.00, and that the property is worth \$367,200. They then ask that the property be declared void of any lien held by Ocwen.

Ocwen responds that it is entitled to be dismissed from the complaint as the result of section 1322(b)(2) of the Bankruptcy Code, which provides:

[A debtor’s plan may] modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.

11 U.S.C. § 1322(b)(2).

JURISDICTION

Jurisdiction over a complaint arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. In re Jurisdiction of Proceedings Under the Bankruptcy Amendments

Act of 1984, Misc. No. 81-30 (W.D. Tenn., July 10, 1984). The determination of the validity, extent, or priority of liens is a core proceeding arising under the Bankruptcy Code. See 11 U.S.C. § 157(b)(2)(K). Accordingly, the bankruptcy court has authority to hear and determine this adversary proceeding subject to appellate review.

ANALYSIS

In deciding a motion to dismiss a complaint upon the assertion that it fails to state a claim for which relief can be granted, the court must construe the complaint in the light most favorable to the plaintiff, accept the factual allegations as true, and determine whether the plaintiff can prove any state of facts that would entitle him or her to relief. *Wyser-Pratte Management Co., Inc., v. Telxon Corp.*, 413 F.3d 553, 560 (6th Cir. 2005); Fed. R. Civ. Proc. 12(b)(6). In addition to the allegations of the complaint, the court may consider other materials integral to the complaint, are public records, or are otherwise appropriate for taking judicial notice. *Wyser-Pratte*, 413 F.3d at 560. The bankruptcy court may take judicial notice of the docket and content of bankruptcy schedules and other documents filed in a case for the purpose of ascertaining facts not reasonably in dispute. *In re Nation*, 352 B.R. 656 (Bankr. E.D. Tenn. 2006).

Ocwen relies upon the exception in section 1322(b)(2) that prevents the modification of a “claim secured only by a security interest in real property that is the debtor’s principal residence.” The key to the application of this exception is the fact that real property is the debtor’s principal residence. The complaint fails to address this fact, but the Debtors’ petition lists their address as that of the property which is the subject of their complaint. In addition, their Schedule A identifies this property as their residence. The only other real property that it identifies is clearly labeled, “rental property.” Thus, there seems no reasonable dispute that the property which is the subject of the

complaint is the Debtor's principal residence.

A second requirement for application of the exception in section 1322(b)(2) is that the claim be secured *only* by real property that is the debtor's principal residence. Again, the complaint fails to address this fact. The Debtors' Schedule D, however, identifies no other collateral for the obligation owed to Ocwen.¹ Thus, there seems to be no reasonable dispute that the claim of Ocwen is secured *only* by real property that is the Debtors' principal residence.

As a result, the exception contained in section 1322(b)(2) prevents the Debtor's from modifying the claim of Ocwen. The Debtors admit that their residence has some value, i.e., \$367,200, which provides security for the claim of Ocwen. It is well settled that, to the extent that the value of a home secures any part of the claim, the lien may not be voided or stripped. *Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 328, 113 S.Ct. 2106 (1993).

CONCLUSION

For the foregoing reasons, the Motion to Dismiss filed by Ocwen Loan Servicing, LLC, is GRANTED.

cc: Plaintiffs
Attorney for Plaintiffs
Defendants
Attorney for Defendant Ocwen Loan Servicing, LLC
Chapter 13 Trustee

¹ As an aside, the court also notes that Schedule D shows no other obligation secured by the Debtors' residence, but instead an obligation owed to Wells Fargo Home Mortgage secured by the Debtors' rental property. The Motion to Dismiss was made only as to Ocwen. Although it seems that the complaint should be dismissed as to Wells Fargo as well, the court will not decide issues not presented to it.