

GOOD NEWS FOR BANKS: JUNIOR MORTGAGE LIENS PROTECTED IN CHAPTER 7 (AT LEAST FOR NOW)

As noted in our April, 2015 Newsletter as an important decision to soon be decided by the U.S. Supreme Court, the U.S. Supreme Court earlier this week unanimously held, overruling the Eleventh Circuit U.S. Court of Appeals, that a debtor cannot void or "strip off" a wholly unsecured junior mortgage lien in a Chapter 7 case.

In *Bank of America, N.A. v. Caulkett*, the issue before the Supreme Court was whether a Chapter 7 debtor may void a junior mortgage when the debt owed on the senior mortgage exceeds the value of the property. Although the Bankruptcy Code provides that a claim is secured to the extent of the value of a creditor's interest in the property, this language is not as straightforward as it may appear.

In the 1992 case of *Dewsnup v. Timm*, the Supreme Court denied a debtor's request to reduce her mortgage debt to the value of her property, holding that a secured claim is "a claim supported by a security interest in property, regardless of whether the value of that property would be sufficient to cover the claim." Relying on *Dewsnup*, the Supreme Court in this case concluded that even if a junior lienholder has no equity interest in the property, the lien is still considered "secured" and the debtor may not void the lien.

Although this decision is a victory for banks and junior lienholders, that victory may be short-lived. In a footnote, the Supreme Court conceded that over the years, *Dewsnup* has been the subject of much criticism, and appeared to suggest that had the debtors asked the Court to overrule *Dewsnup* and its definition of a secured claim, it may have done so.

FROM APRIL 2015

STRIPPING OF UNSECURED SECOND MORTGAGES IN CHAPTER 7 BANKRUPTCIES TO BE DECIDED BY THE UNITED STATES SUPREME COURT

On March 24, 2015, the U.S. Supreme Court heard oral arguments in two cases involving whether a Chapter 7 debtor may strip off a second (or any junior) mortgage that is not secured by the home's actual market value. The two underlying cases arose out of the Eleventh Circuit U.S. Court of Appeals which has approved stripping-off wholly unsecured second mortgages in Chapter 7 bankruptcies under Section 506(d) of the Bankruptcy Code. The Eleventh Circuit position conflicts with the holdings of the Fourth, Sixth, and Seventh Circuits (the only other federal Courts of Appeal to have addressed the issue).

To learn more about this matter or to discuss it in greater detail, please contact Robert E. Kaelin at 860.240.6036 / rkaelin@murthlaw.com or Thomas S. Vangel at 617.457.4072 / tvangel@murthlaw.com.

If you have any questions about the issues addressed here, or any other matters involving Bankruptcy and Creditors' Rights issues, please feel free to contact:

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